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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 Coordination Proceeding  
14 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding  
No. 4408

15 **ANTELOPE VALLEY**  
16 **GROUNDWATER CASES**

**Santa Clara Case No.**  
**1-05-CV-049053**  
The Honorable Jack Komar, Dept.17

17 **Included Actions:**  
18 Los Angeles County Waterworks District  
19 No. 40 vs. Diamond Farming Company, a  
20 corporation, Superior Court of California,  
County of Los Angeles, Case No.  
BC325201;  
21 Los Angeles County Waterworks District  
22 No. 40 vs. Diamond Farming Company, a  
23 corporation., Superior Court of California,  
County of Kern, Case No. S-1500-CV-254-  
348;  
24 Wm. Bolthouse Farms, Inc. vs. City of  
25 Lancaster, Diamond Farming Company, a  
26 corporation, vs. City of Lancaster, Diamond  
27 Farming Company, a corporation vs.  
Palmdale Water District, Superior Court of  
California, County of Riverside, Case Nos.  
RIC 353840, RIC 344436, RIC 344668.

**JOINT RESPONSE OF OVERLIERS TO  
PUBLIC WATER SUPPLIERS'  
OPPOSITION TO WOOD CLASS  
MOTION FOR AWARD OF COSTS  
AND ATTORNEY FEES**

Date: April 1, 2016  
Time: 1:30 p.m.  
Dept.: TBD, San Jose

1 Cross-Defendants, State of California and State of California 50<sup>th</sup> District Agricultural  
2 Association (collectively, State of California), the City of Los Angeles, by and through its  
3 Department of Airports, Los Angeles World Airports (LAWA), the County Sanitation Districts  
4 of Los Angeles County Nos. 14 and 20 (LA County Sanitation), the Antelope Valley - East  
5 Kern Water Agency, U.S. Borax, Inc., WDS California II LLC, Antelope Valley Ground Water  
6 Agreement Association, Bolthouse Properties, LLC, Wm. Bolthouse Farms, Inc., Crystal  
7 Organic farms LLC, Diamond Farming Company, Granite Construction Company, Grimmway  
8 Enterprises, Inc., Lapis Land company, LLC, Tejon Ranchcorp, Craig Van Dam, Delmar D.  
9 Van Dam, Gary Van Dam, Gertrude J. Van Dam (collectively, “Overliers”) submit this  
10 response to the Public Water Suppliers’ Opposition to the Wood Class’ Motion for award of  
11 costs and attorney’s fees.

12 I.

13 INTRODUCTION

14 At pages 27 and 28 of their Opposition to the Wood Class Motion for award of costs and  
15 attorney’s fees, the Public Water Suppliers argue, in part, that, “Other landowner parties . . .  
16 have actively litigated their groundwater right claims . . . and participated in settlement  
17 discussions with the Wood Class, filed briefs and made arguments regarding matters  
18 concerning the Wood Class” (PWS Opp., 27:10-14); “it would be inequitable for the Court to  
19 place the burden of attorney’s fees solely on the Public Water Suppliers” (PWS Opp., 28:3-5);  
20 and, therefore, “Any fee award against the Public Water Suppliers should not exceed  
21 *apportionment* pursuant to each producer’s percentage share [of] the Adjusted Native Safe  
22 Yield as set forth in Exhibit 3 to the Judgment” (PWS Opp., 28:5-7, emphasis added).

23 It is unclear whether the Public Water Suppliers’ argument is intended solely to suggest  
24 that the costs and attorney’s fees awarded against them should be reduced, or to suggest further  
25 that “each producer” should be assessed or apportioned a portion of the Wood Class costs and  
26 attorney’s fees based upon that “producer’s percentage share [of] the Adjusted Native Safe  
27 Yield.” If the latter is the Public Water Suppliers’ intent, their argument is entirely without  
28 merit and should be rejected, for the following reasons:

1 • The Public Water Suppliers contractually agreed and covenanted that they “shall pay all  
2 reasonable Small Pumper Class attorneys’ fees and costs through the date of the final  
3 Judgment,” and further that no part thereof is to be paid by the stipulating Overliers; and,

4 • The Overliers are not “opposing parties” in the Wood Class Action (CCP section  
5 1021.5).

6 For these and the other reasons stated herein, all costs and attorney’s fees awarded to  
7 the Wood Class should be assessed or apportioned solely as against the Public Water  
8 Suppliers; no part thereof should be assessed against or apportioned to these Overliers, or  
9 any other stipulating party (based on Stipulation Para. 11, line 18).<sup>1</sup>

## 10 II.

### 11 THE PUBLIC WATER SUPPLIERS ARE CONTRACTUALLY BOUND TO 12 PAY ALL WOOD CLASS’ COSTS AND ATTORNEY’S FEES

13 The Court approved Judgment and Physical Solution is the result of the  
14 STIPULATION FOR ENTRY OF JUDGMENT AND PHYSICAL SOLUTION executed  
15 by all the parties identified in Exhibits 3 and 4 of the Judgment, *including each of the Public*  
16 *Water Suppliers*, and certain other parties. In the first finding and order of the Judgment, the  
17 Court held that “[t]he Second Amended Stipulation For Entry of Judgment and Physical  
18 Solution among the stated stipulating parties is accepted and approved by the Court.”  
19 (Judgment, page 1, paragraph 1.)

20 In pertinent part, the Stipulation, at page 4, provides:

- 21 11. The Public Water Suppliers and no other Parties to this Stipulation shall pay  
22 all reasonable Small Pumper Class attorneys’ fees and costs through the date  
23 of the final Judgment in the Action, in an amount either pursuant to an  
24 agreement reached between the Public Water Suppliers and the Small Pumper  
25 Class or as determined by the Court. The Public Water Suppliers reserve the  
26 right to seek contribution for reasonable Small Pumper Class attorneys’ fees  
27 and costs through the date of the final Judgment in the Action from each other  
28 and Non-Stipulating Parties. Any motion or petition to the Court by the Small  
Pumper Class for the payment of attorneys’ fees in the Action shall be  
asserted by the Small Pumper Class solely as against the Public Water  
Suppliers (excluding Palmdale Water District, Rosamond Community

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<sup>1</sup> The Overliers do not take a position on the Wood Class Motion for costs and attorney’s fees because the Motion is not addressed to the Overliers, and the Wood Class does not seek an award against the Overliers, or any of them.

1 Services District, City of Lancaster, Phelan Pinon Hills Community Services  
2 District, Boron Community Services District, and West Valley County Water  
District) and not against any other Party.

3 12. In consideration for the agreement to pay Small Pumper Class attorneys' fees  
4 and costs as provided in Paragraph 11 above, the other Stipulating Parties  
5 agree that during the Rampdown established in the Judgment, a drought water  
management program ("Drought Program") shall be implemented as provided  
in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment.

6 (See Exhibit A attached hereto.)

7 Therefore, the Public Water Suppliers, and each of them, have contractually agreed  
8 that none of the stipulating parties (including these Overliers) shall be responsible for any of  
9 the Wood Class costs and attorney's fees and, instead, the Public Water Suppliers "shall pay  
10 all reasonable Small Pumper Class attorneys' fees and costs through the date of the final  
11 Judgment in the Action." This Court has "accepted and approved" the Stipulation as part of  
12 the Judgment. (Judgment, page 1, paragraph 1.)

13 As noted in paragraph 12 of the Stipulation, the Public Water Suppliers received  
14 separate and additional consideration for that undertaking. Consequently, the Public Water  
15 Suppliers cannot now assert or claim that any part of the Wood Class costs and attorney's  
16 fees should be assessed against or "apportioned" to any stipulating party that is not a Public  
17 Water Supplier.

18 **III.**

19 **THE OVERLIERS ARE NOT "OPPOSING PARTIES" IN THE WOOD**  
20 **CLASS ACTION**

21 Under Code of Civil Procedure section 1021.5, the court may only award attorney  
22 fees to a successful party against one or more "opposing parties." In *Mejia v. City of Los*  
23 *Angeles* (2007) 156 Cal.App.4th 151 ("*Mejia*"), the Court of Appeal explained that the term  
24 "opposing party," as used in this statute, is a person "by or against whom a suit is brought"  
25 (156 Cal.App.4th at 160). The Wood Class' complaint against the Public Water Suppliers is  
26 the only litigation in these consolidated and coordinated proceedings to which the Wood  
27 Class is a party. While the Wood Class did file a complaint against landowner parties, that  
28 complaint was never served on the Overliers, no steps were taken by the Wood Class to

1 pursue a claim against the Overliers, and that complaint was ultimately dismissed.  
2 Accordingly, the Overliers (and other similarly situated stipulating parties) are not named as  
3 parties in the Wood Class complaint, are not parties to that litigation, and none of them has  
4 been put on notice of any claim against them by the Wood Class. Consequently, as to the  
5 Wood Class Motion for costs and fees, the Overliers are not “opposing parties.” For this  
6 additional reason, the stipulating Overliers cannot be held liable for any Wood Class costs  
7 or attorney’s fees.

8 The Public Water Suppliers’ cited case decisions are inapposite. *Sundance v.*  
9 *Municipal Court for the Los Angeles Judicial District of Los Angeles County* (1987) 192  
10 Cal.App.3d 268, 272 and *Friends of the Trails et al. v. Blasius et al.* (2008) 78 Cal.App.4th  
11 810, 837-838, both of which are cited in the Public Water Suppliers Opposition Brief (Opp.,  
12 27:15-22), either assessed or apportioned fees and costs only against the defendants  
13 specifically named in those actions; fees and costs were not assessed against persons not  
14 named as defendants in those actions.

#### 15 IV.

#### 16 NOTWITHSTANDING CONSOLIDATION OF VARIOUS ACTIONS, 17 OVERLIERS ARE NOT SUBJECT TO IMPOSITION OF COSTS AND 18 FEES IN ACTIONS TO WHICH THEY ARE NOT PARTIES

19 Parties to consolidated cases do not become a single party for the purposes of a cost  
20 award in one of the consolidated cases (*Weck v. Los Angeles County Flood Control Dist.*  
21 (1948) 89 Cal.App.2d 278, 282-283 [treating prevailing consolidated co-defendants  
22 separately for purposes of awarding costs on appeal]). In *Golf West of Kentucky, Inc. v. Life*  
23 *Investors, Inc.* (“*Golf West*”), the Court of Appeal explained that:

24 . . . to impose joint and several liability on litigants who elect to consolidate their  
25 actions is to penalize parties for promoting judicial economy. There is no reason in  
26 logic or law to place litigants in a position of having to choose between prosecuting  
27 their actions individually, or consolidating their claims and potentially being held  
28 jointly and severally liable for costs, which may amount to a substantial sum.

1 (89 Cal.App.2d, at 318-319, underscoring added.)

2 If provided for by contract or statute, attorney fees are costs that can be awarded to a  
3 prevailing party (Code Civ. Proc. § 1033.5(a)(10)). Therefore, the Court of Appeal's  
4 decisions in *Weck* and *Golf West*, clearly apply to attorney fee awards in consolidated cases.  
5 Accordingly, under *Weck* and *Golf West*, the Wood Class may not seek fees and costs from  
6 the Overliers who were not parties to the Wood Class Action -- nor does its Motion seek  
7 such. As recognized in the Court's Consolidation Order, the Overliers became parties to  
8 these consolidated actions only because the Public Water Suppliers filed a complaint against  
9 some of them; they cannot be held responsible for costs and fees incurred in a separate  
10 action, including the Wood Class Action.

11 Additionally, the Court's February 19, 2010 Consolidation Order effectively bars the  
12 relief requested by Public Water Suppliers, stating, "Costs and fees could only be assessed  
13 for or against parties who were involved in particular actions" (Consolidation Order, filed  
14 February 24, 2010, page 3, lines 13-14; Exhibit B hereto.)

15 V.

16 CONCLUSION

17 The Public Water Suppliers are contractually bound to pay all Wood Class' costs and  
18 attorney's fees awarded by the Court. This contractual obligation provided the necessary  
19 underpinning for the proposed Judgment and Physical Solution which the Court ultimately  
20 approved. Moreover, the Overliers are not "opposing parties" in the Wood Class Action  
21 (Code Civ. Proc. section 1021.5). For these and the other reasons stated above, the Overliers  
22 respectfully submit that the Court should reject any suggestion by the Public Water  
23 Suppliers that Wood Class costs and attorney's fees should be assessed against or  
24 apportioned to stipulating parties other than the Public Water Suppliers.

25 March 24, 2016

BRUNICK, McELHANEY & KENNEDY

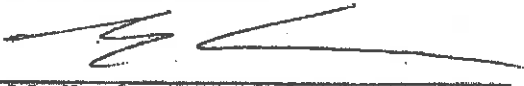
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Dated: March 23, 2016

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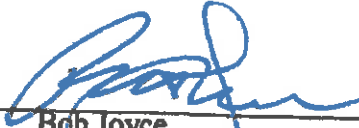
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# **EXHIBIT A**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Coordination Proceeding  
Special Title (Rule 1550 (b))

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Judicial Council Coordination  
Proceeding No. 4408

[Assigned to The Honorable Jack Komar, Judge  
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

**STIPULATION FOR ENTRY OF  
JUDGMENT AND PHYSICAL SOLUTION**

1. The undersigned Parties (“Stipulating Parties”) stipulate and agree to the entry of the proposed Judgment and Physical Solution (“Judgment”), attached hereto as Exhibit 1 and incorporated herein by reference, as the Judgment in this Action. This Stipulation is expressly conditioned, as set forth in Paragraph 4 below, upon the approval and entry of the Judgment by the Court.

2. The following facts, considerations and objectives, among others, provide the basis for this Stipulation for Entry of Judgment (“Stipulation”):

- a. The Judgment is a determination of all rights to Produce and store Groundwater in the Basin.
- b. The Judgment resolves all disputes in this Action among the Stipulating Parties.



- 1 c. The Stipulating Parties represent a substantial part of the total Production within
- 2 the Basin.
- 3 d. There exists now and has existed for many years an Overdraft on the
- 4 Groundwater supply within the Basin.
- 5 e. It is apparent to the Stipulating Parties that protection of the rights of the
- 6 Stipulating Parties and protection of the public interest within the Basin require the
- 7 development and imposition of a Physical Solution.
- 8 f. The Physical Solution contained in the Judgment is in furtherance of the mandate
- 9 of the State Constitution and the water policy of the State of California.
- 10 g. Entry of the Judgment will avoid the time, expense, and uncertainty associated
- 11 with continued litigation.
- 12 h. The Judgment will create incentives, predictability and long-term certainty
- 13 necessary to promote beneficial use of the Basin's Groundwater resources to the fullest
- 14 extent practicable and for the greatest public benefit.
- 15 i. The Judgment will create opportunities for state and local funding as may be
- 16 available to promote greater development and beneficial use of the Basin's Groundwater
- 17 resources.
- 18 j. The Judgment will aid in securing a reliable and cost-effective water supply to
- 19 serve the Stipulating Parties' constituencies and communities.
- 20 3. Defined terms in the Judgment shall have the same meaning in this Stipulation.
- 21 4. The provisions of the Judgment are related, dependent and not severable. Each and every
- 22 term of the Judgment is material to the Stipulating Parties' agreement. If the Court does not approve the
- 23 Judgment as presented, or if an appellate court overturns or remands the Judgment entered by the trial
- 24 court, then this Stipulation is *void ab initio* with the exception of Paragraph 6, which shall survive.
- 25 5. The Stipulating Parties will cooperate in good faith and take any and all necessary and
- 26 appropriate actions to support the Judgment until such time as this Judgment is entered by the Court, and
- 27 appeals, if any, are final, including:
- 28 a. Producing evidentiary testimony and documentation in support thereof;

1           b.     Defending the Judgment against Non-Stipulating Parties, including, as  
2           appropriate, providing evidence of the Stipulating Parties' prescriptive and self-help  
3           rights.

4           6.     Each Stipulating Party has agreed to this Stipulation without admitting any factual or  
5           legal provisions of this Stipulation or the proposed Judgment. In the event that this Stipulation is void,  
6           or if trial is necessary against any Non-Stipulating Party to determine issues provided for in the  
7           Judgment, the resulting factual or legal determinations shall not bind any Stipulating Party or become  
8           law of the case.

9           7.     As consideration and as a material term of this Stipulation, the Stipulating Parties hereby  
10          declare that they are not aware of any additional Person pumping Groundwater, or landowner owning  
11          property in the Basin, that is not either named as a Party in the Action, included in the Non-Pumper  
12          Class or Small Pumper Class, or a Defaulting Party.

13          8.     The Stipulating Parties, in order to protect the Basin from over-pumping, have stipulated  
14          and agreed to the terms of the Judgment and have agreed to substantial cuts to water allocation  
15          compared with what they claim under California law, and in the case of the United States, also under  
16          federal law. In return, the Stipulating Parties have agreed to provisions in the Physical Solution which  
17          are only available by stipulation. These provisions include, without limitation, the right to transfer  
18          Production Rights and the right to Carry Over rights from year to year, as set forth in the Judgment.  
19          Non-Stipulating Parties, or any other Parties contesting the Judgment, shall not be entitled to the benefit  
20          of these provisions, and shall have only the rights to which they may be entitled by law according to  
21          proof at trial.

22          9.     The Stipulating Parties agree to request the Court to order the representatives of the Non-  
23          Pumper Class and the Small Pumper Class to identify any Persons which have opted out of the Classes  
24          and provide the identities of any opt-outs to District No. 40 within twenty (20) days of the Court's order  
25          approving this Stipulation. District No. 40 will assure that all Persons opting out of the Classes have  
26          been named, served, and defaulted or otherwise adjudicated, and will provide a report to the Court and  
27          the Stipulating Parties.

28

1           10. As consideration for this Stipulation between the Stipulating Parties, District No. 40  
2 specifically agrees to the following:

3           a. District No. 40 agrees to identify all landowners in the Basin, to confirm that each  
4 landowner was served, and to confirm that each landowner is a part of the Non-Pumper  
5 Class, the Small Pumper Class, the Stipulating Parties, a Defaulting Party, or a Party that  
6 has appeared, as the case may be. District No. 40 will file a report containing this  
7 information with the Court and with all Parties.

8           b. District No. 40 agrees to take all available steps and procedures to prevent any  
9 Person that has not appeared in this Action from raising claims or otherwise contesting  
10 the Judgment.

11           11. The Public Water Suppliers and no other Parties to this Stipulation shall pay all  
12 reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the  
13 Action, in an amount either pursuant to an agreement reached between the Public Water Suppliers and  
14 the Small Pumper Class or as determined by the Court. The Public Water Suppliers reserve the right to  
15 seek contribution for reasonable Small Pumper Class attorneys' fees and costs through the date of the  
16 final Judgment in the Action from each other and Non-Stipulating Parties. Any motion or petition to the  
17 Court by the Small Pumper Class for the payment of attorneys' fees in the Action shall be asserted by the  
18 Small Pumper Class solely as against the Public Water Suppliers (excluding Palmdale Water District,  
19 Rosamond Community Services District, City of Lancaster, Phelan Piñon Hills Community Services  
20 District, Boron Community Services District, and West Valley County Water District) and not against  
21 any other Party.

22           12. In consideration for the agreement to pay Small Pumper Class attorneys' fees and costs as  
23 provided in Paragraph 11 above, the other Stipulating Parties agree that during the Rampdown  
24 established in the Judgment, a drought water management program ("Drought Program") shall be  
25 implemented as provided in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment.

26           13. The Stipulating Parties do not object to the award of an incentive to Richard Wood, the  
27 Small Pumper Class representative, in recognition of his service as Class representative. The Judgment  
28 shall provide that Richard Wood has a Production Right of up to five (5) acre-feet per year for

1 reasonable and beneficial use on his parcel, free of a Replacement Water Assessment. This Production  
2 Right shall not be transferable and is otherwise subject to the provisions of the Judgment. If the Court  
3 approves this award of an additional two (2) acre-feet of water, such award shall be in lieu of any  
4 monetary incentive payment.

5 14. The Stipulating Parties agree that an orderly procedure for obtaining the Court's approval  
6 of the Judgment is a material term to this Stipulation. The Parties agree that the Case Management  
7 Order attached hereto as Appendix 1 is an appropriate process for obtaining such approval.

8 15. The Stipulating Parties agree that this Stipulation shall bind and benefit them, and will be  
9 binding upon and benefit all their respective heirs, successors-in-interest and assigns.

10 16. Each signatory to this Stipulation represents and affirms that he or she is legally  
11 authorized to bind the Stipulating Party on behalf of whom he or she is signing. The Stipulating Parties  
12 understand that this Stipulation and the Judgment are not effective as to the Small Pumper Class until  
13 the Court grants approval of a settlement agreement in *Wood v. Los Angeles County Waterworks District*  
14 *No. 40 et al.*

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LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40

By: *Gail Farber*  
Gail Farber  
Director of Public Works

Date: 2/24/15

Approved as to form by:  
Mark J. Saladino, County Counsel

By: *Warren R. Wellen*  
Warren R. Wellen  
Principal Deputy County Counsel

Approved as to form by: Eric L. Garner

By: *Eric L. Garner* *Jeffrey V. Dunn and Eric L. Garner*  
~~Eric L. Garner~~  
Best Best & Krieger


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ANTELOPE VALLEY-EAST KERN WATER AGENCY

BY:   
FRANK S. DONATO, Director, Div. 3


Date: 1/13/2015

BRUNICK, McELHANEY & KENNEDY

BY:   
WILLIAM J. BRUNICK  
Attorneys for Cross-Complainant,  
ANTELOPE VALLEY-EAST KERN WATER AGENCY

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JOHN C. CRUDEN  
Assistant Attorney General  
Environment & Natural Resources Division

By: 

Date: 2-23-15

LEE LEININGER, Trial Attorney  
JAMES DUBOIS, Trial Attorney  
United States Department of Justice  
Environment and Natural Resources Division  
999 18th Street, South Terrace, Suite 370  
Denver, Colorado, 80202

Attorneys for Cross-Defendant United States of America

## **EXHIBIT B**



ORIGINAL FILED  
FEB 24 2010  
LOS ANGELES  
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

Coordination Proceeding  
Special Title (Rule 1550(b))

Judicial Council Coordination  
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER  
CASES**

**ORDER TRANSFERRING AND  
CONSOLIDATING ACTIONS FOR  
ALL PURPOSES**

Included Actions:

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Superior Court of California  
County of Los Angeles, Case No. BC 325 201

Hearing Date(s): February 5, 2010  
October 13, 2009  
August 17, 2009  
Time: 9:00 a.m.  
Location: Department 1, LASC

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348

Judge: Honorable Jack Komar

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California, County of  
Riverside, consolidated actions, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County  
Waterworks District No. 40  
Superior Court of California, County of Los

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

Coordination Proceeding  
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Rebecca Lee Willis v. Los Angeles County  
Waterworks District No. 40  
Superior Court of California, County of Los

2  
3 The City of Palmdale, Rosamond Community Services District, Los Angeles County  
4 Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,  
5 California Water Service Company, Quartz hill District, City of Lancaster, and Palmdale Water  
6 District (collectively, "Public Water Suppliers") filed Motions to consolidate all of the  
7 coordinated matter presently pending before the Court. The motions were heard on August 17,  
8 2009 and, at the conclusion of the hearing, the Court orally stated its intent to grant the motions  
9 and directed the parties to meet and confer concerning a form of order and to present to the  
10 Court a proposed order granting the motion. Subsequently, proposed orders and written  
11 arguments were filed and a hearing on the form of the order was held on February 5, 2010.

12 All of the included actions are complex and were ordered coordinated under the  
13 provisions of Code of Civil Procedure Section 401.1. To the extent the actions were filed, or  
14 were being heard in courts other than this Court, the Order of Coordination required the transfer  
15 of the cases to this court for all purposes.

16 The Complaints and Cross-Complaints all include, in one form or other, declaratory  
17 relief causes of action seeking determinations of the right to draw ground water from the  
18 Antelope Valley basin. These claims are central to every action pending before the Court. In a  
19 single aquifer, all water rights are said to be correlative to all other water rights in the aquifer.  
20 A determination of an individual party's water rights (whether by an action to quiet title or one  
21 for declaratory relief) cannot be decided in the abstract but must also take into consideration all  
22 other water rights within a single aquifer.<sup>1</sup> All actions pending, therefore, of necessity involve  
23 common issues of law and fact relating to the determination of the relative rights to withdraw  
24 water from the Antelope Valley Groundwater Basin in the Antelope Valley and all parties to  
25 the litigation claiming water rights are necessary parties to the Court adjudicating a binding  
26 determination of those rights. Thus, it appears to the Court that consolidation is not only  
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<sup>1</sup> In an earlier phase of the proceedings, the court found as a matter of fact that the area within the jurisdictional boundaries of the valley constituted a single aquifer.

1 necessary but desirable. Entering separate judgments would not permit the court to enforce the  
2 judgments once they are entered without transferring each case back to this Court.

3 It is argued by several parties that consolidating the cases will require litigating against  
4 parties they did not sue and would subject them to potential costs and fees in actions to which  
5 they were not parties. However, the only cause of action that would affect all parties to the  
6 consolidation are the declaratory relief causes of action which seek a declaration of water rights  
7 (by definition, correlative rights). If the basin is in overdraft (a fact still to be established), the  
8 Court in each declaratory relief proceeding would of necessity have to look at the totality of  
9 pumping by all parties, evaluate the rights of all parties who are producing water from the  
10 aquifer, determine whether injunctive relief was required, and determine what solution equity  
11 and statutory law required (including a potential physical solution). All other causes of action  
12 could only result in remedies involving the parties who were parties to the causes of action.  
13 Costs and fees could only be assessed for or against parties who were involved in particular  
14 actions.

15 Consolidation will allow for the entry of single statements of decision in subsequent  
16 phases specifying the identity of the parties who are subject to the particular provisions and a  
17 single judgment resulting in a comprehensive adjudication of rights to water from the Antelope  
18 Valley Groundwater Basin which, among other things, is intended to satisfy the requirements  
19 of the McCarran Amendment, 43 U.S.C. § 666.

20 The United States is the largest land owner in the Antelope Valley and claims reserved  
21 water rights under federal law. The United States was made a party defendant in this action so  
22 that the declaratory relief actions could result in a complete adjudication. No party objected to  
23 the participation of the United States in these coordinated actions. There is jurisdiction over the  
24 United States only if authorized by Congress. The McCarran Amendment provides a limited  
25 waiver of immunity for joinder in *comprehensive* adjudications of all rights to a given water  
26 source. In order for there to be a *comprehensive* adjudication all parties who have a water  
27 rights claim must be joined in the action and the judgment must bind all the parties. Without  
28 consolidation there is risk that the United States might attempt to withdraw from the

1 proceedings for lack of a comprehensive judgment. It may be that coordination itself might  
2 permit a single comprehensive judgment but consolidation would eliminate any risk of  
3 uncertainty. Consolidation of the water rights claims will result in a comprehensive  
4 adjudication and a judgment that will affect all the parties. Complete consolidation will permit  
5 these matters to proceed as an *inter se* adjudication of the rights of all the parties to these  
6 consolidated cases to withdraw groundwater from the Antelope Valley Groundwater Basin.

7 While there is a dearth of case law on the issue of consolidation in coordinated cases, it  
8 does seem that Code of Civil Procedure Section 1048 applies in these cases and authorizes a  
9 consolidation that will result in a final judgment. The California Rules of Court 3.451 requires  
10 active management by the coordination trial judge and specifically provides for separate and  
11 joint trials of causes of action and issues, as the court in its discretion might order.

12 Pursuant to Rule 3.545(d) of the Rules of Court, certified copies of the judgments  
13 bearing the original case numbers of the cases must be entered in the courts where the cases  
14 were being heard immediately prior to coordination and unless the coordination judge orders  
15 otherwise, the judgments are enforced in those original jurisdictions. However, Rule 3.545(d)  
16 empowers the court to provide for the court in which post judgment proceedings will occur and  
17 to provide for the court in which any ancillary proceedings will be heard. In this case, that court  
18 should be the coordination court in order to ensure proper enforcement of the judgment or  
19 judgments.

20 This order of consolidation will not preclude any parties from settling any or all claims  
21 between or among them, as long as any such settlement expressly provides for the Court to  
22 retain jurisdiction over the settling parties for purposes of entering a judgment resolving all  
23 claims to the rights to withdraw groundwater from the Antelope Valley Groundwater Basin as  
24 well as the creation of a physical solution if such is required upon a proper finding by the  
25 Court. Upon appropriate motion and the opportunity for all parties in interest to be heard, the  
26 Court may enter a final judgment approving any settlements, including the *Willis* and *Wood*  
27 class settlements, that finally determine all cognizable claims for relief among the settling  
28 parties for purposes of incorporating and merging the settlements into a comprehensive single

1 judgment containing such a declaration of water rights and a physical solution. Any such  
2 settlement can only affect the parties to the settlement and cannot have any affect on the rights  
3 and duties of any party who is not a party to any such settlement. Complete consolidation shall  
4 not preclude or impair any class' right to seek the entry of a final judgment after settlement.

5 Therefore it is ordered as follows:

6 Except as otherwise stated below the motion to transfer and to consolidate for all  
7 purposes is **GRANTED**.

- 8 1. To the extent not previously transferred as a result of the Judicial Council's  
9 order of coordination, all matter presently pending under the Judicial Council  
10 Coordination Proceeding No. 4408 are ordered transferred from the Riverside  
11 County Superior Court and Kern County Superior Court to the Los Angeles  
12 County Superior Court, the Honorable Jack Komar, judge presiding by special  
13 assignment.
- 14 2. The following actions are consolidated for all purposes because declaratory  
15 relief concerning rights to the ground water in the single aquifer is central to  
16 each proceeding:
  - 17 a. *Wm. Bolthouse Farms, Inc. v. City of Lancaster, et al.*, Riverside County  
18 Superior Court, Case No. RIC 353840;
  - 19 b. *Diamond Farming Co., et al. v. City of Lancaster, et al.*, Riverside County  
20 Superior Court, Case No. RIC 3444436;
  - 21 c. *Diamond Farming Co. v. Palmdale Water District, et al.*, Riverside County  
22 Superior Court, Case No. RIC 344668;
  - 23 d. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*  
24 *al.*, Kern County Superior Court, Case No. S-1500-CV-254-348;
  - 25 e. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*  
26 *al.*, Los Angeles County Superior Court, Case No. BC 325201;
  - 27 f. *Rebecca Lee Willis, et al. v. Los Angeles County Waterworks District No. 40,*  
28 *et al.*, Los Angeles County Superior Court, Case No. BC 364553;

1 g. *Richard A. Wood, et al. v. Los Angeles County Waterworks District No. 40, et*  
2 *al.*, Los Angeles County Superior Court, Case No. BC 391869; and

3 h. And all cross-complaints filed in any of the above-referenced actions.

4 3. The action entitled *Sheldon R. Blum, Trustee for the Sheldon R. Blum Trust v.*  
5 *Wm. Bolthouse Farms, Inc.*, Los Angeles County Superior Court, Case No. 1-  
6 05-CV-049053, is not consolidated, but shall remain related and coordinated  
7 with the actions and cross-actions referenced in paragraph 3 above.

8 4. The Court has ordered a Case Management Conference at which it will hear  
9 arguments concerning the order in which common issues will be heard and to  
10 set the matter for further trial. It is the Court's present intent to first schedule  
11 trial on the common issues relating to declaratory relief which will include the  
12 determination of overall condition of groundwater basin:

13 1. Safe Yield

14 2. Overdraft

15 5. The determination of rights to withdraw groundwater, and claims to  
16 prescription, issues affecting appropriation, municipal/domestic priority, rights  
17 to imported water/storage rights, return flow rights, reasonable and beneficial  
18 use of water, recycled water, quiet title, export of water, determination of  
19 federal reserved right to water and physical solution may follow.

20 6. The following described causes of action for damages and other declaratory  
21 relief will proceed after the determination of the issues identified in paragraphs  
22 4 and 5 above. Any waiver of immunity by the United States under the  
23 McCarran Amendment does not extend to these claims; jurisdiction over the  
24 United States does not attach to these claims or causes of action alleging these  
25 claims, and any determination on these claims shall not bind or otherwise  
26 adversely affect the rights of the United States:

27 a) Conversion

28 b) Nuisance

1 c) 42 U.S.C. § 1983


2 d) Takings/Inverse Condemnation

3 e) Trespass

4 7. Any claim to declaratory relief regarding basin boundaries has been  
5 determined by the Court by Order dated November 6, 2008. To the extent any  
6 current party was not a party at the time of the determination of this issue, that  
7 party may seek to reopen or, consistent with the order, move to amend the  
8 basin boundary.

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10 SO ORDERED.

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12 Dated: FEB 19 2010

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15 Hon. Jack Komar  
16 Judge of the Superior Court  
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA }  
3 COUNTY OF SAN BERNARDINO }

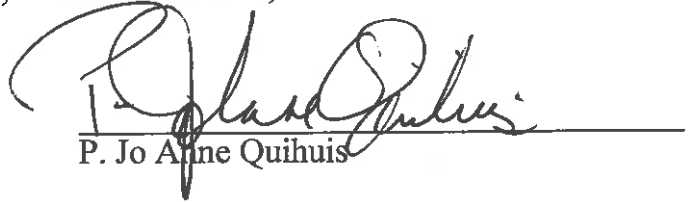
4 I am employed in the County of the San Bernardino, State of California. I am over  
5 the age of 18 and not a party to the within action; my business address is 1839 Commercenter  
West, San Bernardino, California.

6 On March 25, 2016, I served the foregoing document(s) described as: **JOINT**  
7 **RESPONSE OF OVERLIERS TO PUBLIC WATER SUPPLIERS' OPPOSITION TO**  
8 **WOOD CLASS MOTION FOR AWARD OF COSTS AND ATTORNEY FEES** on the  
interested parties in this action served in the following manner:

9 XX BY ELECTRONIC SERVICE AS FOLLOWS by POSTING the document(s)  
10 listed above to the Santa Clara website in the action of the *Antelope Valley Groundwater*  
*Litigation*, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No.  
1-05-CV-049053.

11 X (STATE) I declare under penalty of perjury under the laws of the State of California  
12 that the above is true and correct.

13 Executed on March 25, 2016, at San Bernardino, California.

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16 P. Jo Anne Quihuis

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