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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
17

18 **ANTELOPE VALLEY**
19 **GROUNDWATER CASES**

20 Included Actions:

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

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

25 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
27 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
28

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**PUBLIC WATER SUPPLIERS' REPLY IN
SUPPORT OF MOTION TO AMEND OR
MODIFY SEPTEMBER 11, 2007 ORDER
CERTIFYING CLASS CERTIFICATION**

Hearing:

Date: March 3, 2008
Time: 10:00 a.m.
Dept.: 1

1 White Fence Farms Mutual Water Co.,
2 Inc., El Dorado Mutual Water Co., West
3 Side park Mutual Water Co., Shadow
4 Acres Mutual Water Co., Antelope Park
5 Mutual Water Co., Averydale Mutual
6 Water Co., Sundale Mutual Water Co.,
7 Evergreen Mutual Water Co., Aqua J
8 Mutual Water Co., Bleigh Flat Mutual
9 Water Co., Colorado Mutual Water Co.,
10 Sunnyside Farms Mutual Water Co., Land
11 Projects Mutual Water Co., and Tierra
12 Bonita Mutual Water Co.; collectively
13 known as A.V. United Mutual Group,

14 Cross-Complainants,

15 v.

16 California Water Service Company; City of
17 Lancaster; City of Palmdale; Littlerock
18 Creek Irrigation District; Los Angeles
19 County Water Works District No. 40;
20 Palmdale Water District; Rosamond
21 Community Services District; Palm Ranch
22 Irrigation District; and Quartz Hill Water
23 District; and ZOES 1-200, inclusive,

24 Cross-Defendants.
25
26
27
28

1
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1 REPLY

2 From the many parties in this case, the Public Water Suppliers' Motion to Amend or
3 Modify the Court's September 11, 2007 Order received a "Response" by two parties, an
4 "Objection" by one party; a "Partial Objection" by one party; and only one "Opposition." No
5 party submitted any evidence in opposition to the motion.
6

7 A. REPLY TO UNITED STATES' RESPONSE

- 8 1. The Court Has Already Ruled On The "Comprehensiveness" Issue
9 And No Party Has Filed A Motion To Amend The Existing Class
10 To Include Parties As Again Requested By The United States
11

12 The United States did not file an opposition but a "Response" with two parts. The first
13 and shorter part is another attempt to argue an issue that was already extensively briefed, argued,
14 and decided by the Court. (Request for Judicial Notice, Court Certification Order dated
15 September 11, 2007, Exhibit "1.") The Court issued its Certification Order and no party has filed
16 a motion to amend the Order to include the parties requested by the United States.
17

- 18 2. The United States Recognizes The Proposed Modified Class Shares
19 Common Issues of Law And Fact.

20 The United States recognizes that the proposed modified class shares common issues of
21 law and fact concerning the determination of whether the Public Water Suppliers have
22 prescriptive rights:

23 "There is a question in common to the members of the modified class (and
24 all other parties), but it is not the determination of *what* prescriptive rights to
25 groundwater the public water suppliers may possess. Rather, it is *whether* they
26 have a prescriptive right at all. An early determination of the existence of
27 prescriptive rights, unlike a determination of specific rights of the public water
28 suppliers, does involve questions common to the class, *e.g.*, adequacy of notice,

1 the period of prescription, etc. Therefore, the class should be certified for a
2 determination of whether prescription exists, not for the adjudication of the public
3 water suppliers' express groundwater rights." (United States Response, p. 5:11-
4 19 [emphasis in original].)

5 The Public Water Suppliers agree with the United States that the proposed modified class
6 shares common issues of law and fact as to "whether [Public Water Suppliers] have a prescriptive
7 right at all." The United States, however, appears to misunderstand that prescriptive rights could
8 and should be determined before a determination of whether any landowner pumped groundwater
9 during the prescriptive period.

10 As proposed the modified class would be certified for a determination of the public water
11 suppliers' prescriptive rights but not necessarily for a determination of a landowner's "self-help"
12 during the prescriptive period. There is no need for a potentially lengthy judicial proceeding on
13 any landowner's self-help unless and until public water suppliers establish prescriptive rights. If
14 prescriptive rights are established, the Court would later determine whether a landowner has or
15 has not pumped groundwater during the prescriptive period.

16 After the determination of prescriptive rights, the Court could subdivide the class, if
17 necessary, into two sub-classes: pumpers and non-pumpers. In the meantime, the Court could
18 approve both class notice and discovery requiring class members to identify themselves as a
19 pumper or non-pumping class member. With this class member information, the Court can later
20 subdivide the class, if necessary, for a determination of class members' "self help" groundwater
21 production. (See Request for Judicial Notice, Court Hearing Transcript dated January 14, 2008,
22 p. 12:15-p. 15:4, Ex. 3.)

23
24 3. The United States Has Apparently Overlooked The Public Water Suppliers'
25 Groundwater Rights In Addition To Their Prescriptive Rights
26

27 Another apparent misunderstanding is that the United States' appears to have overlooked
28 the Public Water Suppliers' other groundwater rights in addition to their prescriptive rights. For

1 example, the Public Water Suppliers assert groundwater rights to pump “return flows” attributed
2 to their purchased imported water from the State Water Project. Additionally, the Public Water
3 Suppliers’ assert groundwater rights to pump water that is stored or “banked” in the Basin for
4 later use during water shortage conditions. Stated simply, the Public Water Suppliers claim
5 groundwater rights besides prescriptive rights, and they raise common issues of law and fact for
6 the proposed modified class members. For these reasons, the proposed modified class can be
7 properly certified to include an “adjudication of the Public Water Supplier’s groundwater rights
8 including prescriptive rights.”

9
10 4. Landowners Share Common Issues Of Law And Fact As To The Nature And
11 Extent Of The United States’ Federal Reserved Right

12
13 The United States seems to suggest that only landowners who exercised their “self-help”
14 pumping during the prescriptive period, are affected by the United States’ federal reserved water
15 right. This argument is not supported by any legal authority and is not correct.

16 The United States describes its federal reserved right as “an amount necessary to meet
17 federal purposes on federal enclaves. Reserved water is not available for appropriation or other
18 means of disposal under state laws including correlative or pro rata distribution.” (United States
19 Response, p. 5:24-26 [citations omitted].) The United States further claims its federal reserved
20 right acts as a “super priority” right over any other right asserted by any landowner or
21 appropriator. According to the United States, its federal reserved right would have to be
22 recognized before there could be a determination of the amount of remaining groundwater
23 available for use by any landowner or public agency appropriator.

24 The United States does not discuss the right of all landowners to pump groundwater
25 during surplus conditions. Any landowner who fails to establish its self-help pumping during the
26 prescriptive period may be able to pump groundwater during surplus conditions.

27 Because the United States claims its federal reserved right must be recognized before any
28 other right in the Basin, no landowner or appropriator party would know whether there is surplus

1 water available until the federal reserved right is quantified by the Court. Thus, the United
2 States' federal reserved right claim creates common issues of law and fact for all other parties
3 including all members of the proposed modified class.
4

5 5. All Parties Share Common Issues of Law And Fact Concerning A Physical
6 Solution To The Basin's Water Shortage Conditions.
7

8 Without citation to any legal authority or evidence, the United States briefly argues that
9 not all members of the proposed class would benefit from a physical solution to the Basin's water
10 shortage condition. It is difficult to imagine why all parties do not share a common interest in a
11 physical solution to the shortage conditions. For example, a Court-approved groundwater storage
12 and recovery program could benefit all groundwater users. A physical solution that reduces the
13 risk of additional land subsidence also benefits landowners. Accordingly, the Public Water
14 Suppliers' proposed the modified class so that all of the proposed class members participate in the
15 determination of a physical solution.
16

17 6. The United States Recognizes The Proposed Modified Class Shares Common
18 Issues Of Law And Fact
19

20 As explained above, the proposed modified class members share predominant common
21 issues of law and fact concerning the Public Water Suppliers' groundwater claims including
22 prescriptive rights, return flows and stored water; all parties are directly and similarly impacted
23 by the United States' federal reserved right claims; and all parties share a common beneficial
24 interest in achieving a physical solution to the Basin's water shortage conditions. As explained
25 before to the Court, the Public Water Suppliers recognize there may be a future need to subdivide
26 the modified class after the Court's determination of the prescriptive rights claims, but the Court
27 has the authority to certify the modified class for the proposed limited issues. (Request for
28 Judicial Notice, p. 12:15-p. 15:4, Exhibit 3.)

1 B. EXISTING CLASS REPRESENTATIVE AND CLASS COUNSEL HAVE NO
2 IRRECONCILABLE CONFLICT ARISING OUT OF THE LIMITED
3 CLASS CERTIFICATION ISSUES

4 1. California Law Encourages Use Of The Class Mechanism For Limited
5 Issues To Avoid Conflicts

6 As established by substantial evidence before the Court at the hearing on the Adjudication
7 Boundaries and as shown by the parties' pleadings, there are certain predominate common issues
8 of law and fact in the Public Water Suppliers' Motion to Amend or Modify the September 11,
9 2007 Certification Order. The few remaining objections, response and opposition fail to
10 acknowledge that the Motion seeks class certification for limited issues which do not create
11 conflicts between class members.

12 "Trial courts have wide discretion with regard to class certification." (*Capital People*
13 *First v. State Department of Developmental Services* (2007) 155 Cal.App.4th 676, 689.) Rule
14 3.765, subdivision (b), allows the Court to certify a class for certain limited issues: "When
15 appropriate, an action may be maintained as a class action limited to particular issues." In
16 particular, courts can use Rule 3.765 of California Rules of Court (formerly, Rule 1855) to
17 implement the class mechanism in a way to avoid conflicts among class members. (*E.g. Daniels*
18 *v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 472 ["If the presence of the rescission claim
19 creates a conflict between the class representatives and the class (and we are not sure it does), the
20 remedy is to certify a damages class, not dismiss the whole action."]) Accordingly, the Court
21 may certify a class for limited issues and do so in order to avoid conflicts between class members.

22
23 2. The Limited Class Issues Do Not Create Conflicts Between The Class
24 Members

25 The Diamond Farming opposition consists of a lengthy recitation of inapplicable case law
26 and incorrect legal arguments but fails to recognize that no member of the proposed modified
27 class has a pending cause of action against any other member of the class or against any other
28 private landowner. The proposed modified class has claims against only public water suppliers

1 and the public water suppliers are the only parties to assert a cause of action against the class
2 members. Diamond Farming is not a member of the class, is not named as a defendant in the
3 plaintiffs' class action, and does not have a cause of action against any class member.

4 Diamond Farming argues that a conflict will exist between class members who pump and
5 those who do not pump groundwater. It is well-settled law, however, that courts look to the
6 allegations in the pleadings to determine if a matter is amenable to class action. (*Sav-On Drug*
7 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327 citing *Richmond v. Dart Industries, Inc.*
8 (1987) 29 Cal.3d 462, 478.) The pleadings reveal no conflicts. *The modified class will exist only*
9 *for its specified limited purposes.* Thus, the proposed modified class does not create any conflict
10 for absent class members.

11 Finally, as discussed in previous hearings before the Court, the Court has the discretion to
12 later create subclasses or implement other case management techniques including the use of Rule
13 8.765 to certify a class for limited issues. Thus, any claim of *potential* conflict within the class
14 between those who pump and those who do not, does not prevent certification of the proposed
15 modified class.

16
17 C. THE COURT WILL PROTECT THE ABSENT CLASS MEMBERS'
18 INTERESTS

19 The Court will ultimately review any class settlement to protect the Class members. (Cal.
20 Rules of Ct., Rule 3.769; *Marcarelli v. Cabell* (1976) 58 Cal.App.3d 51, 53.) A possibility of
21 unfair treatment of class members is "held in check by the requirement that the judge determine
22 the fairness of the settlement before he can approve it." (*Wershba v. Apple Computers, Inc.*
23 (2001) 91 Cal.App.4th 224, at p. 240 citing *Mars Steel v. Continental Ill. Nat. Bank & Trust* (7th
24 Cir. 1987) F. 2d 677, 681.) Thus, the Court can protect the modified class members from any
25 unfair settlement, and the Court can ensure all Class members' interests are represented
26 throughout the proceedings.

27 As the Court has previously acknowledged, it must approve any settlement that impacts or
28 otherwise involves the class members. The Court has the responsibility to ensure that absent

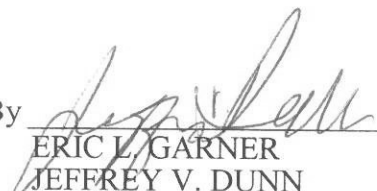
1 class members' interests have been represented in the settlement process. In the settlement
2 process, their interests can be represented by other parties, and Class Counsel has acknowledged
3 that the coordinated proceedings include landowner parties with "experienced and capable
4 counsel" who represent parties commonly known as the "pumping group," and that the interests
5 of class members who pump or do not pump will not go unrepresented. (Request for Judicial
6 Notice, [December 18, 2007 Court Transcript, p. 7:12-20, Exhibit 2].)

7
8 CONCLUSION

9
10 The limited issues for the modified class do not create conflicts between the class
11 members. Class Counsel has indicated an ability to represent the proposed modified class for
12 limited issues without a conflict of interest. (Request for Judicial Notice, December 18, 2007
13 Court Transcript, p. 6:13 to p. 7:2, Exhibit 2.) The Court will protect the class members' interests
14 throughout the proceedings and in any proposed settlement. Substantial evidence before the
15 Court in the Adjudication Area determination hearings and the parties' pleadings establish
16 predominate common issues of fact and law. The Public Water Suppliers respectfully request that
17 the Court grant the Motion to Amend or Modify the September 11, 2007 Order.

18
19 Dated: February 20, 2008

BEST BEST & KRIEGER LLP

20
21 By 
22 ERIC L. GARNER
23 JEFFREY V. DUNN
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28 COUNTY WATERWORKS DISTRICT
NO. 40

ORANGE\JDUNN\44327.1

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 February 20, 2008, I served the within document(s):

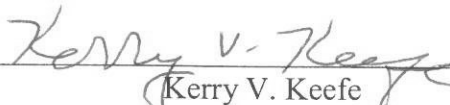
PUBLIC WATER SUPPLIERS' REPLY IN SUPPORT OF MOTION TO AMEND OR MODIFY SEPTEMBER 11, 2007 ORDER CERTIFYING CLASS CERTIFICATION

- ☒ 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 February 20, 2008, at Irvine, California.


Kerry V. Keefe