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GOVERNMENT CODE SECTION 6103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

Coordination Proceeding )  
Special Title (Rule 1550(b)) )  
Judicial Council Coordination )  
Proceeding No. 4408 )  
**ANTELOPE VALLEY GROUNDWATER CASES** )  
Included actions: )  
Los Angeles County Waterworks District No. 40 v. )  
Diamond Farming Co., et al. )  
Los Angeles County Superior Court, Case No. BC 325 )  
201 )  
Los Angeles County Waterworks District No. 40 v. )  
Diamond Farming Co., et al. )  
Kern County Superior Court, Case No. S-1500-CV- )  
254-348 )  
Wm. Bolthouse Farms, Inc. v. City of Lancaster )  
Diamond Farming Co. v. City of Lancaster )  
Diamond Farming Co. v. Palmdale Water District )  
Riverside County Superior Court, Consolidated Action, )  
Case nos. RIC 353 840, RIC 344 436, RIC 344 668 )  
**AND RELATED CROSS ACTIONS** )  
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FEDERAL DEFENDANTS' REPLY  
TO LANDOWNER DEFENDANTS'  
MOTION TO DISMISS PUBLIC  
WATER SUPPLIERS' CROSS-  
COMPLAINT AND RESPONSES  
THERE TO.

1           The United States respectfully submits its response to the [Landowner]  
2 Defendants' Motion to Dismiss Public Water Suppliers' Cross-Complaint (hereinafter the  
3 "Defendants' Motion") and the responses and replies filed thereto. The movants, a group  
4 of over 60 landowners in the Antelope Valley named and joined as Cross-Defendants to  
5 the Public Water Suppliers' (PWS) First-Amended Cross-Complaint, allege that joinder of  
6 all parties with rights to groundwater in this adjudication is not feasible and therefore the  
7 PWS suit should be dismissed. They argue that because the claimants comprising the  
8 Willis (dormant landowners) and Wood (small pumpers) Classes are not cross-defendants  
9 to the Public Water Suppliers' complaint a comprehensive adjudication of all rights to  
10 water is not possible.

11           The PWS responded with three points: 1) the coordination of the complex  
12 proceedings including the original actions filed in Kern and Los Angeles Counties, the  
13 PWS Cross-Complaint, and the Willis and Wood Class actions constitute a general  
14 adjudication; 2) alternatively, the PWS may promptly bring a motion to consolidate all  
15 proceedings to allow for entry of a single judgment; or 3) alternatively, the PWS could  
16 name the Willis and Wood Classes as cross-defendants to their first amended  
17 Cross-Complaint.

18           The Willis and Wood Classes replied noting that the Classes were certified as  
19 Plaintiff Classes. Serving and joining the Classes as cross-defendants, they argue, will  
20 require a motion for re-certification and new notices to the Class members advising them  
21 that they are being sued. Counsel for the Willis Class further argues that filing the PWS  
22 Cross-Complaint against the Classes is unwarranted at this stage of the litigation. Rather,  
23 Willis asserts that the next phase of trial on overdraft and yield may and should proceed  
24 under the current coordinated proceedings without creating "significant new procedural  
25 hurdles." Rebecca Willis' and the Class' Memorandum of Points and Authorities with  
26 Respect to the Landowners' Motion to Dismiss Public Water Suppliers' Cross-Complaint  
27 ("Willis Response"), filed June 16, 2009, at 2.

28           The Landowner Defendants replied to the PWS and the Wood responsive

1 briefing<sup>1/</sup> stating that coordination of the Class actions is not sufficient because it has not  
2 resulted in the joinder of indispensable parties to the general adjudication. Further, they  
3 argue that the Court may not consolidate these actions because they are pending in the  
4 Superior Courts of different counties and are not eligible for consolidation. The solution,  
5 according to the Landowner Defendants, is the PWS alternative suggestion of serving the  
6 Classes as cross-defendants in the PWS lawsuit. Failure to promptly join the Classes as  
7 cross-defendants, they argue, requires the Court to dismiss the PWS lawsuit.

8 **1. Mere coordination is insufficient to support a general adjudication that will**  
9 **be mutually binding on all water users.**

10 The United States agrees with the Landowner Defendants that a coordinated action  
11 does not satisfy the McCarran Amendment requirement of a comprehensive adjudication.  
12 In enacting the amendment, Congress was concerned that the United States not be  
13 subjected to piecemeal, private water rights litigation. *Colorado River Water*  
14 *Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976). In accordance with this  
15 policy, the courts have ruled that federal sovereign immunity is waived to allow  
16 determination of water rights of the federal government only in a comprehensive  
17 adjudication. *Id.* at 819-20; see also *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545,  
18 569 (1983).

19 The coordinated cases in the Antelope Valley Groundwater Adjudication remain  
20 entirely separate lawsuits. Cal. R. Ct. 3.545(c). They are bound together for litigation of  
21 common issues in order to avoid inconsistent determinations on those issues. However,  
22 beyond the limited overlapping issues, the cases remain separate actions and the claims  
23 raised by plaintiffs in the various actions are, and remain, piecemeal. For instance while  
24 safe yield and overdraft are necessary prerequisite issues to prescription in the Class  
25 actions, the claims in those cases do not contemplate the definition of individual rights to  
26 withdraw water that is binding upon all other ground water users from the same source,  
27 nor would the Class actions bind those land owners to the decrees adjudicating others'

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28 <sup>1/</sup> It appears the Landowner Defendants did not receive the Willis responsive brief in time to  
reply.

1 water rights. The limitation of coordination as a means to achieve a mutually binding  
2 adjudication of all of the correlative rights is illustrated by the problems inherent in  
3 enforcement of the separate decrees.

4 Even assuming uniform decrees were entered identically in each case the United  
5 States is not a party to the Class actions, and would not have recourse to enforce a decree  
6 to which it is a stranger. As the Court noted at the May 6, 2009 hearing, should the Willis  
7 and Wood Classes settle their claims against the PWS, the United States and any other  
8 party not named to their suits will not be bound. Coordination does not make the results  
9 of those actions binding on a non-party. Moreover, should the Class actions be resolved  
10 by stipulation and decree without the joinder of the Class members to the comprehensive  
11 adjudication of rights (including state correlative rights and federal reserved rights), the  
12 Class members would not be bound to any decree entered for the rights of the United  
13 States, thus allowing them the opportunity to challenge such decrees at a later date. The  
14 entire purpose of the McCarran Amendment may be frustrated "because unless all of the  
15 parties owning or in the process of acquiring water rights on a particular stream can be  
16 joined as parties defendant, any subsequent decree would be of little value." *United States*  
17 *v. Dist. Court In and For Eagle County, Colo.*, 401 U.S. 520, 525 (1971), quoting S. Rep.  
18 No. 82-755, at 9.

19 Therefore, coordination that leads to separate and non-mutually binding  
20 determinations of rights and interests entered in separate decrees has the potential to  
21 produce only piecemeal adjudication of limited rights that are neither binding on all users  
22 or enforceable by all users. Such an amalgam of decrees would not effect a general  
23 adjudication of the rights to water in the Antelope Valley aquifer. Consequently, this  
24 adjudication for the determination of the rights to all water in the Antelope Valley  
25 groundwater basin must be unified in a single or consolidated proceeding.

26 **2. Consolidation of coordinated complex actions may not be possible.**

27 The United States agrees with the Landowner Defendants that the consolidation of  
28 these cases lodged in different courts and jurisdictions appears to be untenable. The

1 various actions are pending before courts of differing jurisdiction (Kern and Los Angeles  
2 Counties) and, therefore, consolidation is not authorized. *See* Cal. Civ. Proc. Code §  
3 1048(a). Furthermore, transfer and consolidation of the disparate actions to one court is  
4 not possible because the cases are designated complex. *See* Cal. Civ. Proc. Code § 403.  
5 Accordingly, if consolidation of the coordinated actions is not proper, the only option for  
6 a mutually binding determination of all parties' rights to water within the basin, including  
7 the dormant landowners and small pumpers comprising the Willis and Wood Classes, is  
8 joinder as party defendants.

9 **3. The Wood and Willis Classes should be served with the PWS  
10 Cross-Complaint as soon as possible.**

11 The Willis Class suggests that the Court proceed with the Phase III trial on safe  
12 yield and overdraft based on the current alignment of parties, i.e., maintaining Wood and  
13 Willis as Plaintiff Classes. The Class argues that a finding that the basin is in a state of  
14 overdraft will dictate the appropriate course of future proceedings. If the basin is not in  
15 overdraft, Willis correctly points out, the prescriptive claims of the PWS fail and the  
16 correlative rights of all landowners and small pumpers are confirmed. The Willis  
17 suggestion has some appeal. Pursuant to the standards for coordination, this course of  
18 action has the advantage of producing one consistent ruling regarding safe yield and  
19 overdraft that is binding on all claimants. Cal. Civ. Proc. Code § 404.1 (Cases are  
20 coordinated to overcome the "disadvantages of duplicative and inconsistent rulings, orders  
21 or judgments . . . .")

22 However, the Court must also consider the ongoing Class settlement efforts.  
23 Settlement, and the need for a "fairness hearing", may require immediate joinder. A  
24 settlement on the rights of the (numerical) majority of Class claimants in the basin will  
25 necessarily impact all other claimants, and affect their correlative interests. Should either  
26 Class settle prior to the Phase III trial and seek a fairness hearing on the proposed  
27 settlement, the Classes would need to be joined as party defendants to the general stream  
28 adjudication prior to any such hearing. *See* Willis Response at 3 ("But no one - least of  
all the Classes - could settle this case to the prejudice of another party without a full

1 fairness and good faith hearing that examined everyone's rights.")

2           Therefore, the United States suggests that the most expedient course is for the  
3 Court to order the joinder of the Wood and Willis Classes to the Cross-Complaint  
4 proceedings for the general adjudication of all rights to water in the Antelope Valley as  
5 soon as possible, and prior to a fairness hearing on any proposed settlement of the Class  
6 lawsuits.

7           Respectfully submitted this 18th day of June, 2009.

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Environment and Natural Resources Division

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/s/

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**PROOF OF SERVICE**

I, Linda Shumard, declare:

I am a resident of the State of Colorado and over the age of 18 years, and not a party to the within action. My business address is U.S. Department of Justice, Environmental and Natural Resources Section, 1961 Stout Street, 8<sup>th</sup> Floor, Denver, Colorado 80294.

On June 18, 2009, I caused the foregoing documents described as; **FEDERAL DEFENDANTS' REPLY TO LANDOWNER DEFENDANTS' MOTION TO DISMISS PUBLIC WATER SUPPLIERS' CROSS-COMPLAINT AND RESPONSES THERETO**, to be served on the parties via the following service:

BY ELECTRONIC SERVICE AS FOLLOWS by posting the documents(s) listed above to the Santa Clara website in regard to the Antelope Valley Groundwater matter.

BY MAIL AS FOLLOWS (to parties so indicated on attached service list): By placing true copies thereof enclosed in sealed envelopes addressed as indicated on the attached service list.

BY OVERNIGHT COURIER: I caused the above-referenced document(s) be delivered to FEDERAL EXPRESS for delivery to the above address(es).

Executed on June 18, 2009, at Denver, Colorado.

/s/ Linda Shumard \_\_\_\_\_  
Linda Shumard  
Legal Support Assistant