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LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Lead Case No. BC 325 201

Included Consolidated Actions:

**ORDER DENYING THE
CHALLENGING PARTIES'
PEREMPTORY CHALLENGE
PURSUANT TO CCP § 170.6**

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): March 8, 2010
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
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
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Immediately following the Court's Order granting a Motion to Consolidate the various coordinated actions herein, all of which involve a determination, *inter alia*, of the rights of the parties to use the groundwater within the Antelope Valley Groundwater Basin, a group of parties including U.S. Borax, Inc., Bolthouse Properties, LLC, WM. Bolthouse Farms, Inc., Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., Lapis Land Company, LLC, Service Rock Products Corp., Sheep Creek Water Company, Inc., A.V. United Mutual Group, and Antelope Valley Groundwater Agreement Association (collectively, the "Challenging Parties") brought a peremptory challenge to the Court pursuant to Code of Civil Procedure section 170.6.

The Court requested briefing from the various parties, specifically with regard to the provisions of California Rule of Court 3.516, and set the matter for hearing on March 8, 2010.

The Court having read and considered the written and oral arguments of the parties, and good cause appearing, the Court strikes the challenge as not being timely.

This coordinated action is already almost five years old (major included actions were already old when the matters were coordinated) and it is clear that the time for making a challenge pursuant to Code of Civil Procedure section 170.6 and the California Rules of Court has passed. The matter was ordered coordinated in 2005 and the undersigned judge was assigned as the coordination trial judge at that time.

All the cases and all the causes of action in each such matter have been before this Court from the time of assignment by the Chair of the Judicial Council (with the exception of several add-on cases which are governed by California Rule of Court 3.532(d)). All of the actions that were consolidated by this Court's February 19, 2010 order were already assigned to this judge long before the consolidation order was made. Moreover, although the actions have now been consolidated, the effect of the consolidation is merely to allow the Court to enter one binding judgment as to all of the parties with regard to the declaratory relief causes of action that are

1 present in each of the pleadings and which relate to the major question of whether or not the
2 aquifer is in overdraft and in need of judicial management by way of a physical solution or
3 other remedy.

4 If the aquifer is in overdraft, a declaration of the rights of the parties as to that cause of
5 action in each case would necessarily require the Court “to look at the totality of pumping by all
6 parties, evaluate the rights of all parties who are producing water from the aquifer, determine
7 whether injunctive relief was required, and determine what solution equity and statutory law
8 required (including a potential physical solution).” (Order Transferring and Consolidating
9 Actions for All Purposes, p. 3:8-11.)

10 Over the course of this litigation, even the parties now filing the challenge have of
11 necessity repeatedly involved themselves in the coordinated actions to which they were not
12 named as parties, and have briefed all issues presented to the court, and have variously
13 objected, concurred, and entered into stipulations involving all the parties. It is noteworthy that
14 these same parties have referred to the necessity of ensuring that all overlying owners in the
15 basin participate in the adjudication as necessary parties and have referred (accurately) to the
16 litigation as the “Antelope Valley Groundwater Adjudication” and have noted in one form or
17 other that the purpose of adjudication is to initiate a process of managing the limited resources
18 of the basin. The Court’s Order concerning consolidation does nothing more than provide some
19 assurance that the ultimate determination that is the product of all parties participating in the
20 adjudication will be binding on all parties.

21 With regard to all other causes of action, whether disputes between overlying land
22 owners and appropriators, or otherwise, the Court’s order makes clear that: “All other causes of
23 action could only result in remedies involving the parties who were parties to the particular
24 causes of action. Costs and fees could only be assessed for or against parties who were
25 involved in particular actions.” (*Id.* at p. 3:11-14.) Consequently, while this is now a
26 consolidated action as to the overall groundwater adjudication, there has been no real change in
27 parties or causes of action; the consolidation order may be considered a “continuation” of the
28 coordinated actions and does not alter the fact that the cases remain coordinated.

1 It is clear that the timing of challenges pursuant to Code of Civil Procedure Section 170.6
2 in this case is governed by California Rule of Court 3.516, which states:

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4 A party making a peremptory challenge by motion or affidavit of prejudice
5 regarding an assigned judge must submit it in writing to the assigned judge within
6 20 days after service of the order assigning the judge to the coordination
7 proceeding. All plaintiffs or similar parties in the included or coordinated actions
8 constitute a side and all defendants or similar parties in such actions constitute a
9 side for purposes of applying Code of Civil Procedure section 170.6.
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11 And while there are “add-on” cases (which have not joined in the challenge), cases
12 “added” to the coordination proceeding after the 20 day period are subject to California Rule of
13 Court 3.532(d) which limits the exercise of CCP 170.6 challenges to the time limits established
14 in Rule 3.516.

15 The reasoning of the court in the case of *Industrial Indemnity Co. v. Superior Court*
16 (1989) 214 Cal.App.3d 259 with regard to “add-on” cases resonates here. The court stated: “We
17 conclude that the authority given to the Judicial Council over coordinated actions is broad
18 enough to empower the Judicial Council to exclude parties from the right to exercise a section
19 170.6 challenge.” (*Id.* at p. 263.) The court explained further:
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21 Not to accord add-on parties the right to challenge the coordination trial judge
22 was reasonable. The council could well have concluded that add-on cases were
23 peculiarly subject to abuse of the peremptory challenge since the coordination
24 trial judge may, as in this case, have participated in the case for years and the
25 nature and the extent of his rulings could be well known. This presents an unusual
26 opportunity to challenge for reasons unrelated to bias or prejudice. It also presents
27 the possibility that by use of the challenge, the add-on party can effectively thwart
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1 the add-on procedure and prevent the benefits the Legislature sought to achieve
2 by the add-on process.


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4 (*Industrial Indemnity Co. v. Superior Court, supra*, 214 Cal.App.3d at p. 264.)

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6 Similarly, this Court has been assigned to preside over this very complex action since
7 2005. The case is exceptionally complex. The Court has had to innovate in order to create a
8 sufficiently comprehensive adjudication so that a meaningful judgment could be entered.
9 Because a judgment potentially (if not actually) involves thousands of small landowners in this
10 very large valley cutting across at least two counties, the court encouraged the creation of two
11 separate class actions which were added to the litigation to ensure that virtually all landowners
12 with groundwater rights would be subject to the jurisdiction of the court. Without such a
13 comprehensive adjudication, the Federal Government (the largest land owner within the
14 Antelope Valley) would not be able to subject itself to the jurisdiction of the Court under the
15 provisions of the McCarran Act.

16 The consolidation of the coordinated actions in this matter is necessary to result in a
17 judgment that will bind all parties to a determination of the status of the valley and a
18 determination whether judicial management is necessary to protect the valuable water resource
19 within the valley and permit this Court to enter one binding judgment as to the declaratory relief
20 cause of action, which already involves all of the overlying owner parties through their
21 correlative rights, and which requires a determination of what rights appropriators may have, if
22 any.

23 Accordingly, the court concludes that the challenge pursuant to Code of Civil Procedure
24 Section 170.6 is untimely and it is ordered stricken.

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26 Dated: MAR 09 2010

27 
28 Hon. Jack Komar
Judge of the Superior Court