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7 WATERWORKS DISTRICT NO. 40, ANTELOPE

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8 (See Next Page For Additional Counsel]

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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

13 **ANTELOPE VALLEY
GROUNDWATER CASES**

14 Included Actions:

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

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

20 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
21 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
22 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

[Code Civ. Proc., § 382; Cal. Rules 3.764 and
3.765]

**PUBLIC WATER SUPPLIERS' NOTICE
OF MOTION AND MOTION TO AMEND
OR MODIFY SEPTEMBER 11, 2007
ORDER CERTIFYING PLAINTIFF CLASS**

Hearing:

Date: March 3, 2008

Time: 10:00 a.m.

Dept.: 1

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NOTICE OF MOTION

TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rules 3.764 and 3.765 of the California Rules of Court, on March 3, 2008, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 1, Room 534 of the above titled court, located at 110 North Hill Street, Los Angeles, California 90012, defendants California Water Service Company; City of Lancaster; City of Palmdale; Littlerock Creek Irrigation District; Los Angeles County Water Works District No. 40, Antelope Valley; Palmdale Water District; Rosamond Community Services District; Palm Ranch Irrigation District; and Quartz Hill Water District (collectively, "Public Water Suppliers") will, and hereby do, move for an order to amend or modify the court's Order Certifying Plaintiff Class ("Order") dated September 11, 2007 as follows:

1. The class definition in Paragraph 1 of the Order is amended or modified to delete the phrase "that are not presently pumping water on their property and did not do so at any time during the five years preceding January 18, 2006".

2. The following paragraph is added after the last sentence in Paragraph 1 of the Order: "The Court certifies the Class for the (1) determination of the Basin's characteristics including yield; (2) adjudication of the Public Water Suppliers' groundwater rights including prescriptive rights; (3) adjudication of the United States' groundwater rights including federal reserved rights; (4) determine a physical solution to water shortage conditions including all parties' rights to store and recover non-native water in the Basin; and (5) for all other purposes until such time the Court deems necessary to redefine the Class."

The Motion will be made on the grounds that members of the amended and modified class are numerous and it is impracticable to bring them all before the Court; they are an ascertainable class, with a common, similar and unique question of law or fact; the amended and modified class is superior to other available methods for the fair and efficient adjudication of the controversy; and the class representative is able to fairly and adequately protect the interests of the amended or modified class as certified for any or all of the purposes described above and until such time as the Court may deem necessary to further amend or modify the Class.

1 The Motion is based upon the attached Memorandum of Points and Authorities, and any
2 other oral and documentary evidence properly before the Court.

3
4 Dated: January 30, 2008

BEST BEST & KRIEGER LLP

5
6 By 

7 ERIC L. GARNER
8 JEFFREY V. DUNN
9 STEFANIE D. HEDLUND
10 Attorneys for Defendants
11 ROSAMOND COMMUNITY SERVICES
12 DISTRICT and LOS ANGELES COUNTY
13 WATERWORKS DISTRICT NO. 40,
14 ANTELOPE VALLEY
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LAW OFFICES OF
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1 I. INTRODUCTION

2 On September 11, 2007, the Court issued its Order Certifying Plaintiff Class ("Order") for
3 a plaintiffs' class action with Rebecca Lee Willis as the representative of the Class and the law
4 firm of Krause, Kalfayan, Benink & Slavens LLP as counsel for the Class. As presently certified,
5 the Class generally includes all persons and entities that own real property in the Court's
6 previously-determined Adjudication Area ("Basin") that do not pump groundwater and have not
7 pumped groundwater within the five years preceding January 18, 2006, and excludes municipal
8 water customers.

9 For more than a year, the Court and parties have discussed the potential use of the class
10 action mechanism for remaining landowners who have not yet appeared in these coordinated
11 proceedings. Although there was an indication that another plaintiff class might be created to
12 represent remaining landowners, no additional plaintiff class representative has yet appeared and
13 requested additional class certification. In the meantime, the Court has had extensive discussions
14 with the parties concerning the need to obtain jurisdiction over remaining landowner parties.
15 Accordingly, the Court ordered that any party may file a motion on or before January 30, 2008, to
16 amend or modify the Class to include remaining property owners.

17 As shown in the previous filings leading to the Court's Order, the Basin encompasses
18 approximately 1,000 square miles, and there are thousands of landowners who have groundwater
19 wells on relatively small-sized properties. They are far too numerous to individually serve within
20 a reasonable time period, and they share common issues of fact and law with existing Class
21 members. For these reasons, the Public Water Suppliers¹ respectfully request that the Court
22 amend or modify its Order to include all remaining property owners, and to certify the Class to
23 determine their predominate common issues of fact and law.

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27 ¹ The Public Water Suppliers include California Water Service Company, City of Lancaster, City of Palmdale,
28 County of Los Angeles Waterworks District No. 40, Antelope Valley, Palmdale Water District, Rosamond
Community Services District and Quartz Hill Water District.

II. THE MODIFIED CLASS MEETS CALIFORNIA'S CLASS CERTIFICATION REQUIREMENTS

In *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, the California Supreme Court articulated California's class certification requirements: (1) an ascertainable class; and (2) a well-defined community of interest among class members. (*Sav-On, supra*, 34 Cal.4th at p. 326, citing *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104.) As shown below, the modified Class meets the requirements because class members: (1) are all located within the Basin; (2) allege the same correlative, overlying right for reasonable and beneficial use of a common groundwater supply; (3) have a predominate common interest in identifying the Basin's characteristics including yield; (4) have a predominate common interest in defining or limiting Public Water Suppliers' groundwater rights; and (5) have a predominate common interest in achieving a physical solution to the Basin's water shortage conditions. Thus, the amended or modified class certification is both necessary and proper.

A. The Amended and Modified Class is Ascertainable

In determining whether the proposed class is ascertainable, courts examine the proposed class definition, size of the class, and the means for identifying class members. (*Sav-On, supra*, 34 Cal.4th at p. 327, citing *Lockheed, supra*, 29 Cal.4th at pp. 1104-1107.) The modified Class would consist of all private landowners subject to the Order's existing class member exclusions.

In *Richmond v. Dart Industries, Inc.* (1987) 29 Cal.3d 462, 478, the California Supreme Court found an ascertainable property owner class because public records indicated land ownership. Additionally, the California Supreme Court found class members' individual service or joinder to be impracticable because there were over 2,600 property lots.

As in *Richmond*, the modified Class is ascertainable because class members' land ownership can be identified in public records. Moreover, the Basin has an estimated 65,000 parcels, more than 25 times the number that the *Richmond* court found impracticable to join.

Thus, there is no reasonable dispute that the class is ascertainable or that individual class member joinder is impracticable.

B. The Amended and Modified Class Has A Well-Defined Community of Interests

In *Sav-On*, the California Supreme Court explained that "the community of interest" requirement includes (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p. 326, citing *Lockheed, supra*, 29 Cal.4th at p. 1104.) As shown below, the modified Class satisfies each requirement.

1. The Class Has Predominant Questions of Law and Fact

A well defined community of interests exists if there is a predominant question of law or fact. (*Linder v. Thrifty* (2000) 23 Cal.4th 429, 435.) The modified Class has predominant questions of law and fact.

First, each class member owns land within the Basin. Thus, its characteristics including safe yield, are important common issues for each class member. Moreover, Basin yield is the predominate issue for all parties because the yield determination will decide how much water can be safely withdrawn from the Basin. With a safe yield determination, the Court can protect all parties from the existing "free for all" groundwater pumping which creates overdraft conditions and threatens all parties' ability to rely upon the Basin for a safe and reliable groundwater supply.

Second, modified Class members allege a predominate common correlative and overlying right to the Basin's native groundwater for class members' reasonable and beneficial use on their land. (*Katz v. Walkinshaw* (1903) 141 Cal. 116, 134-136.)

Third, the modified Class members have predominate common claims and defenses against other water rights claims, specifically the federal reserved right claim by the United States and the water rights claims by the Public Water Suppliers.

1 Finally, the modified Class members have a predominate common interest in a physical
2 solution to the Basin's water shortage conditions. The physical solution should include a Court
3 determination of all parties' rights to store and recover non-native water in the Basin.

4 5 2. Class Members' Individual Claims Do Not Prevent Class Certification

6
7 The possibility that class members have different pumping histories is not a reason to
8 deny class certification: "In any event, 'a class action is not inappropriate simply because each
9 member of the class may at some point be required to make an individual showing as to his or her
10 eligibility for recovery or as to the amount of damages.'" (*Sav-On, supra*, 34 Cal.4th at p. 332
11 quoting *Employment Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266.) "We long
12 ago recognized 'that each class member might be required ultimately to justify an individual claim
13 does not necessarily preclude maintenance of a class action.'" (*Sav-On, supra*, 34 Cal.4th at p.
14 332-333 quoting *Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

15 "If the factual underlying class members' claims differ, or if class members disagree as to
16 the proper theory of liability, the trial judge, through use of techniques like sub-classing, or [other
17 judicial] intervention, may incorporate the class differences into the litigative process, and give all
18 class members their due in deciding what is the proper outcome of the litigation." (*Richmond,*
19 *supra*, 29 Cal.3d at p. 473.) Moreover, each class member has the right to "opt out" if the class
20 member does not want the class representative to represent its interests. (*Sav-On, supra*, 34
21 Cal.4th at p. 335.)

22 "Because trial courts are ideally situated to evaluate the efficiencies and practicalities of
23 permitting group action, they are afforded great discretion in granting or denying certification. . .
24 ." (*Sav-On, supra*, 34 Cal.4th at p.326, citing *Linder, supra*, 23 Cal.4th at pp. 435-436.) Whether
25 there are predominant questions of law and fact is a "comparative concept," and the need for class
26 members to later establish individual eligibility and damages does not mean that predominant
27 questions of law and fact do not exist. (*Reyes v. Board of Supervisors* (1987) 196 CalApp.3d
28 1263, 1278.) Class members have predominate common questions of law and fact and the

1 modified Class should be certified.

2
3 3. The Class Representative Has Claims and Defenses
4 Common to the Class.
5

6 A class only needs one class representative with some claims and defenses that are typical
7 of the class. (*Richmond, supra*, 29 Cal.3d at p. 470.) If the representative's claims and defenses
8 are typical of the class, the class representative will adequately represent the class. (*Linder,*
9 *supra*, 23 Cal. 4th at p. 435.)

10 As explained herein, the modified Class has predominate common claims and defenses.
11 They are the same as those held by the Class representative, Ms. Rebecca Lee Willis. Like Ms.
12 Willis, each class member is a landowner within the Basin. They each have the right to allege a
13 correlative overlying right to pump groundwater for reasonable and beneficial use on their
14 property. (See *Katz, supra*, 141 Cal. at pp. 134-136; Cal. Const. art X, sec. 2.) Ms. Willis has the
15 same interest in determining the Basin's safe yield and other Basin characteristics as the Class
16 members. She also has their same interest in limiting Public Water Supplier groundwater rights
17 because all private landowners gain by limiting or reducing the Public Water Suppliers' rights to
18 groundwater. Ms. Willis and class members have similar, if not identical, defenses to various
19 water rights claimed by the United States. (See *Wershba v. Apple Computers, Inc.* (2001) 91
20 Cal.App.4th 224, 236 [court found that class was appropriate where claims were not identical but
21 each class member was subject to the identical conduct of Apple Computers].) Stated simply, the
22 less water used by the United States and Public Water Suppliers, the more water will be available
23 for all private landowners.
24

25 4. Class Counsel Has Extensive Class Action Experience
26

27 The Court has already found that existing Class Counsel has sufficient experience
28 litigating complex class actions. The Class attorney, Mr. Zlotnick, has already played an active

1 role in the adjudication and has shown that he will vigorously prosecute this action.

2
3 IV. NO IRRECONCILABLE CONFLICT PREVENTS CERTIFYING THE MODIFIED
4 CLASS

5
6 The existing Class alleges a correlative overlying right on behalf of all Class members.
7 As explained herein, the California Supreme Court has long recognized that each class member's
8 different claim does not prevent class certification nor create a conflict within the class that would
9 prevent class certification for limited purposes.

10 In *Wershba, supra*, the Court of Appeal upheld the trial court class certification by
11 recognizing "the fact that the class representatives had not personally incurred all of the damages
12 suffered by each different class member does not necessarily preclude their providing adequate
13 representation to the class." The *Wershba* Court found that class representatives were "exposed
14 to identical conduct by Apple as all other class members " and held that "only a conflict that goes
15 to the very subject matter of the litigation will defeat a party's claim of representation. (*Id.*, at pp.
16 236 -238.) Similarly, in *In re Cipro Cases I & II* (2004)121 Cal.App.4th 402, the Court of
17 Appeal relied upon several cases for its holding that differences in individual class members'
18 proof of damages is not fatal to class certification. (121 Cal.App.4th at pp. 413-414 citing *Lazar*
19 *v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 140; *Clothesrigger, Inc. v. GTE Co.* (1987) 191
20 Cal.App.3d 605, 617; *Wershba, supra*, 91 Cal.App.4th at p. 238].)

21 Some counsel incorrectly contend that a conflict will exist between class members who
22 pump and those who do not pump groundwater. It is well-settled law, however, that courts look
23 to the allegations in the pleadings to determine if a matter is amenable to class action. (*Sav-On,*
24 *supra*, 34 Cal.4th at 327 citing *Richmond, supra*, 29 Cal.3d at p. 478.) The Class does not allege
25 any claims against other private landowner party, and no private landowner has filed a pleading
26 against the Class. Thus, there is no class conflict between class members who pump and those
27 who do not pump groundwater.

28 If such an allegation arises, the Court has the discretion to create subclasses or implement

1 other case management techniques. (*Richmond, supra*, 29 Cal.3d at pp. 470-471.) Thus, any
2 claim of conflict within the Class between those who pump and those who do not, fails to prevent
3 certification of the modified Class.

4 Finally, the Court will ultimately review any class settlement to protect the Class
5 members. (Cal. Rules of Ct., Rule 3.769; *Marcarelli v. Cabell* (1976) 58 Cal.App.3d 51, 53.) A
6 possibility of unfair treatment of class members is "held in check by the requirement that the
7 judge determine the fairness of the settlement before he can approve it." (*Wershba, supra*, 91
8 Cal.App.4th at p. 240 citing *Mars Steel v. Continental Ill. Nat. Bank & Trust* (7th Cir. 1987) F. 2d
9 677, 681.) Thus, the Court can protect the modified Class members from any unfair settlement,
10 and the Court can ensure all Class members' interests are represented throughout the proceedings.

11
12 V. CONCLUSION

13 For the all reasons above, the Public Water Suppliers respectfully request that the Court
14 grant their motion to amend and modify the Order as requested herein.

15 Dated: January 30, 2008

BEST BEST & KRIEGER LLP

16
17
18 By 

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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 January 30, 2008, I served the within document(s):

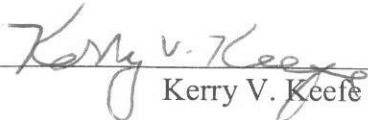
PUBLIC WATER SUPPLIERS' NOTICE OF MOTION AND MOTION TO AMEND OR MODIFY SEPTEMBER 11, 2007 ORDER CERTIFYING PLAINTIFF CLASS

- ☒ 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 January 30, 2008, at Irvine, California.


Kerry V. Keefe