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Attorneys for the United States

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)
[Assigned for all Purposes to the)
Honorable Jack Komar])
Included actions:)
FEDERAL DEFENDANTS')
Los Angeles County Waterworks District No. 40 v.)
Diamond Farming Co., et al.)
OPPOSITION TO MOTION TO)
Los Angeles County Superior Court, Case No. BC 325)
201)
SIGN ORDER RE: JURISDICTION)
OVER TRANSFEREES)
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)
_____)

FEDERAL DEFENDANTS' OPPOSITION TO MOTION TO SIGN ORDER
RE: JURISDICTION OVER TRANSFEREES

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The United States respectfully submits this opposition to the Public Water Suppliers’ motion requesting the Court sign the proposed Order Re Jurisdiction Over Transferees of Property (“Order”), filed May 26, 2010. The Antelope Valley Groundwater Adjudication is postured as an *in personam*, not an *in rem*, action. Consequently, the rulings of this Court will not bind anyone over whom the Court does not retain personal jurisdiction. *In re Estate of La Motta*, 86 Cal. Rptr. 880, 884 (Cal. Ct. App.1970) (“The essential difference between the res judicata effect of in rem, as contrasted to in personam judgments, is the range of persons upon whom they are conclusive.”); *see also* Restatement (First) of Judgments § 73 cmt. b (2009) (“Although a valid judgment in rem is binding on all the world as to interests in the thing which is the subject of the action, it will not bind anyone personally over whom the court did not have jurisdiction.”)

Unfortunately, this Order will not achieve personal jurisdiction over all transferees (during the pendency of the lawsuit and after final decree is entered) for three reasons:

- (1) notice of the Order is ineffective against the vast majority of landowners who hold correlative rights to water in this adjudication;
- (2) transferees who do not receive service and actual notice of the adjudication are not bound by any final judgment; and,
- (3) transferees after final judgment will not be bound by principles of res judicata.

Because the Order will not accomplish what it purports to do, i.e., maintain a comprehensive adjudication by obtaining jurisdiction over transferees of property and retaining jurisdiction after entry of judgment over subsequent transferees, the United States preserves its underlying objection that these proceedings cannot satisfy the requirements, under the McCarran Amendment, for the assertion of jurisdiction over the United States.

1. There is no provision for notice of this Order to be served upon Class members.

The Order provides that it applies to all parties in this adjudication, including individual parties and Class members. Order at ¶ 1. Both Classes object that their members had no notice

1 of this Order and its substantive obligations on Class members. A failure to adequately inform
2 Class members of the Order and the duties imposed on transferors will negate its effectiveness.
3 When this Order was first proposed by Tejon RanchCorp in January 2008, it was intended that “a
4 copy of this Order shall be included with the initial notice of Class Action that will be mailed to
5 all class members.” Order at ¶ 6. That did not happen. The Willis Class now states that “at a
6 bare minimum, the Suppliers must be required to re-notice the Class in order to provide Class
7 Members with notice of the terms of the Proposed Order.” See *Objection of Plaintiff Willis and*
8 *the Dormant Landowner Class to the Public Water Suppliers’ Request for Entry of Order*
9 *Governing Transferees of Properties*, dated May 5, 2010, at 3. The United States agrees. The
10 proposed Order, which imposes a substantive burden on each and every landowner including the
11 approximately 85,000 Class members (dormants and small pumpers), should be noticed to all
12 parties. Without notice of the obligations imposed by the Order, it is inconceivable that Class
13 members who sell their land could be expected to comply with an order that (1) requires them to
14 post notice of the transfer on the Court website, (2) include a Real Estate Transfer Disclosure
15 statement (if appropriate), and (3) provide to the buyer copies of this order, the current Cross-
16 Complaint of the Providers, and, if post-settlement or post-judgment, a copy of the judgment that
17 applies to the transferred property. Consequently, an unknown number of landowners will not
18 be joined or bound by any rulings in this adjudication and the Order, as proposed, will not cure
19 the underlying problem.^{1/} The failure to join landowners will make this less than a
20 comprehensive adjudication, and imperil the Court’s jurisdiction over the United States.

21 **2. Transferees who have not received actual notice of the pending adjudication**
22 **are not bound by any judgment.**

23 The Wood Class observes that “even if this order was signed, it would not cure the
24 problem caused by hundreds if not thousands of property transfers that have already occurred
25 during the pendency of this case.” *Richard Wood’s Opposition to Los Angeles County*

26 ^{1/} It is the burden of the Plaintiff Public Water Suppliers to establish comprehensiveness and
27 jurisdiction over the United States. The uncertainty regarding the number or scope of transfers
28 within the Classes brings even the ability to demonstrate jurisdiction into question.

1 *Waterworks and Rosamond CSD's Response Re: Objection to Failure to Join Indispensible* [sic]
2 *Party*, dated May 5, 2010, at 3. "A purchaser . . . who receives title to real property . . . prior to
3 judgment and without actual or constructive notice of the pending litigation is not bound by any
4 judgment received in the litigation." 5 Henry D. Miller and Marvin B. Starr, *California Real*
5 *Estate* § 11:147 (3d ed. 2009).

6 There can be no constructive knowledge of pending litigation absent *lis pendens*. "A
7 purchaser . . . who acquires an interest after the action is filed, without *actual* notice of the
8 pending litigation, is not on notice of the action unless a *lis pendens* is recorded." *Id.* (emphasis
9 in original); *see also Kendall-Brief Co. v. Superior Court*, 60 Cal. App. 3d 462, 468 (Cal. Ct.
10 App. 1976); *Alpha Stores, Ltd. v. Nobel*, 57 Cal. App. 2d 867, 872 (Cal. Ct. App. 1943). "The
11 purpose of a *lis pendens* is merely to furnish a means of notifying all persons of the pendency of
12 an action and thereby to bind any person who may acquire an interest in (the) property,
13 subsequent to the institution of the action, by any judgment which may be secured in the action
14 affecting the property." *Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 325 (Cal. Ct. App. 1969).

15 Absent *lis pendens* then, the Public Water Suppliers must provide actual notice to all new
16 Class members, as well as re-notice previous Class members, with a copy of this Order.
17 Otherwise, a bona fide purchaser of land within the Antelope Valley may evade the Court's
18 jurisdiction. Failure to identify and serve all new property owners violates the requirements,
19 under the McCarran Amendment, for the assertion of jurisdiction over the United States.

20 **3. Transferees after final judgment will not be bound to the decree.**

21 Finally, the Order is also ineffective in binding post-judgment transferees to the final
22 decree. Tejon RanchCorp argued that "post-judgment transferees of the property would be
23 bound by the judgment under traditional *res judicata* principles." *Brief of Tejon RanchCorp Re*
24 *Jurisdiction Over Transferees of Land*, dated May 11, 2007, at 4. Tejon RanchCorp is mistaken.
25 The case it cites, *Gale v. Tuolumne County Water Co.*, 169 Cal. 46, 51, (Cal. 1914), held that a
26 judgment against a current landowner should be binding on successors. However, this case "was
27 entirely in rem and the obligations and rights ran with the land. Thus, each successive owner of
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1 the creek and its adjacent lands took title to the same rights and obligations merely by virtue of
2 owning those permanent physical features of the land.” *People ex rel. Gwinn v. Kothari*, 83 Cal.
3 App. 4th 759, 770-771 (Cal. Ct. App. 2000).

4 In contrast to *Gale*, the Antelope Valley Groundwater Adjudication is *in personam*. Res
5 judicata principles applicable to *in rem* proceedings do not apply to this adjudication. Without a
6 mechanism to ensure that post-judgment transferees of property will be bound by the judgment,
7 the parties including the United States risk future piecemeal adjudication of the rights of future
8 landowners. This, too, will violate the requirements of the McCarran Amendment.

9 **4. Conclusion.**

10 Without actual notice of the proposed Order on all members of the Classes and future
11 transferees, the Order will not ensure that this adjudication comprehensively determines all
12 rights to water in the Antelope Valley groundwater basin. Without a viable means to determine
13 all rights to ground water and avoid piecemeal adjudication, the assertion of jurisdiction over the
14 United States under the McCarran Amendment will not hold.

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16 Respectfully submitted this 9th day of June 2010.

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19 _____
/s/
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