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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY GROUNDWATER**
18 **CASES**

19 Included Actions:
Los Angeles County Waterworks District No.
20 40 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No.
21 BC 325201;

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

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

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40
AND ROSAMOND COMMUNITY
SERVICES DISTRICT'S JOINDER IN
THE PUBLIC WATER SUPPLIERS'
REPLY AND SEPARATE REPLY IN
SUPPORT OF MOTION TO
CONSOLIDATE CASES FOR ALL
PURPOSES

Date: October 13, 2009
Time: 10:00 a.m.
Dept. 17C

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I.

INTRODUCTION

Los Angeles County Water Works District No. 40 and Rosamond Community Services District join in the Reply filed by the other Public Water Suppliers and offer this separate Reply in support of the Public Water Suppliers' Motion to Transfer and Consolidate for all Purposes. These coordinated cases should be consolidated for all purposes so that a single judgment can be entered that resolves the water rights stemming from the single groundwater basin at issue in all of these cases. Various parties have opposed such consolidation. Some have objected to procedural aspects of the motion itself, raising issues of sufficiency of the list of parties to the case and the method of service of the motion. Others have added to those procedural objections arguments on the substance of the motion, claiming that this Court lacks power to consolidate these cases. No one, however, has opposed the merits of consolidating these cases. It stands undisputed that there are in all of these cases common questions of law and fact; thus, the matters should be consolidated for all purposes. As for the procedural and substantive roadblocks the opposing parties have attempted to set up, none of them are valid cause to deny consolidation of these matters.

II.

ANALYSIS

A. The Motion for Consolidation is Procedurally Adequate

Numerous parties have argued (and in one case, objected to the Court even hearing the Motion) that the Motion for Consolidation is procedurally deficient for not complying with the requirements for such a motion under the Rules of Court. They assert (1) that the Motion does not list all of the named parties in the various cases sought to be consolidated, (2) that it fails to list the captions of all of the cases sought to be consolidated, with the earliest case number listed first, and (3) that the Motion was not properly served on all parties to this case. The parties raising these objections and arguments in opposition are wrong.

Exhibit "A" to the Public Water Suppliers' Supplemental Memorandum of Points and Authorities in Support of the Motion to Consolidate, filed September 8, 2009, lists in 77 pages of detail all of the parties to each of the actions sought to be consolidated on this Motion. That exhibit also contains the information from the caption for each of those actions, including the names of all parties and the case number for each case with the court the matter was initially filed in. The Motion, and the Supplemental Points and Authorities, also were validly served on all parties to these cases. The Proof of Service attached to each document indicates that it was served pursuant to this Court's web site in this matter pursuant to the Court's electronic-filing procedures.¹ The Motion complies with the procedural requirements under Rule of Court 3.350.

B. Consolidation of These Already-Coordinated Cases is Substantively Appropriate

Aside from the alleged procedural deficiencies discussed above, the opposing parties also raise three substantive grounds for why they believe these coordinated cases cannot be consolidated for all purposes. They contend that the cases cannot be consolidated (1) because they are "complex," (2) because they were originally filed in different courts, and (3) because the parties and the causes of action are not identical in all of the cases. None of these bases support denial of consolidation of these cases for all purposes.

1. Consolidation Under Section 1048 of the Code of Civil Procedure is not Forbidden for "Complex" Cases

The opposing parties first argue that the Court cannot order these actions consolidated because consolidation is not available for "complex" cases. This argument is a red herring because it is based on the wrong statutory authority for consolidation. The authorities cited in support of that argument show, however, that such an argument is based on the requirement in

¹ As such, the documents were served in an identical manner to the Notice of Motion and Motion to Dismiss the Public Water Suppliers' Cross-Complaint, filed by all of the parties that object to the manner of service of the Motion for Consolidation. See Proof of Service attached to Notice of Mot. and Mot. to Dismiss Public Water Suppliers' Cross-Compl., filed May 28, 2009, Docket No. 2759. If such service is grounds for denial of the Motion to Consolidate, it identically would require denial of the Motion to Dismiss.

1 Section 403 of the Code of Civil Procedure that the cases to be transferred and consolidated under
2 that section must not be complex. That point is irrelevant here because the Public Water
3 Suppliers do not move for transfer and consolidation under Section 403, but instead seek
4 consolidation for all purposes under Section 1048 of the Code of Civil Procedure. In fact, the
5 original moving papers are explicit that the Motion is not brought under Section 403. See Mem.
6 P. & A., filed July 15, 2009 (Docket No. 2976) at 9, n. 1.

7
8 Section 403 is an alternative procedure that provides a shortcut to achieve a transfer and
9 consolidation of non-complex cases in different courts without first having to seek coordination
10 of those cases. The very authority that the opposing parties offer in support of their argument on
11 this point establishes that the argument does not apply to this Motion. It states that "[c]omplex
12 cases still must be coordinated through the cumbersome procedure described above (i.e.
13 appointment of a coordination judge by the Judicial Council, etc.) but any judge in any court may
14 order a 'noncomplex' case pending in another court transferred and consolidated with a case
15 pending in that judge's court." Weil & Brown, California Civ. P. Before Trial (T.R.G. 2009), ¶
16 12:405.1. This authority does not support any proposition that complex cases cannot be
17 consolidated, as the opposing parties here argue. Rather, it merely provides that the Section 403
18 shortcut of transfer and consolidation can only be used in noncomplex cases – for complex cases,
19 the "cumbersome" procedure of coordination must be employed.

20
21 These cases have already gone through that process and have already been coordinated.
22 See Ex. "1" to the July 15, 2009 Motion to Consolidate. Section 403 is not applicable here, and it
23 is not necessary. The Public Water Suppliers seek consolidation under Section 1048 of the Code
24 of Civil Procedure, which does not limit itself to non-complex cases the way Section 403 does.
25 The opposing parties have offered no authority for the proposition that Section 1048 does not
26 apply to complex cases. Accordingly their argument that these cases cannot be consolidated
27 because they are complex fails as a ground for denying consolidation. Because the matters
28 involve common questions of law and fact, consolidation for all purposes is appropriate.

1 **2. The Cases Sought to be Consolidated are Pending Before the Same Court**

2 The opposing parties also argue that consolidation is not possible here because the cases
3 sought to be consolidated were filed in three different courts (Los Angeles, Kern, and Riverside
4 Superior Courts). The requirement for consolidation under Section 1048, however, is that the
5 cases be "pending before the court" consolidating them. Code of Civil Procedure 1048 (emphasis
6 added). Pursuant to the Order coordinating these cases (Exhibit "1" to the moving papers), the
7 cases are now pending before this Court. Accordingly, this Court may order them consolidated
8 for all purposes under Section 1048 so long as they "involve[e] a common question of law or fact
9" Since there is no dispute on that issue, consolidation for all purposes is appropriate.

10
11 **3. The Cases Can be Consolidated for All Purposes Even Where the Parties and**
12 **Causes of Action in All Cases are not Identical**

13 Finally, the opposing parties argue that these cases cannot be consolidated for all purposes
14 because the parties and the causes of action in the various actions are not identical. This issue is
15 addressed in the Public Water Suppliers' original moving papers, the original reply, and in the
16 supplemental Memorandum of Points and Authorities. The opposing parties' attempt in their
17 supplemental opposition to distinguish Committee for Responsible Planning v. City of Indian
18 Wells, 225 Cal. App. 3d 191 (1990) is addressed in the Public Water Supplier's Reply to those
19 papers and requires no further analysis. These various actions, all of which seek in one way or
20 another the determination of the parties' respective rights to groundwater in the Antelope Valley
21 Basin, may, and should, be consolidated for all purposes.

22
23 **C. The McCarran Amendment Issue Weighs in Favor of Consolidation for All Purposes**

24 The opposing parties have also sought to address the McCarran Amendment in their
25 opposition papers. Such discussion adds nothing to their opposition to the consolidation of these
26 matters for all purposes. On the question of whether the cases should be consolidated, their
27 arguments about the McCarran Amendment merely assume their own conclusion that
28 consolidation is unavailable, and therefore will not solve the McCarran Amendment problem.

1 Regardless, the Federal Defendant has filed papers in support of consolidating these matters for
2 all purposes in order to resolve the McCarran Amendment issue. See Federal Defendant's
3 Response to Mot. to Transfer and Consol., filed August 3, 2009, Docket No. 3022. Consolidation
4 not only is appropriate because these various cases involve common questions of law and fact,
5 but it is vitally important to this Court's jurisdiction over these matters.

6
7 **D. The Proposed Settlement of the Class Actions Does not Weigh Against Consolidation**
8 **of these Cases for All Purposes**

9 Finally, counsel for one of the classes has filed supplemental papers in opposition to
10 consolidation of these matters for all purposes on the ground that such a consolidation would
11 jeopardize the settlement reached at a recent mediation with Justice Robie. Initially, it should be
12 noted that the settlement with the classes does not lessen the common questions of law and fact
13 existing between the cases sought to be consolidated here, and therefore does not diminish the
14 propriety of consolidating these matters. Moreover, and contrary to the Willis Class's position,
15 the proposed settlement with that class does not obviate the need for consolidation of these
16 matters because that settlement must be part of a unified (albeit consensual) judgment binding on
17 all landowners in order for this Court to maintain jurisdiction over these cases. Finally,
18 consolidation will not threaten the prospects for final approval of that settlement, for reasons
19 stated in the Public Water Suppliers' Supplemental Reply. Accordingly, the pending settlement
20 with the classes plays no role in the determination of whether these cases should be consolidated.

21
22 **III.**

23 **CONCLUSION**


24 None of the arguments raised in the various opposition papers merits denying the Public
25 Water Suppliers' Motion to Consolidate these already-coordinated cases for all purposes. The
26 Motion is procedurally proper; it lists the parties to each of the cases proposed to be consolidated,
27 contains the caption information for each of those matters, and was properly served on all parties
28 to these coordinated cases through the Court's electronic filing and service procedures.

1 Substantively, the fact that these cases involve common questions of fact and law is undisputed.
2 The fact that these cases are complex does not disqualify them from being consolidated under
3 Section 1048 of the Code of Civil Procedure. It is immaterial that these cases were initially filed
4 before different courts – they are now all pending before this Court, and therefore this Court has
5 authority under Section 1048 to consolidate them for all purposes. As for the classes, the
6 requested consolidation will not harm the proposed settlement with them. Consolidation for all
7 purposes is important in this matter so that a single judgment can be rendered determining the
8 water rights of all parties claiming such rights, and is necessary for this Court to maintain
9 jurisdiction to make that determination in light of the presence of the United States as a party
10 (who supports consolidation). For all of these reasons, Los Angeles County Waterworks District
11 No. 40 and the Rosamond Community Services District respectfully request the Court grant the
12 pending Motion for Consolidation.

13
14 Dated: September 23, 2009

Respectfully submitted,

BEST BEST & KRIEGER LLP

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16
17 By 
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25 ROSAMOND COMMUNITY SERVICES
26 DISTRICT
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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 September 23, 2009, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 AND ROSAMOND COMMUNITY SERVICES DISTRICT'S JOINDER IN THE PUBLIC WATER SUPPLIERS' REPLY AND SEPARATE REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CASES FOR ALL PURPOSES

- ☒ 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.

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 September 23, 2009, at Irvine, California.


Kerry V. Keefe