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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

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

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;

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, Case Nos.: RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination Proceeding No. 4408

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

CROSS-COMPLAINT OF A.V. UNITED MUTUAL GROUP AGAINST PURVEYORS FOR:

1) **Declaratory Relief, Water Rights;**
2) **Injunctive Relief, Water Rights;**
3) **Declaratory Relief, Return Flows;**
4) **Declaratory Relief, Physical Solution;**
5) **Injunctive Relief, Physical Solution.**

White Fence Farms Mutual Water Co. Inc.; El Dorado Mutual Water Co.; West Side Park Mutual Water Co.; Shadow Acres Mutual Water Co.; Antelope Park Mutual Water Co.; Averydale Mutual Water Co.; Sundale Mutual Water Co.; Evergreen Mutual Water Co.; Aqua J Mutual Water Co.; Bleigh Flat Mutual Water Co.; Colorado Mutual Water Co.; Sunnyside Farms Mutual Water Co.**; collectively known as A.V. United Mutual Group,**

Cross-Complainants,

v.

California Water Service Company; City of Lancaster; City of Palmdale; Littlerock Creek Irrigation District; Los Angeles County Water Works District No. 40; Palmdale Water District; Rosamond Community Services District; Palm Ranch Irrigation District; and Quartz Hill Water District; and ZOES 1-200, inclusive,

Cross-Defendants.

Cross-Complainants A.V. United Mutual Group ("AVUMG") allege against Cross-Defendants California Water Service Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water Works District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District, and Quartz Hill Water District ("collectively referred to herein as "Purveyors"), and ZOES 1-200, inclusive, as follows:

GENERAL ALLEGATIONS

1. The Court has jurisdiction over this action pursuant to Code of Civil Procedure sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order issued by the Judicial Council.

2. Cross-Complainants herein, White Fence Farms Mutual Water Co. Inc., El Dorado Mutual Water Co., West Side Park Mutual Water Co., Shadow Acres Mutual Water Co., Antelope Park Mutual Water Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co., Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co., Colorado Mutual Water Co., Sunnyside Farms Mutual Water Co., collectively known as A.V. United Mutual Group("AVUMG"), are mutual water companies whose shareholders are owners of land in the Antelope Valley. Each Cross-Complainant holds a beneficial right to the shareholders' interest in ground water within the geographic boundaries of the Antelope Valley

Ground Water Basin ("Basin"). The Cross-Complainants have historically pumped water from beneath the shareholders land for the shareholders use.

3. Cross-Complainants are informed and believe and thereon allege that California Water Service Company is a California corporation which provides water to customers located within the geographic boundaries of the Basin and which extracts water from the Basin.

4. Cross-Complainants are informed and believe and thereon allege that City of Lancaster is a municipal corporation located within the County of Los Angeles, and within the geographic boundaries of the Basin.

5. Cross-Complainants are informed and believe and thereon allege that City of Palmdale is a municipal corporation located within the County of Los Angeles.

6. Cross-Complainants are informed and believe and thereon allege that Littlerock Creek Irrigation District is a public agency which provides water to customers located within the geographic boundaries of the Basin and which extracts water from the Basin.

7. Cross-Complainants are informed and believe and thereon allege that Los Angeles County Waterworks District No. 40 is a public agency governed by the Los Angeles County Board of Supervisors operating under Division 16 of the California Water Code. Los Angeles County Waterworks District No. 40 was established on November 4, 1993 to provide water service to the public within the Basin.

8. Cross-Complainants are informed and believe and thereon allege that Palmdale Water District was formed as a public irrigation district in 1918 and operates under Division 11 of the California Water Code and is producing water from the Basin and selling it to its customers.

9. Cross-Complainants are informed and believe and thereon allege that Rosamond Community Services District is a county water district voted into being in 1966, and operating under Division 12 of the California Water Code to provide water for domestic use and irrigation, among other things.

10. Cross-Complainants are informed and believe and thereon allege that Palm Ranch

Irrigation District is a public agency which provides water to customers located within the geographic boundaries of the Basin and which extracts water from the Basin.

11. Cross-Complainants are informed and believe and thereon allege that Quartz Hill Water District is a county water district organized and operating under Division 12 of the California Water Code and is producing water from the Basin and selling it to its customers.

12. Cross-Complainants are ignorant of the true names and capacities of Cross-Defendants sued herein as ZOES 1-200, inclusive, and therefore sue these Cross-Defendants by such fictitious names. Cross-Complainants will amend this Cross-Complaint to allege their true names and capacities when ascertained. References to "Purveyors" in this Cross-Complaint also refer to all Cross-Defendants sued under such fictitious names.

FACTUAL ALLEGATIONS

13. The Antelope Valley is located in northern Los Angeles County and the southeastern portion of Kern County, California. The Antelope Valley comprises the western tip of the Mojave Desert, opening up to the Victor Valley and the Great Basin to the east. The Antelope Valley is a desert ecosystem which spans approximately 2,200 square miles. Human water use in the Antelope Valley depends mainly on pumping of groundwater from the valley's aquifers and the importing of additional water. Cross-Complainants herein acquire water both by pumping underlying groundwater and purchasing imported water to supplement the pumped water.

14. Cross-Complainants are informed and believe and thereon allege that Purveyors began pumping appropriated surplus water from the Basin to provide water for their municipal, industrial, or other water customers, which was initially lawful and did not immediately nor prospectively invade or impair any overlying rights.

15. However, since the initial pumping began, with the expanded population growth of the Antelope Valley, Purveyors have dramatically increased their demand for water, which created a potential for damages to the water supply. Despite the potential for damages to the water supply, Purveyors have continued the act of pumping.

16. Cross-Complainants are informed and believe and thereon allege that Purveyors, with knowledge did extract, and have continued to extract, groundwater from the common supply, and have continued the act of pumping the groundwater to increase their extractions of groundwater with the knowledge that the continued extractions are damaging the long-term rights of the mutual water companies, including its shareholders who are the property owners, among others.

17. Cross-Complainants are informed and believe and thereon allege that Purveyors, with full intent and knowing that they could take by claim of prescription, without compensation, the water rights of all landowners overlying the Basin. Despite the knowledge and intent to take overlying property owners' water rights, the Purveyors did not take any steps necessary or intended to inform or otherwise notify any landowner of their adverse and hostile claim or that their pumping of groundwater was an invasion of the landowners' property rights.

18. During the time that each Purveyor was pumping the groundwater, no Purveyor ever took any affirmative action reasonably calculated to inform or notify any overlying landowner that the Purveyor intended to take by prescription the overlying water rights.

19. For the five years immediately preceding the filing of this Cross-Complaint, the Cross-Complainants, and their shareholders who are property owners in the Basin, did not have actual knowledge that any Purveyor's pumping of groundwater was adverse to or hostile to their present and/or future priority rights.

20. In or about March 2007, Cross-Complainants were served as Does by Cross-Defendants seeking to obtain a judicial determination that they had obtained the overlying landowners' water rights, without compensation, within the Basin through the common law doctrine of prescription.

21. None of the Purveyors have invoked the power of eminent domain, nor paid any compensation to the Cross-Complainants or their shareholders, for the property rights that they have allegedly and knowingly taken.

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FIRST CAUSE OF ACTION

(Declaratory Relief; Water Rights)

(Against all Cross-Defendants and Zoes 1-200, inclusive)

22. Cross-Complainants reallege and incorporate by reference paragraphs 1 through 21 of this Cross-Complaint as though fully set forth herein.

23. An actual controversy has arisen between Cross-Complainants and each of the Cross-Defendants as to the nature, extent and priority of each party's right to produce groundwater from the Basin. As mutual water companies whose shareholders are overlying landowners, Cross-Complainants allege that their water rights are superior in priority to those of any of Cross-Defendants, and that they have preserved and maintained their priority rights to the use of groundwater.

24. Cross-Complainants are informed and believe and thereon allege that Cross-Defendants dispute these contentions.

25. Cross-Complainants seek a declaration and judicial determination as to the validity of their contentions set forth herein, the amount of Basin water to which each party is entitled to produce from the Basin, and the priority and character of each party's respective rights.

SECOND CAUSE OF ACTION

(Injunctive Relief; Water Rights)

(Against all Cross-Defendants and Zoes 1-200, inclusive)

26. Cross-Complainants reallege and incorporate by reference paragraphs 1 through 25 of this Cross-Complaint as though fully set forth herein.

27. In their First-Amended Cross-Complaint, Cross-Defendants allege that they produce more water from the Basin than they have a right to produce. If allowed to continue, this production is excess of rights will interfere with the right of Cross-Complaints to produce groundwater and will cause injury to Cross-Complainants.

28. Cross-Complainants have no adequate remedy at law.

29. Cross-Complainants are informed and believe and thereon allege that Cross-Defendants dispute these contentions.

30. Unless the Court orders that Cross-Defendants cease production of water in excess of their rights, Cross-Complainants will suffer irreparable harm in that the supply of groundwater will become depleted and other undesirable effects will occur.

THIRD CAUSE OF ACTION

(Declaratory Relief; Return Flows)

(Against all Cross-Defendants and Zoes 1-200, inclusive)

31. Cross-Complainants reallege and incorporate by reference paragraphs 1 through 30 of this Cross-Complaint as though fully set forth herein.

32. Some of the imported State Project water typically returns and/or enters the Basin, and will continue to do so. This water is commonly known as "return flows." These return flows further augment the Basin's water supply.

33. Cross-Complainants are informed and believe and thereon allege that there is underground space available in the Basin to store return flows from imported State Project water.

34. Cross-Complainants have the right to recapture the return flows from that water attributable to their purchase of imported State Project water, or such water imported on their behalf. The rights of Cross-Defendants, if any, are limited to the Basin's native supply, and/or their imported water, and do not extend to groundwater attributable to the Cross-Complainants' return flows.

35. An actual controversy has arisen between Cross-Complainants and each of the Cross-Defendants. Cross-Complainants are informed and believe and thereon allege that Cross-Defendants dispute their contentions as set forth in this Cross-Complaint.

36. Cross-Complainants seek a declaration and judicial determination as to the validity of their contentions, and that they have the sole right to recapture return flows in the Basin, both at the present and in the future.

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FOURTH CAUSE OF ACTION

(Declaratory Relief; Physical Solution)

(Against all Cross-Defendants and Zoes 1-200, inclusive)

37. Cross-Complainants reallege and incorporate by reference paragraphs 1 through 36 of this Cross-Complaint as though fully set forth herein.

38. Cross-Complainants contend that Cross-Defendants, who are seeking an injunction/physical solution, must prove common law overdraft, the nature and extent of all pumping occurring in the Antelope Valley, appropriative *inter se* priority rights, the rights of all groundwater producers in the Antelope Valley and a legal basis for an injunction against parties holding inferior rights based upon the California groundwater allocation priority system.

39. Cross-Complainants seek a declaration and judicial determination as to the validity of their contentions, and that a physical solution shall be implemented.

FIFTH CAUSE OF ACTION

(Injunctive Relief; Physical Solution)

(Against all Cross-Defendants and Zoes 1-200, inclusive)

40. Cross-Complainants reallege and incorporate by reference paragraphs 1 through 39 of this Cross-Complaint as though fully set forth herein.

41. Cross-Complainants contend that if water cutbacks are necessary, appropriative users must be cutback first to prevent continuing common law overdraft. To the extent Cross-Defendants prove that common law overdraft exists, Cross-Complainants request the Court enjoin parties holding inferior appropriative rights from pumping and/or that the Court impose a physical solution on appropriators to prevent continuing common law overdraft.

WHEREFORE, Cross-Complainants pray that judgment be entered as follows:

1. For a judgment against Cross-Defendants;

2. For a declaration of Cross-Complainants rights to pump and reasonable use groundwater underlying the shareholders' property;

3. If the Court determines based upon the Cross-Defendants' basin-wide

adjudication that the groundwater basin is in common law overdraft, for an injunction and/or a physical solution cutting back appropriative water use to prevent continuing common law overdraft;

4. For continuing jurisdiction of the Court to litigate disputes as necessary in the future consistent with the Court judgment herein and consistent with California water law;

5. For a declaration that no party hereto may hereinafter obtain prescriptive rights against any other party to this action and that all parties will act in conformance with the terms of any such judgment;

6. For a judgment for Cross-Complainants for all available remedies to secure and protect Cross-Complainants' continuing overlying water rights;

7. For an award or reasonable attorneys' fees and costs of suit; and

8. For such other and further relief as the Court deems just and proper.

Dated: May 3, 2007

COVINGTON & CROWE, LLP

By: _____

ROBERT E. DOUGHERTY
WILLIAM A. HAUCK
Attorneys for Cross-Defendants and Cross-Complainants A.V. United Mutual Group

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

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 **May 3, 2007**, I served the foregoing document described as **CROSS-COMPLAINT OF A.V. UNITED MUTUAL GROUP AGAINST PURVEYORS FOR: 1) Declaratory Relief, Water Rights; 2) Injunctive Relief, Water Rights; 3) Declaratory Relief, Return Flows; 4) Declaratory Relief, Physical Solution; 5) Injunctive Relief, Physical Solution** 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 **May 3, 2007**, at Ontario, California.

Carol Sanchez

CAROL SANCHEZ

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