

1 ROBERT E. DOUGHERTY [SBN 41317]
2 JESSE T. MORRISON [SBN 247185]
3 **COVINGTON & CROWE, LLP**
4 **ATTORNEYS AT LAW**
5 1131 West Sixth Street, Suite 300
6 Ontario, California 91762
7 (909) 983-9393; Fax (909) 391-6762

(SPACE BELOW FOR FILING STAMP ONLY)

5 Attorneys for White Fence Farms Mutual Water Co. Inc., El Dorado Mutual Water Co., West
6 Side Park Mutual Water Co., Shadow Acres Mutual Water Co., Antelope Park Mutual Water
7 Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co.,
8 Aqua J Mutual Water Co., Bleich Flat Mutual Water Co., Colorado Mutual Water Co.,
9 Sunnyside Farms Mutual Water Co., Land Projects Mutual Water Co., Tierra Bonita Mutual
10 Water Co. and Landale Mutual Water Co.; **collectively known as A.V. United Mutual Group**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 **ANTELOPE VALLEY**
12 **GROUNDWATER CASES**

Judicial Council Coordination Proceeding
No. 4408

13 Included Actions:
14 Los Angeles County Waterworks District
15 No. 40 v. Diamond Farming Co., Superior
16 Court of California, County of Los Angeles,
17 Case No.: BC 325201;

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

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

**A.V. UNITED MUTUAL GROUP'S
OPPOSITION TO CALIFORNIA WATER
SERVICE COMPANY'S MOTION FOR
LIMITED RELIEF FROM NOTICE
REQUIREMENTS**

19 Wm. Bolthouse Farms, Inc. v. City of
20 Lancaster, Diamond Farming Co. v. City of
21 Lancaster, Diamond Farming Co. v.
22 Palmdale Water Dist., Superior Court of
23 California, County of Riverside, Case Nos.:
24 RIC 353 840, RIC 344 436, RIC 344 668

DATE: TBD

TIME:

**DEPT: 1 –Los Angeles County Superior
Court**

22 Rebecca Lee Willis v. Los Angeles County
23 Waterworks District No. 40, et al.

25 **REASONS FOR OPPOSITION**

26 California Water Service Company (Cal Water) has requested that it be relieved from
27 giving certain notices to those of its customers who previously received water service from two
28

1 mutual water companies. The request is based on Cal Water's contention that: Cal Water's
2 predecessors acquired two mutual water companies. In connection with these acquisitions, Cal
3 Water claims it acquired all related real property rights of the mutual water companies and their
4 shareholders used in the business, including but not limited to, their rights to pump groundwater.

5 Motion page 2, lines 17-20

6 A.V. United Mutual Group (A.V. United) opposes the motion because, as discussed
7 below, it is based on erroneous statements of California's water law.¹

8
9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 A person who owns land which overlies an underground source of water holds what is
11 called an "overlying" water right. Overlying rights are vested exclusively in the landowner.
12 Because the overlying water right is appurtenant to private ownership of real property, the
13 landowner cannot divert the water to non-overlying land. The transfer of title to the overlying
14 water right, separate from the land, effectuates a permanent severance of the right from the land.
15 Once the water right is severed, the parcel ceases to be overlying. An exception to this rule
16 occurs when a landowner transfers the overlying water right to a mutual water company. The
17 mutual water company holds the landowner's overlying right in trust. The landowner retains
18 legal title, thus the overlying right is not severed. However, the mutual water company cannot
19 divert such water to lands other than the overlying lands of its shareholders. To do so also works
20 a severance of the right.

21 Cal Water is an investor-owned water utility, regulated by the California Public Utilities
22 Commission. It can be inferred, although not expressly stated in the motion, that Cal Water
23 provides water service to customers within its Lancaster service area, whether or not those
24 customers were shareholders in the two mutual water companies named in the motion.

25 It cannot be legitimately disputed that if Cal Water obtained a transfer of an overlying
26 water right separate and apart from the land to which it is appurtenant, a severance would have

27
28 ¹ The argument that follows is based upon those principles of California groundwater law discussed in 2 Slater California Water Law and Policy (2008) Chapter 3 "Riparian and Overlying Water Rights"

1 occurred and the overlying nature of the transferred water right ceased to exist. Cal Water could
2 not acquire an overlying right "in gross" because there is no right separate from the land.

3 This is the result that would occur should Cal Water purport to acquire an overlying
4 water right directly from an overlying landowner, and the result should be no different because
5 an intervening mutual water company once held the landowner's overlying right in trust.

6 Cal Water claims that as a result of the transfers described in its motion, it has acquired
7 the landowners' rights to pump groundwater. This would not be the case, even if the water rights
8 are reclassified as appropriative. The grantee, Cal Water in this case, only obtains a putative
9 basis to initiate an appropriative water right or a basis to eliminate competition for water taken
10 from the same source under an independent claim of right. If the groundwater basin is in a state
11 of overdraft, and remains in one after the grant, the grantee would not be able to acquire even an
12 appropriative right.

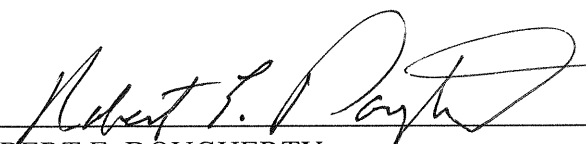
13 CONCLUSION

14 If Cal Water is allowed to dispense with notice to some of its customers, it should not be
15 for the reason that it is the successor in interest of those customers' previously held overlying
16 water rights.

17 Respectfully,

18 Dated: July 16, 2009

COVINGTON & CROWE

19
20 
21 ROBERT E. DOUGHERTY,
22 Attorneys for White Fence Farms Mutual Water Co. Inc., El
23 Dorado Mutual Water Co., West Side Park Mutual Water
24 Co., Shadow Acres Mutual Water Co., Antelope Park
25 Mutual Water Co., Averydale Mutual Water Co., Sundale
26 Mutual Water Co., Evergreen Mutual Water Co., Aqua J
27 Mutual Water Co., Bleich Flat Mutual Water Co., Colorado
28 Mutual Water Co., Sunnyside Farms Mutual Water Co.,
Land Projects Mutual Water Co., Tierra Bonita Mutual
Water Co. and Landale Mutual Water Co.; **collectively
known as A.V. United Mutual**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is Covington & Crowe, LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

On July 16, 2009, I served the foregoing document described as A.V. UNITED GROUP'S OPPOSITION TO CALIFORNIA WATER SERVICE COMPANY'S MOTION FOR LIMITED RELIEF FROM NOTICE REQUIREMENTS on the interested parties in this action:

☒ by posting the document listed above to the Santa Clara County Superior Court e-filing website under the Antelope Valley Groundwater matter pursuant to the Court's Order dated October 27, 2005.

☐ by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ BY MAIL


☐ * I deposited such envelope in the mail at Ontario, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Ontario, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 16, 2009, at Ontario, California.


NANCY BELTRAN