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12 WATERWORKS DISTRICT NO. 40

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

18 **Included Actions:**

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

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

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

**EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103**

Judicial Council Coordination No. 4408

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

**CASE MANAGEMENT STATEMENT**

**Hearing:**

**Date:** November 13, 2006

**Time:** 1:30 p.m.

**Dept.:** 1

1 The court requested proposals concerning a potential class or classes to obtain jurisdiction  
2 over large numbers of landowners with overlying rights. This statement explains why a property-  
3 owner class is appropriate if additional water producers need to be brought into the case. Before  
4 additional water users are brought into the case, the experts should determine generally who is  
5 producing water in the Basin to avoid wasting court resources on parties who can properly be  
6 excluded from the case. Finally, there is also a discussion on the need for a court hearing on the  
7 characteristics of the groundwater basin to allow certain parties to continue with settlement  
8 discussions on groundwater storage and recovery.

9  
10 1. Additional Technical Data is Needed

11  
12 It is estimated that there are at least 7000 property owners in the Basin who are not parties  
13 to this case. No one yet knows how much water the current parties are producing. It is at least  
14 fifty percent of the total Basin production and could be as much as ninety percent. Either way,  
15 the vast majority of the 7000 property owners do not use water. The experts are currently  
16 developing water production data and to maximize judicial economy they should finish  
17 developing some of this data before any additional parties are brought in. In addition to data on  
18 quantity of water production, data on location of water production may prove useful in creating  
19 subclasses for certain areas in the Basin. In setting a schedule to move forward, the court should  
20 allow some time for the experts to develop technical data on water production and location of  
21 water use.

22  
23 2. A Property-Owner Class Can Be Used To Adjudicate Water Rights

24  
25 There have been at least three state court water-rights cases referencing a property-owner  
26 class.<sup>1</sup> In *Orange County Water Dist. v. City of Riverside* (1958) 137, 168, the Court of Appeal

27 <sup>1</sup> Cross-Complainants' legal counsel, Best Best & Krieger, represented parties in each of these  
28 three cases; and served as defendant class counsel in the Putah Creek Adjudication. Additionally,  
Best Best & Krieger represented an association of defendant class members in *Oden v. Board of*

1 recognized the ability to use a property-owner class to adjudicate rights to the Santa Ana River:  
2 “We do not see why the owners of such overlying rights may not properly be treated as a class  
3 possessing such common interests as to justify the maintenance of a single action for their  
4 protection.”  
5

6 In *City of Chino v. Superior Court* (1967) the Court of Appeal opined that a property-  
7 owner class of overlying and riparian property owners could be used to acquire jurisdiction over a  
8 large number of parties although appropriators and prescriptive rights claimants could not be class  
9 members: “It is stated that there may be as many as 3,000 claimants to the ownership of water  
10 within the boundaries of OCWD. The majority of these may well be owners or overlying or  
11 riparian lands who water rights are based solely on ownership of such lands. Nothing that we  
12 have said precludes their being represented as a class or classes.” (225 Cal.App.2d at 763.)  
13

14 In the *Putah Creek Adjudication*, Sacramento County Case No. 2565, the Superior Court  
15 granted plaintiffs’ motion for certification of a defendant class of riparian property owners. A  
16 copy of the court’s order granting plaintiffs’ certification order is attached hereto as Exhibit A.  
17

18 Additionally, there is a reported federal court decision using a defendant class to  
19 adjudicate disputed California water rights. In *United States v. Truckee-Carson Irrigation*  
20 *District* (D. Nev. 1975) 71 F.R.D. 10, 16, the District Court addressed the issue of a defendant  
21 class action in a water rights dispute between the United States, the Pyramid Lake Paiute Tribe  
22 and defendant water rights holders. The court noted that the defendant class members derived  
23 their water rights from a common source of supply and that the diversions sought by the plaintiff  
24 United States would diminish the water rights of all members of the defendant class. In other  
25 words, the correlative, overlying right was proportionately diminished due to extractions by the  
26 United States and appropriator parties. For that reason, the Court found that the “interests of each  
27 member of the class are identical in both law and fact.”

28 *Administration of the Public Employees’ Retirement System* (1994) 23 Cal.App.4<sup>th</sup> 194.

1  
2 Thus, the issue is not whether a class can be used to adjudicate water rights, but whether a  
3 class is appropriate here and needed for a comprehensive adjudication under the McCarran  
4 Amendment and for the court to obtain jurisdiction over a sufficient amount of water production  
5 to implement a physical solution. As briefly explained below, there are sufficient grounds to  
6 certify a class.

7  
8 3. Creation of a Property-Owner Class  
9

10 As a general rule, class certification requires (1) an ascertainable class; and (2)  
11 commonality of interest among the class members. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th  
12 429, 435). An overlying user class is ascertainable because the court has defined the area of  
13 adjudication and the class consists of overlying users within the adjudication area. They have a  
14 common interest because they have overlying rights to a common water supply, the groundwater  
15 basin. Class members can be identified, the size of the class controlled, and class members could  
16 be located and ultimately notified by a reasonable expenditure of time and money.

17  
18 Moreover, a property-owner class will save significant time and minimize costs for all  
19 parties and the court. Without such a class, there are an estimated 7,000 parties that might be  
20 individually named and served. With additional technical data the size of the class will likely be  
21 dramatically reduced.

22  
23 Finally, a judgment will be protected from any possible due process challenge in that (1)  
24 sufficient information and resources are available to provide adequate notice to class members;  
25 (2) class representatives can represent class interests; and (3) legal counsel can provide adequate  
26 class representation.

1           4.     Class Certification Motion Requirements

2  
3           Class certification motion requirements include:

- 4           -     A complaint with class allegations as required by California Rules of Court,  
5                 Rule 1851;  
6           -     An optional case conference under Rule 1851; and  
7           -     A motion and proposed order for class certification or to determine other class  
8                 issues under Rules 1854 and 1855; and  
9           -     The motion must be filed and served at least 28 days before the hearing.

10  
11           To provide reasonable time to satisfy the above requirements and an opportunity for  
12           experts to determine the appropriate minimal user exclusions and what additional water  
13           production needs to be included, a court certification hearing could be held in the first part of  
14           2007. In the meantime, the court should hold its previously-suggested hearing on Basin  
15           characteristics on December 15, 2006.

16  
17           5.     A Hearing on Basin Characteristics

18  
19           In recent case conferences, the court indicated a hearing on basin characteristics could  
20           take place before the end of the year. Although the hearing date has not yet been set, County of  
21           Los Angeles Waterworks District No. 40 requests that the court set the hearing on December 15,  
22           2006. The hearing should include testimony on the Basin's geology, historical land use, imported  
23           water supplies, and storage capacity.

24  
25           6.     Conclusion

26  
27           The Judicial Council of California *Deskbook on the Management of Complex Civil*  
28           *Litigation* encourages trial courts to "exercise pragmatism and flexibility in dealing with class

1 actions:" "Ultimately, the California Supreme Court has explained, 'we must rely upon the ability  
2 of trial courts to adopt innovative procedures which will be fair to the litigants and expedient to  
3 serving the judicial process.' There is, in short, significant flexibility in California trial courts for  
4 adjusting procedures to handle class actions." (*Deskbook* at p. 3-57.)

5  
6 County of Los Angeles Waterworks District No. 40 recommends a hearing on the  
7 determination of any additional parties needed in the case. These potential parties would not  
8 include: *(1) all customers who receive water service from a public water supplier party; (2) all*  
9 *minimal groundwater users as determined by the court after hearing with expert witness*  
10 *declarations or testimony; (3) any other water production that may not be necessary for a*  
11 *comprehensive McCarran Amendment adjudication and for the court to implement a physical*  
12 *solution.*

13  
14 Dated: November 13, 2006

BEST BEST & KRIEGER LLP

15  
16 By



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COUNTY WATERWORKS DISTRICT  
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 11 SOLANO COUNTY WATER AGENCY, Respectively

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 13 IN AND FOR THE COUNTY OF SACRAMENTO

14 SOLANO IRRIGATION DISTRICT,  
 15 SOLANO COUNTY WATER AGENCY,  
 16 et al.,  
 17 Plaintiffs,

No. 2565  
 (Sac. County No. 515766)  
 (Solano Co. No. 108552)

18 -vs-

19 THE NAMES OF ALL APPROPRIATIVE  
 20 WATER RIGHTS HOLDERS IN UPPER  
 21 BASIN, et al.,  
 22 Defendants.

ORDER GRANTING PLAINTIFFS'  
 PETITION FOR CLASS  
 CERTIFICATION

23 AND RELATED ACTION:

24 PUTAH CREEK COUNCIL,  
 25 Plaintiff,

26 -vs-

27 SOLANO IRRIGATION DISTRICT and  
 28 SOLANO COUNTY WATER AGENCY,  
 Defendants.

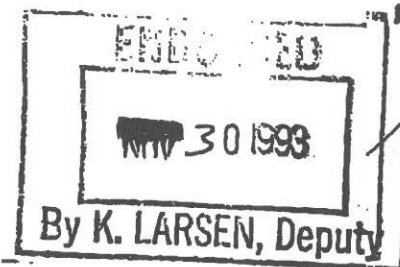


EXHIBIT "A"



1 The Petition for Class Certification filed by Plaintiffs came  
2 on regularly for hearing by the Court on October 15, 1993.  
3 Plaintiffs, Solano County Water Agency, et al., appeared by  
4 counsel, Tim O'Laughlin. Defendant, the United States of America,  
5 appeared by counsel, Maria Iizuka. Defendant, Regents of the  
6 University of California, Davis, appeared by counsel, Alan Lilly.  
7 Defendant, California Water Service Company, appeared by counsel,  
8 Eric Garner. Certain other defendants appeared by counsel, Warren  
9 Felger.

10 Based on the pleadings and declarations on file herein, and  
11 oral arguments, the Court finds that the requirements for  
12 certification of a defendant class have been met and that the  
13 Plaintiffs' Petition for Class Certification ought to be granted.  
14 Therefore,

15  
16 IT IS ORDERED THAT:

- 17 1. The Defendant Class petitioned by the plaintiffs be  
18 certified.
- 19 2. The City of Winters, Robert Borchard, Franz Horsely and  
20 George Crum, represented by Warren Felger of McCutchen,  
21 Doyle, Brown & Enersen (Putah Creek Landowners  
22 Association) are defendant class representatives.
- 23 3. California Water Service Company is a defendant class  
24 representative.
- 25 4. Regents of the University of California, Davis, is a  
26 defendant class representative.
- 27 5. The class representatives are not required to take any  
28 actions on behalf of the defendant class, other than any  
actions which the class representatives may decide to  
take to represent their own interests.
6. The class members will be determined by inspection of  
the records of Solano County Tax Assessor and Yolo  
County Tax Assessor and identification of parcels within  
the Putah Fan Recharge Area.



7. The plaintiffs will prepare a notice to the class members. This notice will include the following information:
  - a. A brief explanation of the Putah Creek Adjudication.
  - b. An explanation of the groundwater issue in the Putah Creek Adjudication.
  - c. A definition of the class.
  - d. An explanation of the issue to be determined which affects the class.
  - e. Procedures for objecting to the class representatives and option of proceeding as an individual party.
8. Copies of the proposed notice shall either be approved by a stipulation signed by all class representatives and members of the Litigation Committee representing parties with interests in the waters of lower Putah Creek or shall be approved by the court, before it is mailed to each class member or published in any newspaper of general circulation.
9. The notice will be delivered via first class mail to each class member.
10. Plaintiffs shall cause the notice to be published three times, once each in three consecutive weeks, in at least one newspaper of general circulation published in each of the counties (Yolo and Solano).
11. Plaintiffs will bear the cost of delivering said notice.

Dated: <sup>November</sup> ~~October~~ 30, 1993

RICHARD K. PARK

JUDGE PARK

**PROOF OF SERVICE**

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On November 13, 2006, I served the within document(s):

**CASE MANAGEMENT STATEMENT**



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.



by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.



by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.



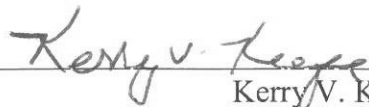
I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

(SEE ATTACHED SERVICE LIST)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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.

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

Executed on November 13, 2006, at Irvine, California.

  
Kerry V. Keefe

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