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LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

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

**MUNICIPAL WATER PROVIDERS'
OPPOSITION TO UNITED STATES'
MOTION FOR JUDGMENT ON THE
PLEADINGS AND MEMORANDUM IN
SUPPORT**

Date: September 21, 2006

Time: 10:00 a.m.

Dept: Los Angeles County Superior Court,
Central District, Department 1, Room
534

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

California is virtually unique in the western United States in not giving the State regulatory authority over groundwater resources. Although the State Water Resources Control Board and state courts have concurrent jurisdiction over surface water,¹ the only way comprehensively to adjudicate groundwater rights is in superior court.² Thus, comprehensive groundwater adjudications have routinely occurred in California without the inclusion of surface waters. (See, e.g., *Pasadena v. Alhambra* (1949) 33 Cal.2d 908; *Tehachapi-Cummings County Water District v. Armstrong* (1975) 49 Cal.App.3d 992; *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74; *Chino Basin Municipal Water District v. City of Chino, et al., San Bernardino Superior Court*, Case No. RCV 51010 (formerly No. 164327) (1978).)

Further, the Antelope Valley Groundwater Basin ("Basin") is a distinct and separate hydrologic unit that can and should be adjudicated separately from any surface water sources. There is no question that under California law, and for purposes of the McCarran Amendment, an adjudication of all water rights in the groundwater Basin is a comprehensive adjudication of a distinct water source.

The United States argues that it is necessary to include surface supplies as part of the adjudication because it is possible that parties who have rights to divert surface supplies outside the Basin boundaries may intercept water that would otherwise reach the Basin. However, this concern does not bear on comprehensiveness of the adjudication or on the Court's jurisdiction over the United States pursuant to the McCarran Amendment, but is instead a factual issue that can be addressed in the adjudication.³ As such, it is not a proper basis for a motion for judgment on the pleadings.

Finally, the United States claims that there are no McCarran Amendment cases solely involving groundwater. In addition to the fact that there has long been doubt as to whether

¹ *National Audubon Society v. Superior Court* (1983) 33 Cal. 3d 419, 426

² *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, 86

³ See, e.g., *United States v. Oregon* (9th Cir. 1994) 44 F.3d 758,770; *United States v. Eagle County* (1971) 401 U.S. 520,525-526.

1 federal reserved rights extend to groundwater⁴, it is important to note that the situation here is
2 unique. The Basin is isolated and without surface watercourses running through it. It is also
3 located in California, a state that treats regulation of groundwater resources differently than
4 virtually every other western state. For these reasons, a comprehensive adjudication of the
5 Basin's groundwater resources can occur without adjudicating surface waters outside the Basin.
6 Such an adjudication is needed to determine all water rights claims and to protect the Basin's
7 water resources.

8 In sum, the United States has presented no legitimate authority for its proposition that the
9 McCarran Amendment requires the inclusion of surface supplies in order to achieve a
10 "comprehensive" adjudication of the Basin. To the contrary, the cases cited by the United States
11 are largely inapposite and are distinguishable, both legally and factually. Thus, the Municipal
12 Water Providers⁵ request that the United States' motion for judgment on the pleadings be denied.

13 **II. ARGUMENT**

14 **A. The Antelope Valley Adjudication Is "Comprehensive" For Purposes Of The** 15 **McCarran Amendment**

16 **1. The McCarran Amendment Does Not Require The Inclusion Of All Hydrologically** 17 **Connected Water Systems**

18 The United States argues that it is not properly joined under the McCarran Amendment
19 because this action does not name all surface water users who may divert water that potentially
20 recharges the Basin. The United States has made and lost the same and similar arguments on
21 several other occasions. For example, in *United States v. Oregon* (1994) 44 F.3d 758, the United
22 States contended that because the Klamath Basin adjudication included only the Klamath River
23 and not groundwater that was hydrologically connected to the Klamath River, the adjudication
24 was not "comprehensive" for purposes of the McCarran Amendment. The Ninth Circuit rejected
25 this argument, stating:

26 _____
27 ⁴ *In Re: The General Adjudication Of All Rights To use Water In The Big Horn River System* (1988) 753 P.2d 76,
100.

28 ⁵ The "Municipal Water Providers" are the City of Lancaster, Los Angeles County Waterworks District No. 40,
Palmdale Water District, Quartz Hill Water District and Rosamond Community Services District.

1 For the United States' argument to succeed, we must read "river
2 system" to include not only the water of the river, but
3 hydrologically-related groundwater systems as well.

4 In support of this interpretation, the United States refers to cases
5 stating that the Amendment's waiver is limited to "general" or
6 "comprehensive" adjudications. See, e.g., *United States v. Idaho*,
7 (1988) 113 S. Ct. 1894; *Dugan v. Rank*, (1963) 372 U.S. 609, 618,
8 10 L. Ed. 2d 15, 83 S. Ct. 999. These cases make clear that the
9 adjudication must include the undetermined claims of all parties
10 with an interest in the relevant water source. However, these cases
11 do not address the proper definition of the relevant water source and
12 do not decide if groundwater must be included in an adjudication of
13 a "river system." The United States can point to no other case law,
14 statutory text or legislative history that specifically requires
15 groundwater to be adjudicated as part of the comprehensive
16 adjudication of a "river system." (*United States v. Oregon, supra*,
17 44 F.3d 758, 768-69 [emphasis added].)

18 The court noted that on some level, "all waters are interrelated in one continuous hydrologic
19 cycle." (*Id.* at 769 [citing Robert E. Beck, *Waters and Water Rights* § 6.02 (footnotes omitted).])

20 Ultimately, the court concluded:

21 [C]ontrary to the United States' assertions, the comprehensiveness
22 requirement does not mandate that every hydrologically-related
23 water source be included in the adjudication. While the
24 adjudication must avoid excessively piecemeal litigation of water
25 rights, it need not determine the rights of users of all
26 hydrologically-related water sources. (*Id.*)

27 Similarly, in *United States v. District Court for Eagle County* (1971) 401 U.S. 520, the
28 Supreme Court rejected the United States' argument that because the Eagle River was

hydrologically related to the Colorado River, a comprehensive adjudication under the McCarran Amendment must include an adjudication of the entire Colorado River:

We deem almost frivolous the suggestion that the Eagle and its tributaries are not a “river system” within the meaning of the Act. No suit by any State could possibly encompass all of the water rights in the entire Colorado Rivers which runs through or touches many States. (*Id.* at 523.)

Thus, courts have unilaterally and unequivocally held that a comprehensive adjudication under the McCarran Amendment need not include all hydrologically connected sources.

Moreover, the United States’ attempts to distinguish *United States v. Oregon* are without merit. The United States broadly asserts that in California, unlike Oregon, groundwater and surface water rights are administered under the same “legal regime.” (Motion at 7.) As detailed below, this is, unfortunately, misunderstanding of California water law. Likewise, there is no legal basis for the United States’ unfounded assertion that groundwater is not a separate water source but is simply part of a “larger river system hydrology.” (*Id.*) Notably, the United States cites no authority for this proposition, and the Municipal Water Providers are unaware of any authority that would support this contention. In California, surface supplies and groundwater supplies are treated as separate water sources and are subject to entirely different legal regimes.

2. California Water Law Treats Surface Water And Groundwater Separately

California has a “dual system” of water rights in that surface water rights and groundwater rights are subject to separate legal regimes. In 1914, the California Legislature adopted the Water Commission Act, which provides a statutory procedure and permit system for the allocation of rights to unappropriated surface waters but specifically excludes percolating groundwater from its provisions. (*See* Water Code §§ 1200, *et seq.*) The Act’s procedures, which require filing an application with the State Water Resources Control Board (“State Board”), constitute the exclusive means of obtaining a post-1914 appropriative right to surface water. (*People v. Shirokow* (1980) 26 Cal. 3d 301, 309.) Holders of pre-1914 surface water rights and riparian rights holders are not required to obtain permits from the State Board, but the Water Code

1 requires that these surface rights holders file statements of diversion with the State Board. (Water
2 Code §§ 5100, *et seq.*) The State Board has no jurisdiction over groundwater; as a consequence,
3 groundwater rights are largely determined by courts using common law principles. (See *North*
4 *Gualala Water Company v. State Water Resources Board* (2006) 139 Cal.App.4th 1577,
5 1591[citing *People v. Shirokow, supra*, 26 Cal.3d 301, 304 n. 2].)

6 In addition, the Water Code provides for a statutory adjudication of surface water.⁶
7 Because the State Board's jurisdiction over water rights is limited to surface supplies, the Water
8 Code specifically limits these adjudications to "stream systems," which are defined as "stream,
9 lake or other body of water, and tributaries and contributory sources, but does not include an
10 underground water supply other than a subterranean stream flowing through known and definite
11 channels." (Cal. Wat. Code § 2500.) There are no such statutory adjudications to determine
12 groundwater rights.⁷ Thus, the sole method comprehensively to determine groundwater rights to
13 a basin is through a court action such as this. (*Wright v. Goleta Water District, supra*, 174
14 Cal.App.3d 74, 86.)

15 Thus, in California, surface water and groundwater are treated as both physically and
16 legally separate sources of supplies, so much so that the legislature granted the State Board
17 jurisdiction over one but not the other. In light of this legal and physical distinction, there is no
18 support for the United States' argument that groundwater is not a distinct source of water but is
19 instead part of "the larger river system hydrology." Indeed, this argument is fundamentally
20 inconsistent with California water law.

21 3. The McCarran Amendment Applies To Groundwater

22 The plain language of the McCarran Amendment indicates that it is not limited to surface
23 supplies:

24 Consent is hereby given to join the United States as a defendant in
25 any suit (1) for the adjudication of rights to the use of water of a
26 river system or other source... (43 U.S.C. § 666 [emphasis added].)

27 ⁶ This process is codified in Cal. Water Code §§ 2500 *et seq.*

28 ⁷ The State Board may file an action in superior court to restrict pumping or impose a physical solution to protect the
quality of groundwater. (Cal. Wat. Code § 2100.)

1 In holding that a comprehensive adjudication of surface supplies need not include hydrologically
2 related groundwater supplies, the court in *Oregon* specifically recognized that groundwater was
3 included as an “other source” for purposes of the McCarran Amendment:

4 On its face, the statute applies to the “water of a river system or
5 other source.” Groundwater may be included as an “other source,”
6 but the use of “or” strongly suggests that the adjudication may be
7 limited to *either* a river system *or* some other source of water, like
8 groundwater, but need not cover both. (*Oregon, supra*, 44 F.3d
9 758, 768.)

10 The United States argues that because no case involving solely groundwater rights has
11 involved the use of the McCarran Amendment, groundwater cannot be an “other source” for
12 purposes of the McCarran Amendment. Indeed, according to the United States, *only* a river
13 system can qualify as a McCarran Amendment adjudication. (Motion at 3-4.) This argument
14 ignores both the plain language of the McCarran Amendment and the language cited above from
15 *Oregon*. Moreover, the United States’ argument lacks practical application in a state such as
16 California, which treats surface water and groundwater separately. (See *supra* Section II.A.2.)

17 In addition, there has long been doubt as to whether federal reserved rights extend to
18 groundwater. (*In Re: The General Adjudication Of All Rights To Use Water In The Big Horn*
19 *River System, supra*, 753 P.3d 76,100.) Indeed, the Municipal Water Providers are aware of only
20 four reported cases involving federal reserve rights to groundwater. (See *U.S. v. Cappaert* (9th
21 Cir. 1974) 508 F.2d 313; *In Re: The General Adjudication Of All Rights To Use Water In The*
22 *Big Horn River System, supra*, 753 P.3d 76,100; *In re the General Adjudication of All Rights to*
23 *Use Water in the Gila River System and Source* (1999) 195 Ariz. 411.) It was not until 2005 that
24 the question of whether federal reserve rights apply to groundwater was answered definitively in
25 *United States v. Washington* (W.D. Wash. 2005) 375 F. Supp.2d 1050. Thus, it is not surprising
26 that the reported McCarran Amendment cases involve surface supplies. The United States has
27 cited no authority, and the Municipal Water Providers are not aware of any, that specifically
28 excludes groundwater adjudications from the purview of the McCarran Amendment.

1 4. The Antelope Valley Adjudication Will Comprehensively Adjudicate All Water
2 Rights In The Basin And Will Not Result In Piecemeal Litigation

3 This adjudication seeks a comprehensive, *inter se* determination of all water rights in the
4 Basin.⁸ This adjudication could involve thousands of parties and could potentially be the largest
5 groundwater adjudication ever conducted in the state of California. Unlike the cases relied upon
6 by the United States, such as *Dugan et al v. Rank, supra*, 372 U.S. 609, 618, *People of the State*
7 *of California v. United States of America* (9th Cir. 1956) 235 F.2d 647, 663, *Metropolitan Water*
8 *District of Southern California v. The United States of America* (9th Cir. 1987) 830 F.2d 139 and
9 *Turner v. Kings River Conservation Dist.* (9th Cir. 1966) 360 F.2d 184, 197, this case does not
10 involve only a few known claimants seeking to establish water rights as against the United States.
11 This case bears no resemblance to the “piecemeal, private water rights litigation” that is beyond
12 the scope of the McCarran Amendment. (Motion at 8.)

13 The United States argues that because it owns other land outside the Basin but within the
14 “watershed,” it will be subject to piecemeal litigation if the other water rights within the
15 watershed (but outside the Basin) are not included in the adjudication. (Motion at 8-9.) This
16 argument is directly contrary to the Court’s holdings in *Eagle County* and *Oregon*, as detailed
17 above. There, as here, the United States argued that failure to include all potentially related water
18 sources would result in “piecemeal” litigation. That argument was rejected in both *Eagle County*
19 and *Oregon* and should be rejected here, as well. The purpose of the McCarran Amendment is to
20 avoid subjecting the United States to piecemeal litigation regarding rights to a particular source of
21 water; it was not designed to protect the United States against all lawsuits involving other sources
22 of water within a State.

23
24
25 ⁸ In the context of a statutory stream adjudication, the Water Code permits the exclusion of *de minimus* producers
26 who pump less than 10 acre-feet annually. (Cal Wat. Code § 2503; § 2102.) Further, Courts have held that *de*
27 *minimus* users need not be named, and that their absence does not render the adjudication incomprehensive. (*In re*
28 *the General Adjudication of All Rights to Use Water in the Gila River System and Source* (Ariz. 1993) 175 Ariz. 382,
394 [“A properly crafted *de minimus* exclusion will not cause piecemeal adjudication of water rights or in any other
way run afoul of the McCarran Amendment.”]) Thus, to the extent *de minimus* producers are excluded from this
adjudication, their exclusion does not affect the comprehensiveness of the adjudication for purposes of the McCarran
Amendment.

B. Concerns Over Surface Supplies Impacting The Basin Can Be Addressed In The Merits Of The Adjudication And Are Not Relevant To The Court's Jurisdiction Over The United States

In *United States v. District Court for Eagle County*, the Supreme Court rejected an argument by the United States that the adjudication was not comprehensive because it was a "supplemental water adjudication" to determine the rights of those claiming to have acquired water rights since the last adjudication of the river system, and water rights determined in previous adjudications were not subject to re-determination. (*Eagle County, supra*, 401 U.S. at 525, 527, 529.) The Court noted that the exclusion of these parties related not to the "comprehensiveness standard" of the McCarran Amendment but was instead an issue that went to the merits of the adjudication:

The absence of owners of previously decreed rights may present problems going to the merits, in case there develops a collision between them and any reserved rights of the United States. All such questions, including the volume and scope of particular reserved rights, are federal questions which, if preserved, can be reviewed here after final judgment by the [state] court. (*Id.* at 527.)

Similarly, in *United States v. Oregon*, the United States argued that the Klamath adjudication was not "comprehensive" for purposes of the McCarran Amendment because certain parties, such as those with water rights determined through a separate permit process, were not before the court as part of the adjudication. (*United States v. Oregon, supra*, 44 F.3d 758, 767-68.) Citing *Eagle County*, the court rejected the United States' argument. (*Id.* at 768.) The court likewise rejected the United States' argument that the adjudication was not "comprehensive" because the rights of claimants to groundwater were excluded. (*Id.*) Specifically, the United States argued that the use of groundwater in the Klamath Basin could have an impact on the availability of water to fulfill the United States' federal reserve water rights. (*Id.* at 770.) While the court acknowledged that there were "legitimate concerns about the relationship between federal reserve water rights in a river and the distribution of water rights in hydrologically related

1 groundwater,” the court found that “these concerns go to the merits of the adjudications.” (*Id.*)

2 The court ultimately concluded:

3 [T]he Klamath Basin adjudication is in fact the sort of adjudication
4 Congress meant to require the United State to participate in when it
5 passed the McCarran Amendment. Accordingly, federal sovereign
6 immunity imposes no bar to the United States’ participation in that
7 process. (*Id.*)

8 In this case, as in *Oregon* and *Eagle County*, all existing water rights claims in the water
9 source – here the Basin – will be determined in the adjudication. Thus, concerns over surface
10 water entering the Basin can best be addressed in the merits of the adjudication and do not raise a
11 threshold jurisdictional issue.

12 **III. CONCLUSION**

13 For the foregoing reasons, the United States’ motion should be denied.

14 Dated: September 1, 2006

BEST BEST & KRIEGER LLP

16 By: 

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18 Attorneys for Los Angeles County
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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 1, 2006, I served the within document(s):

MUNICIPAL WATER PROVIDERS' OPPOSITION TO UNITED STATES' MOTION FOR JUDGMENT ON THE PLEADINGS AND MEMORANDUM IN SUPPORT

- ☒ 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 September 1, 2006, at Irvine, California.


Kerry V. Keefe

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