

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

DIAMOND FARMING COMPANY, WILLIAM  
BOLTHOUSE FARMS, INC.,

Plaintiffs,

vs.

RIC-344436

CITY OF LANCASTER, ANTELOPE VALLEY  
WATER DISTRICT, PALMDALE WATER  
DISTRICT, PALM RANCH IRRIGATION  
DISTRICT, QUARTZ HILL WATER DISTRICT,  
ROSAMOND COMMUNITY SERVICE DISTRICT,  
MOJAVE PUBLIC UTILITY DISTRICT, LITTLE  
ROCK IRRIGATION DISTRICT, LOS ANGELES  
COUNTY WATERWORKS DISTRICTS, et al.,

Defendants.)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Had before the Honorable Gary B. Tranbarger, Judge of the  
Superior Court, Department 7, on November 12, 2004.

APPEARANCES:

For Plaintiff/  
Diamond Farming:

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For Defendants/  
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ORIGINAL

EXHIBIT "1" EXHIBIT 2

APPEARANCES CONTINUED:

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RIVERSIDE, CALIFORNIA, FRIDAY, NOVEMBER 12, 2004

GARY B. TRANBARGER, JUDGE

DEPARTMENT 7

THE COURT: Diamond Farming versus City of Lancaster.  
Let's see if we can avoid everyone making an appearance. We  
got --

MR. JOYCE: Good morning, your Honor. Bob Joyce  
appearing on behalf of Diamond Farming.

MR. ZIMMER: Good morning, your Honor. Richard Zimmer on  
behalf of Bolthouse Farms.

THE COURT: Who wants to speak for the district?

MR. DUNN: Good morning, your Honor. Jeffrey Dunn on  
behalf of defendants, L. A. County Water Works District 37 and  
Rosamond Community Services District.

MR. GARNER: Good morning, your Honor. Your Honor, Eric  
Garner also on behalf of Los Angeles County Waterworks Districts  
number 37 and 40 and Rosamond Community Services District.

MR. PFAEFFLE: Good morning, your Honor. Fred Pfaeffle,  
Senior Deputy County Counsel for L. A. County Waterworks District  
40 and 37.

MR. TOOTLE: Good morning, your Honor. John Tootle on  
behalf of Antelope Valley Water Company.

MR. BUNN: Good morning, your Honor. Tom Bunn on behalf  
of Palmdale and Quartz Hill Water District.

MR. MARKMAN: Good morning, your Honor. James Markman,  
not yet a party, representing the City of Palmdale and  
interested-hope-to-be-party in this matter.

MR. ROBBINS: Good morning, your Honor. Jeff Robbins for  
City of Lancaster.

1 MR. FIFE: Good morning, your Honor. Michael Fife for  
2 the other so-called farming interests that are referenced in the  
3 papers.

4 THE COURT: You represent all of them?

5 MR. FIFE: Two to 355. Currently we represent a group of  
6 several of the largest of them. And if the motion is granted  
7 today or if the county does file the second adjudication, we  
8 would expect to represent most, if not all of them.

9 THE COURT: All right. Let's start with threshold  
10 question. No one needs my permission to file a new and separate  
11 action asking for a basin adjudication, do they?

12 MR. DUNN: May I be heard on that, your Honor?

13 THE COURT: Since you're the one who thinks you might be  
14 filing it, yeah.

15 MR. DUNN: Jeffrey Dunn on behalf of the moving party.  
16 The issue arises whether there has to be a cross-complaint filed  
17 in this action. In other words, is the cross-complaint  
18 compulsory or is it permissive? And depending upon whether it's  
19 permissive or compulsory, that would impact the ability of any of  
20 these defendants to file a separate action for adjudication.

21 If it is a compulsory cross-complaint in this action,  
22 there could be an argument in a separate action or actions that  
23 those actions are improper or otherwise should not be brought,  
24 but instead should have been brought as a compulsory  
25 cross-complaint in this action.

26 THE COURT: Aren't there a number of parties who are not  
27 parties in this action that had the ability to seek a basin-wide  
28 adjudication?



1 MR. DUNN: No question that that is true. However, as to  
2 the parties who are defendants in this action, and specifically  
3 my client, the waterworks district, it is a party, it is a  
4 defendant, and it is faced with the issue of filing a compulsory  
5 cross-complaint in this action. So we are not in a position to  
6 ignore the compulsory cross-complaint rule. And that's why the  
7 motion is brought.

8 THE COURT: Would I be safe to assume that the only  
9 persons that can make such a complaint against you if you were to  
10 file a separate action would be the two plaintiffs in this case?

11 MR. DUNN: Hard to say, your Honor. It is possible that  
12 parties -- excuse me -- entities that are not parties to this  
13 case, but would be parties in a separate action or separate  
14 actions, could still make the claim that the basin adjudication  
15 claim, at least as it relates to these two plaintiffs, should  
16 have been raised in this action today.

17 THE COURT: As it relates to these two plaintiffs?

18 MR. DUNN: Correct.

19 THE COURT: These two plaintiffs interested in raising  
20 such a procedural objection to a separately filed basin  
21 adjudication claim?

22 MR. JOYCE: Well, your Honor, I -- I don't necessarily  
23 want to prejudge or speculate as to what my legal position would  
24 or would not be until I was confronted with that event.

25 I will advise the Court that I think, as we clearly point  
26 out in our opposition papers, that first and foremost any claims  
27 that are now desired to be advanced as against the quote-unquote  
28 Roe cross-defendants, are not compulsory by clear definition or

1 permissive at best.

2 As against any defendant as against any other defendant,  
3 those would be likewise permissive at best.

4 If and to the extent any claims could be characterized  
5 as, quote-unquote, and I use that word advisedly, as compulsory,  
6 it would be any -- it would have to be claims as between the  
7 party and plaintiff and the defendant. And I think we made it  
8 fairly clear in our opposition that in the characterization of  
9 this action as it properly is as a straightforward quiet title  
10 action that the cross-complaint is really an unnecessary  
11 procedural vehicle inasmuch as all issues of contest as to the  
12 adversity of title are raised by virtue of answer and the  
13 affirmative defenses pled therein.

14 So I don't think it's a compulsory cross-complaint at  
15 all. I think that's a bit of a red herring. I would advise the  
16 Court that I find it a bit interesting that in the motion in the  
17 first instance, they were relying upon subsection (c) of 426.50.

18 This concept of compulsory cross-complaint is something  
19 that they allude to, but don't even affirmatively ascertain to be  
20 the case in the reply memorandum. I don't know if it was -- if  
21 they were holding it in abeyance or if this was just a new  
22 thought that came to mind, but in any event this motion as  
23 originally brought and brought pursuant to 426.50 subparagraph  
24 (c) therein, that is the basis for the motion. And under that  
25 the only standard to be applied is the interest of justice  
26 standard. And we've addressed that in our opposition.

27 THE COURT: Let's assume for the moment that somebody  
28 files a lawsuit somewhere seeking a basin-wide adjudication. Do

1 plaintiffs in this case think there is something -- some ruling  
2 that I will end up making in this case that will have any  
3 continued viability once a ruling is made in that case?

4 MR. JOYCE: Your Honor, any rulings made in this case on  
5 the issue of title as between my client and these defendants will  
6 be determinative of those issues.

7 As to the two pieces of property that my client owns that  
8 are -- and have before the court in Kern County and Los Angeles  
9 County and as to the claims raised defensively of claims of  
10 prescription and the like, that once those have been litigated in  
11 this case as between that particular piece of property and the  
12 named defendants, they're done.

13 Now, what if any impact that has elsewhere or in other  
14 cases, I don't know. Frankly, from my client's perspective I  
15 want them done, resolved, adjudicated and over. I want the  
16 judgment, good or bad, so I know what I'm going to do in the  
17 future and that's the end of it.

18 THE COURT: Let's assume you get a judgment in this case.

19 MR. JOYCE: If I have a judgment --

20 THE COURT: I assume any judgment that's going to be of  
21 value to you is, go ahead and pump X number of gallons.

22 MR. JOYCE: That in essence would be correct. And that's  
23 going to be res judicata --

24 THE COURT: Well, hang on.

25 MR. JOYCE: -- from once it's entered thereafter.

26 THE COURT: It's going to be res judicata?

27 MR. JOYCE: As between my client and the specifically  
28 identified participating defendants in this action it will be

1 over.

2 THE COURT: But how many gallons you really get to pump  
3 will be determined by the basin-wide adjudication, won't it?

4 MR. ZIMMER: Your Honor, if I could just speak to this  
5 briefly, just answer the Court's question? Number one, I do not  
6 think that what we do in our action will stop the County if they  
7 so desire, or any other party in the Antelope Valley, from filing  
8 a basin-wide adjudication.

9 Number two, what we do in our action will have binding  
10 effects on the parties to the action. We are simply farmers who  
11 have been farming on this ground.

12 THE COURT: Counsel, you're not answering my question.  
13 Yes, you'll have some binding collateral estoppel/res judicata  
14 effect on the parties to this case. But is that going to at all  
15 affect how many gallons you actually get to pump out as  
16 determined by basin-wide adjudication?

17 MR. ZIMMER: No. I would say no. We filed this action  
18 precisely to cut off prescriptive claims.

19 THE COURT: Counsel, if it doesn't really effect how many  
20 gallons you get to pump out, it's somewhat of a Pyrrhic victory,  
21 isn't it, assuming you get a victory?

22 MR. ZIMMER: If there's no prescriptive claims. The  
23 prescriptive claims could affect the number of gallons because  
24 the argument could be they have diminished our right to pump by  
25 whatever numbers of gallons they are claiming prescriptively. So  
26 it could effect it in that way. That judgment of the Court, that  
27 declaration of the Court would be binding as between these  
28 parties clearly in a subsequent basin-wide adjudication.

1 MR. JOYCE: Your Honor, if I could take it one step --

2 THE COURT: Let me phrase it one more time. Let's try it  
3 this way: A judgment that affects two farms in two water  
4 districts only --

5 MR. JOYCE: Actually, your Honor, there's seven parties  
6 that have --

7 THE COURT: All right. Seven parties.

8 MR. JOYCE: Okay.

9 THE COURT: A judgment affecting seven parties, what  
10 effect, if any, is that going to have on a basin-wide  
11 adjudication lawsuit with 300 parties?

12 MR. JOYCE: Very simple, your Honor. The parties that we  
13 have named as party defendants that are presently before the  
14 Court are the primary, if not the only, appropriator pumpers  
15 within the area that we're concerned with.

16 The claims that are in issue are primarily this: Do we  
17 have and have we preserved our common law rights as an overlying  
18 landowner with the -- with the attendant priority that attaches  
19 to that status? In other words, do we have first rights against  
20 the available supply as against these party defendants?

21 If we prevail upon that theory and we get a judgment  
22 quieting our title and confirming our priority, then in any  
23 subsequent adjudication, whether it be amongst some parties or  
24 everybody else, at least as between my client and our properties  
25 and these defendants we now have a confirmed priority.

26 If in the course of a subsequent adjudication a court  
27 were to say there was an inadequate supply to service all the  
28 needs of both the appropriators and overlying landowners, then

1 in -- in that subsequent action any adjustments that need to be  
2 made in relation as it would pertain to the relationship between  
3 the pumping of the parties, the adjustments would have to be made  
4 in recognition of my now confirmed priority; which means, in  
5 essence, there's going to have to be cutbacks. The appropriators  
6 would have to cut back first before I could be compelled to cut  
7 back. That's in essence the impact of what happens if I secure a  
8 judgment in this action quieting my title, confirming my  
9 priority.

10 Once established, then on a going forward basis anything  
11 else that happens would have to give due recognition to my status  
12 and my priority. It's inconsistent with the Mojave-Barstow  
13 decision where the court said and recognized that if, in fact,  
14 there's an absence of showing prescription, the overlyer retains  
15 his priority. And that even in the context of physical solution  
16 in an adjudication setting, then the Court cannot impose upon the  
17 priority right holder any inordinate expense, any inordinate  
18 costs, or any inordinate inconvenience in the exercise of  
19 priority right.

20 So the key focus in this litigation is to establish that  
21 priority or to find that it doesn't exist, one or the other.

22 THE COURT: All right. Anyone disagree with that?

23 MR. DUNN: Yes.

24 THE COURT: What practical or legal effect do you think  
25 judgment in this case will have on the hypothetical separate  
26 basin adjudication lawsuit?

27 MR. DUNN: It would not have the impact that you heard.  
28 The reality is that if there are separate actions for basin



1 adjudication and these complaints continue, we would then have  
2 multiple complaints and cross-complaints involving same parties,  
3 same subject matter of the litigation, and more importantly the  
4 same contested rights.

5 Now, in the interest of justice, that would create a  
6 problem because you're going to have inconsistent findings. Each  
7 court would be free to make its own determinations. It's  
8 entirely possible that a court here in Riverside County could  
9 find X, Y and Z factually and a court in Los Angeles County could  
10 find A, B, C, and a court in Kern County could find yet something  
11 different, all adjudicating the same contested rights. So you  
12 have at a minimum a problem of inconsistent findings of facts and  
13 law. You have the fact that there would be multiple litigation  
14 involving the same parties in this case in other counties over  
15 the same issues.

16 You're going to have the attendant additional expense,  
17 the delay of all that's involved, but at the end of the day --

18 THE COURT: Wait a minute. You talk about delay. Isn't  
19 that their reason for objecting to all this?

20 MR. DUNN: No.

21 THE COURT: What's your time estimate for completion of  
22 your basin adjudication action?

23 MR. DUNN: Time in terms of court days or time until we  
24 get to trial?

25 MR. JOYCE: Time in terms of years.

26 THE COURT: The time in terms of date of filing to date  
27 of judgment.

28 MR. DUNN: I think you're looking at two to three years.

1 THE COURT: That seems rather optimistic, doesn't it?

2 MR. DUNN: Well, consider the fact that this case is  
3 already five years old. There has been a fair amount of work  
4 done to date. We are not starting from scratch. It's  
5 obviously --

6 THE COURT: Hang on. You are not starting from scratch.  
7 A great number of other parties will be starting from scratch.

8 MR. DUNN: They will start from scratch no matter where  
9 the adjudication takes place. If it is in a separate action or  
10 with a cross-complaint in this case, that's going to happen, but  
11 it should not be lost --

12 THE COURT: Let me ask this question: How many  
13 non-farming parties would there be in the basin adjudication  
14 action that are not in this action?

15 MR. DUNN: There would be two groups, primarily neutral  
16 water companies and --

17 MR. GARNER: The cities.

18 MR. DUNN: -- few others, City of Palmdale.

19 MR. MARKMAN: Maybe I can help the Court with that.

20 THE COURT: Please state your name again for the record.

21 MR. MARKMAN: James Markman representing the City of  
22 Palmdale. There are probably at least a dozen water purveyors  
23 serving families in the City of Palmdale. The waterworks  
24 district is one of them.

25 There are numerous mutual water companies, some of whom  
26 claim overlying rights because of the way they're structured,  
27 some of whom think that they're appropriators. None of them are  
28 engaged in this case.



1           The end result is -- I could describe this to the Court.  
2 I think in the end these cases will come together, whether by way  
3 of this cross-complaint should the Court grant the motion or by  
4 way of coordinating and consolidating that case with this case.  
5 And I don't think Mr. Joyce will be able to proceed to judgment  
6 any quicker in either case.

7           The problem is, let's assume these were kept separate,  
8 which I can't imagine. Mr. Joyce obtains a judgment of priority  
9 based on the five years preceding the filing of this case against  
10 these defendants and their mutual water companies. He has no  
11 priority over and he hasn't correlated his rights with hundreds  
12 and hundreds of other overlying farming producers.

13           And then in the next case, based on a new five year  
14 period which starts when the next case is filed, which is a whole  
15 different period for purpose of determining prescriptive rights  
16 existence or nonexistence, we obtain a completely different  
17 result so that we have competing judgments.

18           That's what -- that's -- the City of Palmdale is not a  
19 producer, your Honor. The City of Palmdale's interest is seeing  
20 this resolved with finality to provide certainty to Mr. Joyce and  
21 his clients and everyone else pumping water in that basin as to  
22 what their source is, how sustainable it is, and what it's going  
23 to cost, because presently there's such chaos that we're not sur  
24 at the City of Palmdale whether presently approved projects, ver  
25 large projects, are going to receive water service or whether ou  
26 land use process has any viability. And that is going to remain  
27 the case until all these matters are resolved, not just this one  
28 involving these two farmers, but one that involves everybody.

1           So I think should these -- should there be two cases  
2 and this motion be denied, you could get inconsistent results  
3 for -- if for no other reason than you're going to have different  
4 prescriptive periods to deal with and you're going to have  
5 parties who serve water to people, who don't serve water to  
6 crops, who are not present here, who could end up with or without  
7 priority as compared to Mr. Joyce's priority.

8           THE COURT: You want to address one narrow point?

9           MR. JOYCE: Certainly, your Honor.

10          THE COURT: This notion that the decisions would be based  
11 on the five years that preceded the filing of the action, what  
12 does that do to your res judicata argument?

13          MR. JOYCE: Well, your Honor, first and foremost, in  
14 order to establish the prescriptive claim, they have to make the  
15 demonstrable showing of the predicate five years of adversity  
16 with every other element of necessity having been satisfied  
17 evidentially. The case law clearly establishes it's the five  
18 years preceding the complaint. Once having filed my complaint I  
19 cut off that running of that period.

20          So of necessity, anything that has occurred after the  
21 October 1999 filing as to my purchase of property has no bearing  
22 upon determination of prescription as to that piece of property,  
23 because once in court, once I have protected myself by initiating  
24 the action, the statute no longer runs.

25          THE COURT: Would that protection --

26          MR. JOYCE: And it would --

27          THE COURT: Hang on. Would that protection exist --  
28 let's assume for the moment that there's a separate basin

1 adjudication filed next week. And let's further assume for the  
2 moment that somewhere down the line some judge somewhere orders  
3 these cases consolidated.

4 MR. JOYCE: Certainly.

5 THE COURT: Which -- which five year period applies to  
6 you? And is it a different five year period that applies to you  
7 that applies to everyone else in the case?

8 MR. JOYCE: Absolutely. Absolutely. If the Court were  
9 to force consolidation and/or coordination or otherwise, that's  
10 not going to affect the legal reality that I filed my action on  
11 October -- in October of 1999. That's when I cut off. That's  
12 never going to change no matter what.

13 THE COURT: But you can cut it off against those  
14 individuals for whom you name and serve.

15 MR. JOYCE: That's exactly correct. I'm not suggesting  
16 for a moment that someone else out there couldn't try to assert a  
17 different kind of a claim for different period of time that I  
18 have not as yet locked horns with. That could happen.

19 I can't suggest that I can define a perfect world of  
20 every conceivable outcome being addressed, but as between the  
21 parties that I have sued, that is the operative time frame.

22 If the Court will note in the proposed cross-complaint,  
23 they themselves even concede that there will be two distinct five  
24 years periods: The five year periods to address my claims  
25 predating October of '99 and a five year period which predates  
26 whatever date it is they get around to filing the proposed  
27 cross-complaint, either separately or as a cross-complaint.

28 THE COURT: But parties saying that are the ones that are

1 clearly in this case, not the ones that aren't in this case. Who  
2 knows what they're going to assert?

3 MR. JOYCE: I understand. What I'm saying is that the  
4 prescriptive claims being advanced will be dependent upon two  
5 distinct different time frames. I have no interest in  
6 post-October 1999 events and/or production numbers and all the  
7 rest of it that's going to have an impact on everybody else out  
8 there because I've cut it off. I've locked it in time.

9 MR. ZIMMER: Mr. Joyce is right. That's why the defense  
10 is pointing out exactly why these cases should not be  
11 consolidated, why the cross-complaint should not be allowed  
12 because the Court will be dealing two separate time periods no  
13 matter what. You're going to be dealing with one time period  
14 which is cutoff by the filing of our complaint and a second time  
15 period for everyone else out there.

16 THE COURT: Well, counsel, if that's true, the question  
17 becomes: Is it better that one Court should deal with both time  
18 periods at the same time or two different Courts dealing with two  
19 different time periods?

20 MR. ZIMMER: I would say it's better with one Court  
21 dealing with the limited issues we have now because that will be  
22 binding between these parties.

23 Mr. Dunn points out that, you know, we have all these  
24 problems. If we have a judgment in this case, it's going to be  
25 confusing in the other case. If we have a judgment in this case,  
26 it's not going to have any binding effect in the other case. If  
27 that's true, why did we wait five years to raise that?

28 MR. JOYCE: Your Honor, --

1 MR. ZIMMER: We have been litigating these issues between  
2 these individual parties for four to five years.

3 THE COURT: Well, I don't need much convincing for  
4 someone to say that there's a certain amount of reluctance on  
5 anyone's part to file and initiate a basin-wide adjudication  
6 action. Everyone has been playing chicken for more than five  
7 years --

8 MR. JOYCE: Well, your Honor, --

9 THE COURT: -- trying to avoid that. Now, I haven't  
10 even actually heard to a hundred percent certainty that they're  
11 still not playing chicken. I haven't heard that it's definitely  
12 going to be filed. You could have done that last week. You  
13 don't -- well, this idea that it may be a compulsory  
14 cross-complaint. There are other people in this room who could  
15 file a basin-wide adjudication. I mean, it could be done by  
16 any -- by a couple hundred people allegedly.

17 MR. JOYCE: And it could be done tomorrow. It could be  
18 done five years from now, but we have -- we have a pending  
19 action.

20 THE COURT: Okay. Hang on. I have one other topic here.

21 MR. JOYCE: Sure.

22 THE COURT: Are there any other lawsuits out there that  
23 are piecemeal -- attempts at piecemeal adjudication of water  
24 rights in this basin other than this one?

25 MR. DUNN: Not that we are aware of.

26 THE COURT: Not that you're aware. Go ahead. You were  
27 going to say something.

28 MR. DUNN: All right. There will be a basin

1 adjudication, to answer the Court's question. There's no game of  
2 chicken here. That statement is now on the record.

3 The question is: Is it going to take place for interest  
4 of justice and because it's compulsory cross-complaint in this  
5 case or are we going to have to go through what I have briefly  
6 described today, in more detail described in the motion and  
7 reply, a process by which multiple actions will be filed in other  
8 counties, a request to the Judicial Council to coordinate all of  
9 those cases?

10 THE COURT: Why -- why multiple actions? Why not just  
11 one additional action?

12 MR. DUNN: Because there are property holdings in both  
13 Los Angeles and Kern Counties. The plaintiffs who filed these  
14 lawsuits didn't each just file one. They filed a lawsuit in L.A.  
15 County and one in Kern County.

16 THE COURT: All right. So hang on. So you're saying the  
17 basin-wide adjudication action must of necessity start off in two  
18 separate counties at the same time?

19 MR. DUNN: Well, there are -- there are venue rules  
20 applicable to public entities as plaintiffs. And -- and  
21 basically we filed the action where -- where the events give  
22 rise to the cause of action. We would not file it separately  
23 here in Riverside County.

24 THE COURT: I didn't think -- no one would file anything  
25 in Riverside County.

26 MR. DUNN: Well, that's correct. But can --

27 THE COURT: But -- but -- but you are telling me it  
28 would be two lawsuits, one in Kern and one in Los Angeles.

1 MR. DUNN: It could be.

2 THE COURT: At least at the start of filing.

3 MR. DUNN: Just as these two plaintiffs started their  
4 case.

5 THE COURT: And it would seem -- well, does it seem  
6 logical that if that were to happen, regardless of what I rule  
7 today, that if they were to file -- someone, maybe someone not a  
8 party to this case, filed a basin-wide adjudication action in Los  
9 Angeles; the other one filed in Kern, is it not eminently  
10 foreseeable that the request for coordination would be made; that  
11 the Judicial Council would then appoint a coordinating judge and  
12 that judge would in all likelihood get not only those two  
13 actions, but also this one?

14 MR. DUNN: Um-hum.

15 MR. ZIMMER: Hopefully be done with this action before  
16 then.

17 MR. JOYCE: That's possible, your Honor, but I guess --

18 THE COURT: Hang on. Why would you think we'd be done  
19 with this one?

20 MR. ZIMMER: Because I think --

21 THE COURT: You've mentioned you had four days of trial.  
22 Let's point out the obvious. You didn't have four days of trial  
23 in front of me. And unless there's a stipulation by all sides,  
24 you're going to have to repeat those four days of trial.

25 Now, maybe you'll stipulate that I can read the  
26 transcripts and get caught up. That would be fine.

27 MR. JOYCE: We are more than happy to have the Court do  
28 that, your Honor, because we want to get this thing over with.



1 THE COURT: I understand, but it requires stipulation  
2 from all sides.

3 MR. ZIMMER: The Court has ordered that the transcript  
4 that exists so far would be used in the ultimate action. Now, if  
5 the parties want to stipulate --

6 THE COURT: I haven't done that.

7 MR. ZIMMER: I understand, your Honor. The parties may  
8 very well stipulate to have you hear it, but even assuming the  
9 case -- this Court heard this, with the limited action -- the  
10 limited -- the limited things that we have at issue in this  
11 case, in this limited quiet title case against these specific  
12 defendants, this case would be tried expeditiously. You're  
13 talking about --

14 THE COURT: Now, I haven't read the transcripts from the  
15 four days and I don't pretend to know anything what happened  
16 those four days, but I do know Commissioner Ettinger started off  
17 thinking that it would be limited in scope, couple days, get it  
18 done. And at the end of four days she threw up her hands and  
19 said, nope, can't do it. And she undid the bifurcation order.

20 MR. ZIMMER: I think -- I think what -- I don't think  
21 she said she couldn't do it. I think she realized -- the  
22 defendants had been asking for bifurcation claiming they had to  
23 determine the area of boundaries of a basin in order to litigate  
24 the issues before the Court.

25 The Court came to the realization after listening to  
26 those few days of testimony that that was wrong, that that wasn't  
27 necessary at all. We have been advancing that the entire time.  
28 We said to the Court, we don't need to do this.



1 The Court ultimately agreed with us that we did not need  
2 to do this, undid the bifurcation for that reason, said we can  
3 try this easily in the remaining days of this lawsuit.

4 MR. DUNN: That's not what the Court decided.

5 MR. ZIMMER: You can look at the transcript. The  
6 transcript is pretty clear.

7 THE COURT: Whatever. It didn't get decided. And you'r  
8 now in the waning stages of 2004 in Department 7 and I haven't  
9 heard a word yet.

10 MR. JOYCE: Appreciate that, your Honor.

11 MR. ZIMMER: We'd like you to hear it.

12 THE COURT: There are many, many words you want me to  
13 hear.

14 MR. ZIMMER: And decide it.

15 THE COURT: But I -- he gave me what we're going to sa  
16 is an optimistic estimate that a basin-wide adjudication can be  
17 resolved in three years. What's your optimistic assessment of  
18 when this case can be resolved?

19 MR. JOYCE: Your Honor, if this Court sets trial date  
20 the next 60 to 90 days, we can have this case done if it is th  
21 case.

22 These gentlemen are being extremely disingenuous to  
23 suggest to this Court that a basin adjudication will be done i  
24 three years. They won't even have all the parties before the  
25 Court in three years.

26 MR. DUNN: Object to that, your Honor. There is no  
27 foundation for that statement.

28 THE COURT: Counsel, don't interrupt.

1 MR. JOYCE: Every one of these gentlemen sitting behind  
2 me are currently participating in another groundwater  
3 adjudication that I got drug into late up in Santa Maria --  
4 involving Santa Maria up in San Jose. It's been going on nine  
5 years now.

6 MR. DUNN: That's not true either.

7 THE COURT: Counsel, do not interrupt.

8 MR. JOYCE: The long and short of it is that -- you know  
9 what, better yet, make him commit himself on the record he'll  
10 have everybody served within some defined period of time. Make  
11 him commit himself he'll have the trial tried and completed in  
12 three years. Not going to happen.

13 MR. ZIMMER: To answer your question, I think we can have  
14 our case tried in three weeks.

15 MR. BUNN: May I be heard on that, your Honor?

16 THE COURT: No. Does anyone think that there is -- let's  
17 assume for the moment that a basin-wide -- total basin-wide  
18 adjudication will take significantly longer than three years.

19 MR. ZIMMER: Ha-ha.

20 THE COURT: Is it possible and feasible that this case  
21 convert itself in some effort to reach some sort of interim  
22 solution that will allow the parties in this case to have some --  
23 derive some benefit from this case pending the basin-wide  
24 adjudication? Or is that unrealistic? I want to hear from the  
25 parties in this case on that question.

26 MR. BUNN: Yes, your Honor. I'm a party in the case, if  
27 I may.

28 THE COURT: All right. State your name.

1 MR. BUNN: My name is Tom Bunn. I represent Palmdale  
2 Water District and Quartz Hill Water District.

3 In terms of interim benefit, I think it's important to  
4 point out that until a judgment is entered in this case the  
5 plaintiffs are entitled to pump as much water as they can use on  
6 their overlying run -- their overlying land. So they're not in  
7 need of immediate relief.

8 I think -- to answer the Court's question directly, I  
9 think that the relief would have to await the total relief in the  
10 adjudication, but my point is that neither the plaintiffs nor  
11 defendants are prejudiced in the meantime.

12 THE COURT: Well, let me ask plaintiffs this then: Is  
13 there anything right now stopping you from pumping as much water  
14 as you can pump for the beneficial use of your property?

15 MR. ZIMMER: Your Honor, I'm not sure it's just a  
16 question of pumping. We will pump water reasonably as it's  
17 necessary to irrigate crops. It's not just a matter of pumping  
18 water. It is a matter of being able to plan farming operations.  
19 And when there's claims of prescriptive rights out there, it  
20 changes how you plan your farming operations, what ground you're  
21 farming.

22 And I think that, to answer the Court's question, there  
23 is a benefit to be gained by a decision in this case because it  
24 will give us finality as to these prescriptive claims which is  
25 why the case was filed to begin with. It will give us finality  
26 as to whether they have these prescriptive claims or they don't.  
27 And it will allow us in the interim to be farming our properties  
28 and planning our farming operations accordingly.

1 THE COURT: Will it give you finality as to how much  
2 water you can pump now or in the future?

3 MR. ZIMMER: Well, it will -- it will give us finality  
4 that we will be able to pump up to the safe yield as overlying  
5 landowners relative with the other landowners out there,  
6 absolutely.

7 THE COURT: You don't know what that number will be until  
8 the basin-wide adjudication, do you?

9 MR. JOYCE: That's not wholly correct, your Honor,  
10 because procedurally they are going to have to release the way  
11 they approach these things. They are going to try to do the very  
12 same thing in this case is establish that quote-unquote safe  
13 yield number. That seems to be the preferred procedure.

14 THE COURT: But that number won't last. If I establish  
15 the safe yield number in this case, that number will have no  
16 viability going into the basin-wide adjudication.

17 MR. JOYCE: Your Honor, I will be the first one to  
18 concede that that number, not from a legal perspective, maybe  
19 just from a scientific perspective, is a moving target. It never  
20 stays the same, changes all the time.

21 MR. ZIMMER: What I will say to the Court, going back to  
22 your comment, is this: What it will do, either they have  
23 prescriptive rights, don't have prescriptive rights. The parties  
24 throughout the trial so far and throughout the discovery of it  
25 have obtained a rough idea of what's happening, you know,  
26 hydraulically in this basin and in this area and how much water  
27 is out there, how much the safe yield is approximately. And the  
28 overlying landowners are operating within that safe yield. So i

1 does give them some comfort level by knowing that these  
2 prescriptive claims are not out there to potentially diminish  
3 those rights in the future.

4 MR. DUNN: Can I --

5 THE COURT: Let me put it this way: Let's assume for the  
6 moment that the basin-wide adjudication is going to take place  
7 five years from now. Up until that decision five years out,  
8 although you can't plan for the future between now and those five  
9 years, anyone going to stop you from pumping out whatever you can  
10 beneficially use on your property?

11 MR. ZIMMER: That's hard to say. So far no party has  
12 filed an injunction. But certainly a party could file an  
13 injunction. The county could go out tomorrow and file a request  
14 for injunction based upon some of the allegations that they've  
15 made in the case or a third party could do that.

16 THE COURT: And they could do that with or without this  
17 lawsuit.

18 MR. JOYCE: That's correct.

19 MR. ZIMMER: They could do that.

20 MR. DUNN: The answer to the Court's question to the  
21 plaintiffs, which they didn't answer, is: Under California law,  
22 you pump until the Court orders otherwise. That's how it works  
23 with groundwater.

24 So there's no order that stops them from pumping. And it  
25 has to be pointed out that as to the plaintiffs represented by  
26 Mr. Zimmer, they amended their complaint about a year ago and  
27 greatly expanded the scope of the litigation in terms of adding  
28 additional acreage. And that's been a process by both plaintiffs

1 over the last several years.

2 MR. JOYCE: Your Honor, that's misstatement. That's  
3 misstatement.

4 THE COURT: Counsel, I told him not to interrupt you.  
5 Please don't interrupt him.

6 MR. DUNN: The point simply is that this is an ongoing  
7 process. There has been settlement efforts. There has been  
8 increased pumping with no restriction. There's been increased  
9 land brought into this litigation for -- there is not going to be  
10 a situation where this Court is going to be able to define these  
11 two plaintiffs' water rights in a vacuum. If this case were to  
12 go forward even on the recently amended complaint by Bolthouse  
13 Farms, this Court would have to look at the entire basin; and in  
14 that examination look at all the water coming into that basin and  
15 all of the uses coming out.

16 Now, there's been reference made to the Mojave decision.  
17 The Mojave decision is very instructive because the ultimate  
18 lesson of Mojave, which started in the Riverside County Superior  
19 Court, the lesson from Mojave to courts throughout the state is  
20 this: You cannot try property -- excuse me -- water rights in  
21 vacuum without examining all of the other competing rights in the  
22 case. You cannot simply carve out a group and enter judgment in  
23 their favor at the risk of ignoring the other rights. And --

24 THE COURT: Counsel, you want to address the issue why  
25 it's taken you five years to come to that conclusion?

26 MR. JOYCE: Thank you, your Honor.

27 MR. DUNN: Because the parties decided, all of these  
28 parties decided that you can either litigate or try and get thi



1 thing resolved or you can try to do both. What we decided to do  
2 with the Commissioner's encouragement and sometimes direction is  
3 to stop litigating and try to get this thing resolved.

4 Now, the moving papers present the chronology of all the  
5 events that have taken place since the filing of these complaints  
6 by the plaintiffs. But that record is very clear that there have  
7 been extraordinary efforts to try to get this thing resolved  
8 something short of adjudication.

9 The Court has correctly noted that you don't just wake up  
10 one morning and decide to adjudicate a groundwater basin. And  
11 that's particularly true if you are Los Angeles County Waterworks  
12 District where the decision is made by the County Board of  
13 Supervisors. This is a process that goes through extensive  
14 review, analysis, and study, but at the end of the day after  
15 extended effort on all sides to try to resolve this something  
16 short of adjudication, the need now arises to -- to file this  
17 compulsory cross-complaint and move this basin-wide adjudication  
18 forward.

19 It's going to happen. The issue is: Is it going to  
20 happen here or are we going to have this entire process where  
21 other cases are going to be filed, including cases by people who  
22 are not even in this courtroom as parties; and are we going to  
23 have to go through coordination and then consolidation process  
24 that will bring this case together with that separate action and  
25 in all likelihood would end up back here in the Riverside County  
26 Superior Court, because this is the lead --

27 THE COURT: Now, that's a terrible thing to say.

28 MR. DUNN: It could because this is the case that starte

1 it. And I'm telling the Court that in terms of the interests of  
2 justice and as well as it being compulsory in nature, this is  
3 going to happen. It is silly to put all parties through the  
4 delay and the expense of going through this: Separate lawsuits,  
5 coordination, consolidation.

6 THE COURT: Anyone want to be heard that has not had a  
7 opportunity to be heard?

8 MR. JOYCE: May I address the delay issue, your Honor?

9 THE COURT: Go ahead.

10 MR. JOYCE: Your Honor, I think we made it pretty clear  
11 that if you look at the pleadings in this action, there is no  
12 issue that wasn't framed in the responsive pleadings. In fact,  
13 in July of 2000, the allegation was made by this moving party  
14 that they were missing indispensable parties, i.e., all other  
15 overlying landowners. Query: Why not then? Why didn't they  
16 file the cross-complaint in 2000? Why didn't they file the  
17 cross-complaint in 2003?

18 THE COURT: You keep asking that question. Do you have a  
19 answer that's somehow helpful to making me -- me making a  
20 decision?

21 MR. JOYCE: Yes, your Honor, I do. I have an answer.  
22 Because there is a -- within the quote-unquote water law world,  
23 especially the quote-unquote purveyor side of it, they have a  
24 theory. And the theory is -- is that you don't do an  
25 adjudication until you absolutely have to. Because the longer in  
26 time you can continue to pump, the greater in quantity of  
27 prescriptive rights you may be able to protect and perfect. And  
28 so they delay it inevitably.



1 In fact, one of the leading California water lawyers.  
2 testified before the PUC two years, a year and a half ago, in  
3 order to justify the passing on of the legal fees incurred in the  
4 Mojave case to the rate payers. And one of the commissioners  
5 asked them: Why did you wait so long to file the adjudication?  
6 And his justification was because as purveyors you pump as much  
7 as you can for as long as you can before you have to adjudicate  
8 it so you can increase the amount of prescriptive rights you get.  
9 That's the motivation.

10 So don't assume for the moment that there's some great  
11 deal of soul searching and hand wringing, because that's not the  
12 case. The case is it is an intended ploy to maximize the  
13 benefits of prescriptive claims by waiting until the very last  
14 minute.

15 The only reason we're here today is because we said we're  
16 going to trial. This is more of a, no, we're not going to go to  
17 trial right away move than it was a -- than it was a, gee, we  
18 need to adjudicate the basin.

19 MR. DUNN: I --

20 MR. JOYCE: There's nothing -- there's nothing before  
21 this Court today that wasn't known to these parties in 2000.  
22 Just look at the answers to their complaints. Every single  
23 issue, the need for the other overlying landowners, the claims o  
24 prescriptions, the return flows of reported water, all those  
25 issues are already framed.

26 THE COURT: Are you suggesting if this case suddenly wer  
27 away, they still wouldn't file an adjudication?

28 MR. JOYCE: I can tell you if they thought they could c

1 a deal with us today, that would be the end of it and they would  
2 just wait until the next time they have to cross the bridge.

3 MR. ZIMMER: Your Honor, I'd just like to add to that  
4 briefly. If you look at all the huge cases that have been cited  
5 in water law, for example, Pasadena, what these -- what these  
6 huge water lawyers and the counties have done is ground small  
7 farmers into the ground. They have outspent them. They have --  
8 they have caused litigation to go on and on and on 10 years, 15  
9 years, before they -- and eventually they spend so much money  
10 that they can't go on and they enter into deals like they did in  
11 Pasadena as to the fact that there was -- there were prescriptiv  
12 claims.

13 MR. DUNN: Your Honor, --

14 MR. ZIMMER: And they did exactly the same thing here.  
15 They knew -- they knew when we filed this action exactly what  
16 was about. These guys are all well versed in water law. They'  
17 all in the water lawyers' club. They know exactly what was goi  
18 on. They knew exactly what was pled. They didn't demurrer to  
19 it. They didn't ask to file a cross-complaint at that time.  
20 They knew exactly what the issues are. We have been litigati  
21 the issues before the Court, having rulings on law and motion f  
22 five years.

23 THE REPORTER: Counsel, you want to slow it down, please.  
24 I might get it on the record if you do.

25 MR. ZIMMER: For five years we have been litigating th  
26 issues in this case. We have been having arguments about what  
27 the issue is in this case. They knew precisely what was at is  
28 in this case. They knew precisely then that they could file

1 if they believed that they couldn't -- if this lawsuit would not  
2 have any effect or that this lawsuit needed indispensable parties  
3 or that this -- what the judge decided in this lawsuit would not  
4 be -- would not result in the correct judgment, they could have  
5 corrected it five years ago.

6 But to wait five years until these parties have spent  
7 nearly \$1,000,000.00 and then say, okay, now we've decided that  
8 we need a basin-wide adjudication. We need to kick this off for  
9 another 10 or 15 years. We'll spin you guys into the ground.  
10 And we'll put off your ability to plan your farms and do what you  
11 need to do. That is not in the interests of justice. This is a  
12 ploy done intentionally over and over. There is nothing new.

13 THE COURT: All right.

14 MR. PFAEFFLE: May I have been heard, your Honor?

15 THE COURT: You have prompted the need for a response  
16 apparently. Go ahead.

17 MR. PFAEFFLE: Thank you, your Honor. And I'm not in the  
18 water club.

19 THE COURT: State your name.

20 MR. PFAEFFLE: My name is Fred Pfaeffle, Senior Deputy  
21 County Counsel with the County of Los Angeles. And Mr. Joyce  
22 absolutely correct: Our strategy has been to not file  
23 adjudication until we absolutely have to.

24 And there are many reasons for that. This is a very  
25 expensive process that's going to involve many people. As a  
26 as -- as the County and the Board of Supervisors is the governing  
27 Board of Water District 40, it also represents the community  
28 Antelope Valley. And I can guarantee you that filing a

1 adjudication was not a decision that was taken lightly. We went  
2 into closed session with Board of Supervisors. We have  
3 engineering studies. It took a long time to come to that  
4 decision. There was a lot of soul searching. There's -- it's an  
5 expensive process that will likely require for us to raise our  
6 rates to our water users.

7 And it's -- we did attempt earnestly, and not blaming  
8 anybody, to resolve the issue out of court. 2003 we had three  
9 day mediation and we could not resolve it. We did -- we finally  
10 came to the conclusion that proceeding in this case was not going  
11 to have a meaningful result in light of what's happening out  
12 there; and that is, we have a basin in trouble that we have to  
13 address and we have to plan for.

14 THE COURT: You wish to second the notion which has been  
15 represented that this basin-wide adjudication action is getting  
16 filed or would be filed forthwith even if this case right here  
17 settled today?

18 MR. PFAEFFLE: That's what my five bosses, the Board of  
19 Supervisors of County of Los Angeles, have made a motion to do,  
20 your Honor, yes.

21 THE COURT: They made a motion. Have they decided? D  
22 they take a vote?

23 MR. PFAEFFLE: They decided. Now, our motion, matter  
24 public record, is two-fold. One is to authorize us to file a  
25 cross-complaint in this action. But if that fails, they have  
26 authorized us to file a separate action for the adjudication.  
27 The costs have been taken into -- the effects of that have been  
28 taken into account.

1 THE COURT: Even if this case settled, even if these two  
2 particular squeaky wheels got taken care of, basin-wide  
3 adjudication won't be put off another four or five years hoping  
4 for all the -- the reasons stated?

5 MR. PFAEFFLE: I don't believe that I -- without going  
6 back to the Board of Supervisors, I don't think that I have the  
7 ability to do that, your Honor.

8 THE COURT: All right. Anyone else? All right.

9 MR. BUNN: Your Honor, when we get to scheduling I'd like  
10 to be heard, but my understanding you're just dealing with the  
11 motion then.

12 THE COURT: Yes.

13 MR. BUNN: Okay.

14 THE COURT: All right. The request to file the  
15 cross-complaint is denied on this basis: It appears to the Court  
16 that the appropriate way to have a basin-wide adjudication is to  
17 file a basin-wide adjudication in Los Angeles County and/or in  
18 Kern County.

19 The Court fully anticipates that should such action be  
20 filed, that an appropriate coordination motion would be made.  
21 And the Court would not pretend to bind, of course, that  
22 coordination judge. As I understand the coordination process,  
23 it's two judges. The first judge is just picked to decide the  
24 issue of coordination. And then if that bench officer decides  
25 that the cases should be coordinated, then maybe it's same bench  
26 officer or different bench officer gets saddled with the chore of  
27 presiding over the coordinated trial. I will allow the  
28 coordination judge to decide -- when that case is to be

1 coordinated, to decide whether those two cases should be  
2 coordinated with this case. It's not going to be this Court's  
3 decision. It will be the coordination judge's decision.

4 And I will state this though: I am not going to rush  
5 this case to trial if I am convinced that the filing of the  
6 separate action and the seeking to coordinate the actions is  
7 proceeding rapidly. I know coordination takes time. But if I  
8 become convinced that someone is dragging their feet just getting  
9 this matter -- a coordination decision made, then I'll just set  
10 this for trial. I assume you can have a trial within 90 days of  
11 me saying we're going to have a trial.

12 MR. JOYCE: Yes, your Honor.

13 THE COURT: Well, so says one side. The other side will  
14 probably disagree. And we don't need to have that argument right  
15 now.

16 But we do need to set another date in which to monitor  
17 the progress of the filing and/or serving and coordination  
18 decision of the other case. So who wants to give me a rosy  
19 scenario now as to when that's going to take place?

20 MR. DUNN: I suggest we come back in 30 days.

21 THE COURT: And what do you think will have taken place  
22 in 30 days?

23 MR. DUNN: In 30 days the County will have filed at least  
24 one separate action.

25 THE COURT: In Los Angeles County?

26 MR. DUNN: That's correct.

27 THE COURT: Anyone want to speak for Kern County?

28 MR. DUNN: We can do them both.

1 THE COURT: That would make sense. I mean, that would be  
2 a symptom of delay if you are only filing in one county, then  
3 just going to wait for someone else to file in Kern County.

4 MR. DUNN: Let me just be heard just ever so briefly on  
5 that. The fact that there's an adjudication action filed in both  
6 counties does not mean that they look identical because you have  
7 different property interests in both counties. You don't have  
8 the same people, not a set of clones in Kern County. So in one  
9 sense it is the same lawsuit, but in another sense it's part of  
10 the overall adjudication that if we're now going to break this  
11 thing up, there's going to have to be a piece broken off that is  
12 somewhat specific to Kern County.

13 But having said all that, when we come back in 30 days  
14 both actions will have been filed.

15 THE COURT: How long before a coordination petition gets  
16 filed?

17 MR. DUNN: I would say that would be filed before the end  
18 of the year, which is about six weeks from now, including  
19 holidays.

20 THE COURT: All right. I'll see everyone back here on  
21 January 14th at 10 o'clock with the expectation that I'll be  
22 briefed as to the status of the coordination petition. I assume  
23 this case will be included in that petition as well as the two  
24 basin-wide adjudication actions.

25 MR. DUNN: These -- all these consolidated cases will be  
26 included in that.

27 THE COURT: And again, it is the Court's intention not to  
28 proceed to trial in this case as long as I am convinced that --



1 that that coordination petition is being pursued actively. If I  
2 become convinced it's being -- it's languishing, then we'll set  
3 this for trial.

4 All right. Water District Number 40 to give notice. See  
5 you back here January 14th, 10 o'clock.

6 MR. DUNN: Thank you, your Honor.

7 MR. JOYCE: Thank you, your Honor.

8 MR. BUNN: Thank you, your Honor.

9 (Proceedings were concluded for the day.)  
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DIAMOND FARMING COMPANY, WILLIAM  
BOLTHOUSE FARMS, INC.,

Plaintiffs,

vs.

CITY OF LANCASTER, ANTELOPE VALLEY  
WATER DISTRICT, PALMDALE WATER  
DISTRICT, PALM RANCH IRRIGATION  
DISTRICT, QUARTZ HILL WATER DISTRICT,  
ROSAMOND COMMUNITY SERVICE DISTRICT,  
MOJAVE PUBLIC UTILITY DISTRICT, LITTLE  
ROCK IRRIGATION DISTRICT, LOS ANGELES  
COUNTY WATERWORKS DISTRICTS, et al.,

Defendants.)

RIC-344436

STATE OF CALIFORNIA)

ss.

COUNTY OF RIVERSIDE)

I, Sharon A. Jones, Certified Shorthand Reporter Number 3022,  
do hereby certify:

That on November 12, 2004, in the State of California, County  
of Riverside, I took in stenotypy a true and complete account of  
the proceedings had in the above-entitled cause, and that the  
foregoing transcript, pages 1 to 34, is a true and accurate  
transcription of my shorthand notes, taken as aforesaid, and is  
the whole thereof.

DATED: Riverside, California, January 13, 2005.

*Sharon A. Jones*

Sharon A. Jones, C. S. R. 3022  
4100 Main Street, Room 110  
Riverside, CA 92501