

EXHIBIT D

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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

Antelope Valley Groundwater Litigation (JCCP 4408)
Los Angeles County Superior Court, Case No. BC 325 201
Order Transferring and Consolidating Actions for All Purposes

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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.¹ 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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¹ 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;

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

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

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

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

1. Safe Yield

2. Overdraft

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

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

a) Conversion

b) Nuisance

1 c) 42 U.S.C. § 1983

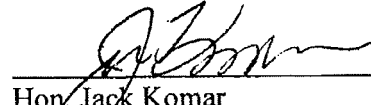
2 d) Takings/Inverse Condemnation

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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14 Hon. Jack Komar
15 Judge of the Superior Court
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