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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

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

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

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

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053

Assigned to the Honorable Jack Komar

**PUBLIC WATER SUPPLIERS' REPLY
FOR COURT TO SIGN PROPOSED
ORDER RE JURISDICTION OVER
TRANSFEREES**

Hearing:

Date: June 14, 2010

Time: 9:00 a.m.

Dept.: 1

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REPLY

I. INTRODUCTION

Over the course of several years and at a cost of hundreds of thousands of dollars, the Court has obtained jurisdiction over more than 70,000 landowners. In yet another attempt by large agricultural landowner parties to stall the safe yield and overdraft determination, they again claim coordinated proceedings are not a comprehensive adjudication under the McCarran Amendment.

As the Court has already indicated to the Van Dam parties, a mere “objection” is procedurally insufficient to raise a claim of missing parties, and, even if 3 parties were not included in the adjudication proceedings, the coordinated cases are sufficiently comprehensive within the meaning of the McCarran Amendment and under California law. Nonetheless, Public Water Suppliers will continue to serve additional property owners to avoid yet another attempt to delay the safe yield and overdraft determination.

As for both the Willis and Wood Classes, their concerns appear to be a matter of notice to class members. Specifically, their class notices did not include language addressing class members’ obligation to notify their buyers or transferees regarding the litigation. For the Willis Class, additional class notice is anticipated soon after the court approves a class settlement already approved or to be presented for approval by class defendants. The notice of class settlement can include transfer notice obligation language. The same could be true for the Wood Class and, in any event, an additional class notice could be sent to class members, if appropriate.

Under existing law, all class members and landowner parties have a legal duty to notify their property buyers of existing litigation. Moreover, no California groundwater adjudication has required a lis pendens, and no adjudication was required to proceed as an in rem action. The obvious reasons are that the overwhelming cost to record a lis pendens upon tens of thousands of properties, together with the insurmountable delay from having to prepare and record a lis pendens, makes a lis pendens practically impossible.

A few parties continue to confuse jurisdiction over transferees with jurisdiction under the McCarran Amendment. The United States position has been, and continues to be, each and every

1 property owner must be a party even a homeowner receiving water from a public water supplier.
2 The Court has ruled and subsequently indicated the Antelope Valley Groundwater Adjudication is
3 sufficiently comprehensive under federal and state law.

4 Finally, Code of Civil Procedure Section 368.5 unequivocally provides that an action or
5 proceeding does not terminate upon the transfer of a party's interest in the case. Thus, property
6 transfers by parties and class members do not defeat the court's jurisdiction nor render the
7 coordinated proceedings defective under state or federal law.

8 Attached as Exhibit "A" is a revised, proposed order ("Order") that addresses issues raised
9 in the relatively few oppositions. In these coordinated proceedings, the Court is respectfully
10 requested to exercise its discretion and authority to establish a practicable remedy for transferees
11 by ordering parties to provide notice of property transfers.

12
13 **II. THE COORDINATED ADJUDICATION PROCEEDINGS ARE**
14 **SUFFICIENTLY COMPREHENSIVE UNDER THE MCCARRAN**
15 **AMENDMENT**

16 Some parties argue that "indispensable parties" have not been joined and further that the
17 coordinated proceedings are not sufficiently comprehensive. Their arguments reveal a
18 fundamental misunderstanding of the McCarran Amendment. It resolves "a general problem
19 arising out of the limitations that federal sovereign immunity placed on the ability of the States to
20 adjudication water rights." *Arizona v. San Carlos Apache Tribe of Arizona* (1983) 463 U.S. 545,
21 545.

22 The McCarran Amendment waives federal sovereign immunity in cases comprehensively
23 adjudicating water rights to rivers or other sources of water. *Orff v. United States* (9th Cir. 2004)
24 358 F. 3d 1137, 1142. By waiving federal sovereign immunity for comprehensive adjudications,
25 the McCarran Amendment protects the federal government from "piecemeal adjudication" of
26 water rights. As the intent of the McCarran Amendment is to protect the federal government,
27 only the federal government has standing to remove a case to federal court under the McCarran
28 Amendment.

1 The United States has always taken the position that the McCarran Amendment requires
2 jurisdiction over each and every landowner in the basin. When the Van Dam parties or another
3 private landowner party files an “objection” claiming there are parties yet to be served, the United
4 States perfunctorily files a written response repeating its well-known position on the McCarran
5 Amendment: Each and every landowner must be a party with no exception for customers of
6 public water suppliers, small landowners within the public water supplier customer service areas,
7 or any other landowner party who could not afford to install their own groundwater well. But
8 courts consistently reject this impracticable interpretation, and this Court ruled the McCarran
9 Amendment does not require each and every landowner to be a party. *See In re the General*
10 *Adjudication of All Rights to Use Water in the Gila River System and Source* (Ariz. 1993) 175
11 Ariz. 382, 394 (“A properly crafted de minimus exclusion will not cause piecemeal adjudication
12 of water rights or in any other way run afoul of the McCarran Amendment.”)

13 *In re the General Adjudication of All Rights to Use Water in the Gila River System and*
14 *Source*, the Arizona Supreme Court found the McCarran Amendment does not require that each
15 and every claimant be a party. The McCarran Amendment allows a court to exclude well owners
16 pumping minimal amounts of groundwater: “It is sensible to interpret the McCarran Amendment
17 as permitting the trial court to adopt reasonable simplifying assumptions to allow us to finish
18 these proceedings within the lifetime of some of those presently working on the case.” (*Id.* at
19 394.) Thus, even if private parties had standing to object to comprehensiveness, their so-called
20 “objection” still fails as a matter of law

21 Instead of requiring every actual or potential water right claimant to be joined, courts have
22 taken a reasonable and practical approach by examining the overall proceedings to determine a
23 genuine effort to comprehensively adjudicate the parties’ rights or merely a bilateral action by
24 certain claimants against the United States. (*See generally Dugan v. Rank* (1963) 372 U.S. 609;
25 *United States v. District In And For County Of Eagle, Colorado* (1981) 401 U.S. 520.) In these
26 proceedings with more than two thousand parties and more than 70,000 class members
27 encompassing virtually the entire property ownership of a 1,000 square-mile area, there can be
28 no legitimate claim the Antelope Valley Groundwater Adjudication is anything but a

1 comprehensive adjudication of water rights.

2 Over the years, this Court has repeatedly considered and addressed the United States'
3 continuing position regarding the McCarran Amendment. To have the comprehensiveness issue
4 properly come before the Court, at the outset of the United States case participation years ago, the
5 United States filed a motion to dismiss in 2006. In the motion, the United States argued the Court
6 lacked jurisdiction under the McCarran Amendment, due to a lack of comprehensiveness as all
7 potential groundwater claimants were not parties to the coordinated proceedings. (See, United
8 States' Motion for Judgment on the Pleadings an Memorandum in Support, filed on August 18,
9 2006.)

10 After many months of extensive briefing and argument, this Court denied the motion.
11 (See, Order After Hearing, filed on September 22, 2006.) Certain landowner parties, however,
12 continue to raise the issue in attempt to delay the determination of safe yield and overdraft.

13 **III. THE COORDINATED ADJUDICATION PROCEEDINGS ARE**
14 **SUFFICIENTLY COMPREHENSIVE UNDER CALIFORNIA LAW**

15 The Antelope Valley Groundwater Adjudication is consistent with California law
16 governing comprehensive adjudications. Although there is no judicial or administrative
17 framework for comprehensively resolving groundwater claims, California has a statutory scheme
18 for comprehensive river and stream adjudications. (See Water Code § 2500.) Significantly, the
19 statutory scheme provides a *minimus* exclusion of parties using relatively small quantities of
20 water, less than 10 acre feet annually. (Water Code § 2503.) Thus, California's statutory
21 framework for river and stream adjudications contemplates water adjudications without every
22 water potential water-right claimant.

23 Additionally, the California Supreme Court has recognized that not all groundwater users
24 are necessary parties for a comprehensive adjudication. In *City of Pasadena v. City of Alhambra*
25 (1949) 33 Cal.3d 908, the California Supreme Court upheld a stipulated groundwater adjudication
26 judgment although some groundwater users were not parties because the need for a
27 comprehensive adjudication must yield to practical considerations:
28

1 The line must be drawn somewhere in order to bring the proceeding
2 within practical bounds, and it would have been impossible to reach
3 a solution of the problems involved and to render a valid judgment
4 if jurisdiction to make an allocation depended on the joinder of
every person having some actual or potential right to the water in
the basin and its sources of supply. *Id.* at 920.

5 Already, the Public Water Suppliers have personally served thousands of persons, and
6 through the class action mechanism have mailed notices to over 70,000 individuals, all of whom
7 have an obligation to notify their property buyers of the existing litigation.¹

8
9 **IV. CODE OF CIVIL PROCEDURE SECTION 368.5 ALLOWS THE COURT**
10 **TO ACQUIRE JURISDICTION OVER TRANSFEREES.**

11 Section 368.5 provides “[a]n action or proceeding does not abate by the transfer of an
12 interest in the action or proceeding or by any other interest. The action or proceeding may be
13 continued in the name of the original party, or the court may allow the person to whom the
14 transfer is made to be substituted in the action or proceeding.” Stated simply, the argument that
15 party or class members’ property transfers cause the coordinated adjudication proceedings to fail,
16 is wrong as a matter of law.

17
18 **V. THERE IS NO REQUIREMENT FOR A LIS PENDENS IN A**
19 **CALIFORNIA GROUNDWATER ADJUDICATION**

20 No statutory or case law imposes a clearly unreasonable requirement to continuously
21 monitor and track each and every change in property ownership interests throughout the
22 proceedings. In these coordinated proceedings, a lis pendens is impracticable for any of the
23 following reasons:

24 First, a lis pendens could cloud title to practically all real estate holdings in the nearly
25 1,000 square mile Antelope Valley, harm or prevent real property transfers, potentially lower real
26 property values, and obstruct financing for countless real estate transactions. Second, the

27
28 ¹ The Public Water Suppliers have published legal notices of the adjudication proceedings in several newspapers
which, as the Court has commented, provides notice to the general public of the adjudication proceedings

1 requirements for lis pendens preparation, service, recordation, indexing and court for at least
2 80,000 parcels would be impossibly burdensome and time consuming. Third, a lis pendens could
3 create ancillary litigation amongst private landowners attempting to expunge the lis pendens.
4 Finally, nothing prevents a landowner party from recording a lis pendens. Indeed, in the Santa
5 Maria Adjudication many landowner parties voluntarily recorded their own lis pendens upon their
6 respective properties.

7
8 **VI. NOTICE TO CLASS MEMBERS OF THEIR OBLIGATION TO NOTIFY**
9 **THEIR TRANSFEREES**

10 Additional court-approved class member notice can alleviate any legitimate concerns
11 concerning an alleged lack of class notice. As already mentioned herein, the attached Order could
12 be mailed to class members upon court approval of a class settlement. In the Willis Class Action,
13 Public Water Supplier defendants have approved, or about to have their governing boards
14 approve, a class settlement agreement. Once approved by the Court, class members could receive
15 notice of the class settlement agreement with language addressing notice to transferees. In the
16 meantime, the proposed Order could be posted on both class websites, as well as the Court's case
17 website.

18
19 **VII. LANDOWNER PARTIES HAVE FAILED TO PROPERLY RAISE**
20 **CLAIMS OF ALLEGED MISSING NECESSARY PARTIES.**

21 To date, no party has filed a motion to dismiss for a failure to join necessary parties.

22
23 **VIII. THE COURT CAN RETAIN JURISDICTION TO ENFORCE ITS**
24 **JUDGMENT AS TO TRANSFEREES.**

25 The United States asks how can a state court's final judgment binds successors-in-interest.
26 The answer is the judgment itself can be binding upon successors-in-interest while a court retains
27 jurisdiction to enforce its judgment. Through the Court's continuing jurisdiction, a court-
28 appointed water master can enforce the judgment against new groundwater users.

1 In the Chino Basin Adjudication Judgment, the court's full jurisdiction, power and
2 authority are retained and reserved to the Court as to all matters contained in the judgment...
3 Said continuing jurisdiction is provided for the purpose of enabling the Court, upon application of
4 any party, the Watermaster, the Advisory Committee or any Pool Committee, by motion and,
5 upon at least 30 days' notice thereof, and after hearing thereon, to make such further or
6 supplemental orders or directions as may be necessary or appropriate for interpretation,
7 enforcement or carrying out of this Judgment, and to modify, amend or amplify any provisions of
8 this Judgment." (Chino Basin Judgment at IV.)

9 A similar provision here would allow a water master to take actions against any individual
10 that begins to pump groundwater claiming the court judgment is not applicable. A provision of
11 this type exists in almost every California water adjudication allowing the court to manage the
12 basin.


13 IX. CONCLUSION

14 In these coordinated proceedings, the Court can exercise broad powers to manage
15 complex litigation and require notice to transferees. The proposed Order, as revised, will allow
16 the Court to acquire jurisdiction over transferees.

17 Dated: June 7, 2010

BEST BEST & KRIEGER LLP

19
20 By


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PROOF OF SERVICE

I, Stefanie D. Hedlund, 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, 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On June 7, 2010, I served the within document(s):

PUBLIC WATER SUPPLIERS' REPLY FOR COURT TO SIGN PROPOSED ORDER RE JURISDICTION OVER TRANSFEREES

- ☒ 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 June 7, 2010, at Sacramento, California.



Stefanie D. Hedlund