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8 FARMS, a limited liability company, GRIMMWAY  
9 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 Coordination Proceeding Special Title  
13 (Rule 1550 (b))

14 ANTELOPE VALLEY GROUNDWATER  
15 CASES

16 Included actions:

17 Los Angeles County Waterworks District No.  
18 40 vs. Diamond Farming Company  
19 Los Angeles Superior Court  
20 Case No. BC 325201

21 Los Angeles County Waterworks District No.  
22 40 vs. Diamond Farming Company  
23 Kern County Superior Court  
24 Case No. S-1500-CV 254348 NFT

25 Diamond Farming Company vs. City of  
26 Lancaster  
27 Riverside County Superior Court  
28 Lead Case No. RIC 344436 [Consolidated  
w/Case Nos. 344668 & 353840]

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**OBJECTION TO HEARING ON  
MOTION TO TRANSFER AND TO  
CONSOLIDATE FOR ALL PURPOSES**

Date: August 17, 2009  
Time: 9:00 a.m.  
Dept.: 17C

(Hon. Jack Komar)

1 I.

2 INTRODUCTION

3 The City of Palmdale, Rosamond Community Services District, Los Angeles County Waterworks  
4 District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Water  
5 Service Company, Quartz Hill Water District, City of Lancaster, and Palmdale Water District  
6 (collectively, "Public Water Suppliers") filed and served their Motion to Transfer and to Consolidate for  
7 All Purposes on July 15, 2009 (the "Motion to Consolidate"). In the Motion to Consolidate, the Public  
8 Water Suppliers move for an order consolidating the previously or presently transferred actions and cross-  
9 actions, as well as any subsequent complaints or cross-complaints filed in the Judicial Council  
10 Coordination Proceeding No. 4408. The Motion to Consolidate, however, fails to conform with the laws  
11 of this state as it fails to comply with the mandates of California Rules of Court, rule 3.350 ("rule 3.350")  
12 as is further detailed below. Because the Motion to Consolidate fails to comply with mandatory  
13 provisions of the Rules of Court prescribed for motions to consolidate, the Motion to Consolidate must  
14 be denied.

15 II.

16 MEMORANDUM OF POINTS AND AUTHORITIES

17 When a Motion to Consolidate, pursuant to Code of Civil Procedure section 1048(a) is brought  
18 by a party, the noticed motion and motion must conform to requirements set forth in rule 3.350. Rule  
19 3.350(a) "Requirements of motion" provides:

20 "(1) A notice of motion to consolidate **must**: [Emphasis Added.]

21 (A) List all named parties in each case, the names of those who have  
22 appeared, and the names of their respective attorneys of record;

23 (B) Contain the captions of all the cases sought to be consolidated, with  
24 the lowest numbered case shown first; and

25 (C) Be filed in each case sought to be consolidated."

26 Despite these clear mandated requirements for a noticed Motion to Consolidate, such as the one at issue  
27 here, the Public Water Suppliers disregarded rule 3.350(a) and failed to comply with its mandate.  
28 Compliance with the rule is required for all noticed motions to consolidate. The rule is mandatory not

1 discretionary. The moving party “must”, not may, follow its directives.

2 “Absent a stipulation to consolidate, a *noticed* and *written* motion to consolidate is required.”  
3 (*Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 514 [emphasis in original].) The  
4 mandatory requirements for a noticed motion to consolidate, as described above are explicitly set forth  
5 in rule 3.350. Any motion filed not in conformity with this rule should be denied as the Judicial Council  
6 and the California Supreme Court, pursuant to their constitutional and statutory authority, have set forth  
7 this rule to ensure proper notice to all parties in all actions sought to be consolidated. (See Preface to  
8 California Rules of Court 2009 Edition [identifying the genesis and authority for the California Rules of  
9 Court].)

10 As emphasized above, the requirements in rule 3.350 are not discretionary. The moving party  
11 must include the above-described information per the Rules of Court. (See 4 Witkin, Cal. Procedure (5th  
12 ed. 2009) Pleading, §344, p. 472, and 3 Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial  
13 (The Rutter Group 2009) Case Management, ¶¶ 12:355, pp. 12(I)-64 to 12(I)-65 (rev.#1, 2009)].) The  
14 purveyor’s Motion to Consolidate does not list all named parties in each case or those who have appeared  
15 or the respective attorneys of record. Moreover, the Public Water Suppliers have failed to provide the  
16 captions of all the cases sought to be consolidated, with the lowest numbered case shown first.

17 Instead of providing the above-noted missing but required information, the Public Water Suppliers  
18 apparently sought to circumvent the rule’s requirements by simply requesting an “**order consolidating**  
19 **the previously or presently transferred actions and cross-actions, as well as any as [sic] complaints**  
20 **or cross-complaints filed in this Judicial Council Coordination Proceeding.**” (The Public Water  
21 Suppliers Motion to Consolidate, p. 3, ll. 14-17.) Does any litigant or this court know the identity of  
22 those other complaints or cross-complaints or all of the parties thereto? Exhibits 1, 2, and 3 to the Motion  
23 to Consolidate do not identify all of the actions sought to be consolidated, and entirely fail to “[l]ist all  
24 named parties in each case, the names of those who have appeared, and the names of their respective  
25 attorneys of record” as required by rule 3.350(a)(1)(A). Furthermore, it is clear that all the captions of  
26 each action, including all cross-complaints, are not provided and are not listed with the lowest caption  
27 number first. The catch-all comment that the operative complaints listed in Exhibit 3 should include “all  
28 cross-complaints filed in the above-actions or in these coordinated proceedings” fails to rectify the above-

1 noted deficiencies in the Motion to Consolidate.

2       The Declaration of Whitney G. McDonald, Esq., at paragraphs 6 and 8 make clear that there does  
3 not exist an identity of parties, claims, causes of action, or relief sought in all of the various pending  
4 pleadings and actions, including those identified in the motion. Yet the motion seeks to consolidate for  
5 all purposes and thereafter secure a single judgment, for and against all litigants in all pending separate  
6 actions. It is axiomatic that jurisdiction over the parties is necessary for the validity of any judgment “in  
7 personam”, and due process, requiring notice and an opportunity for a hearing is essential to that  
8 jurisdiction. Likewise, a judgment cannot be rendered for or against one who is not a party to the action.  
9 (*Environmental Coalition of Orange County, Inc., et al. v. Local Agency Formation Commission of*  
10 *Orange County* (1980) 110 Cal.App.3d 164, 173.).

11       This court entered an Electronic Filing and Service Order in September of 2005. (The same order  
12 was again entered in August 2006.). Thereafter, Los Angeles County Waterworks District No. 40, on  
13 behalf of itself and the other identified purveyors filed the original cross-complaint, and thereafter the first  
14 amended cross-complaint. After filing, the public water purveyors have initiated service of those cross-  
15 complaints on hundreds upon hundreds of Doe/Roe cross-defendants. Pursuant to Section VIII of the  
16 Electronic Filing and Service Order, all new parties must have been served with a copy of the electronic  
17 filing order concurrently with the summons and complaint/cross-complaint. It is uncertain whether or  
18 not Los Angeles County Waterworks District No. 40 served that order concurrently with the summons  
19 and complaint/cross-complaint upon the hundreds and hundreds of Doe/Roe cross-defendants  
20 subsequently served. A cursory review of multiple “Proof of Service of Summons” suggest that the order  
21 was note served. Nonetheless the number of parties who have registered and are therefor on the court’s  
22 electronic service list is significantly less than the gross number of all parties the purveyor’s claim to have  
23 served and significantly less than the gross number of all parties who have appeared. Therefore, it is  
24 likewise abundantly clear that hundreds upon hundreds of Doe/Roe cross-defendants have not been served  
25 with nor given notice of this Motion for Consolidation. (See proof of service attached to the motion for  
26 consolidation). California Rule of Court, Rule 3.350(a)(2)(B) mandates that a motion to consolidate  
27 **“must be served on all attorneys of record and all non-represented parties in all of the cases sought**  
28 **to be consolidated; . . .”**. Minimal due process requirements mandate that due to the failure of notice,

1 this motion to consolidate must be denied.

2 Had the public water purveyors complied with California Rule of Court, Rule 3.350, it would have  
3 become immediately apparent that the United States government is a party to only two actions, that being  
4 the “cross-complaint” (First Amended Cross-Complaint) of the public water purveyors. (See Stipulation  
5 for Extension to Serve Responsive Pleading and Order dated February 3, 2006.), and the cross-complaint  
6 of Phelan Piñon Hills Community Services District. The United States answered the original cross-  
7 complaint on February 15, 2006 and the First Amended Cross-Complaint on April 13, 2007. The United  
8 States has not yet responded to the cross-complaint of Phelan Piñon Hills. Apart from those public water  
9 purveyors, it does not appear that any other party litigant has sued the United States government. The  
10 United States government itself has not sued any other litigant. Not all of the litigants are cross-  
11 defendants and thus parties to the above-referenced cross-complaints. Previously served cross-defendants  
12 have since been dismissed with prejudice by some purveyor cross-complainants. On the current state of  
13 the pleadings, no single judgment equally enforceable both for and against all litigants can be entered.

14 “[4] It is a principle of general application in Anglo-American jurisprudence that one is  
15 not bound by a judgment *in personam* in a litigation in which he is not designated as a  
16 party or to which he has not been made a party by service of process. *Pennoyer v. Neff*,  
17 95 U.S. 714; 1 Freeman on Judgments (5<sup>th</sup> ed.), §407. A judgment rendered in such  
18 circumstances is not entitled to the full faith and credit which the Constitution and statute  
19 of the United States, R.S. § 905, 28 U.S.C. § 687, prescribe, *Pennoyer v. Neff, supra*;  
*Lafayette Ins. Co. v. French*, 18 How. 404; *Hall v. Lanning*, 91 U.S. 160; *Baker v. Baker*,  
*Eccles & Co.*, 242 U.S. 394; and judicial action enforcing it against the person or property  
of the absent party is not that due process which the Fifth and Fourteenth Amendments  
require. *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464; *Old Wayne Mutual Life*  
*Assn. v. McDonough*, 204 U.S. 8.” (Citing *Hansberry, et al. v. Lee, et al.*, 311 U.S. 32.)

20 Thus, consolidation for all purposes cannot be ordered.

21 Rule 3.350 is clear and requires specific formatting and information to be set forth in a noticed  
22 motion to consolidate. The rule likewise mandates that the motion be served on all parties to all actions  
23 which are to be consolidated. These requirements ensure proper notice to all interested parties of the  
24 proposed consolidation and ensure judicial economy and efficiency in specifically identifying which  
25 actions, claims and request for relief are to be consolidated. The Public Water Suppliers failed to comply  
26 with this requirement. The motion should be denied.

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III.

CONCLUSION

The Public Water Suppliers have failed to comply with the mandatory requirements of California Rules of Court, rule 3.350(a). The motion must be served on all parties. The required information as set forth in rule 3.350(a) must be set forth in the noticed motion or else the motion is improper and must be denied. Since the Public Water Suppliers have completely neglected to comply with the above-described mandatory requirements, DIAMOND FARMING COMPANY, a California corporation, CRYSTAL ORGANIC FARMS, a limited liability company, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC respectfully request that the court deny the Motion to Consolidate for failure to comport with the Rules of Court of this state. Compliance with Rule 3.350 would have revealed the pleading morass precluding consolidation for all purposes.

Dated: August 3, 2009

LeBEAU • THELEN, LLP

By: 

BOB H. JOYCE  
Attorneys for DIAMOND FARMING COMPANY,  
a California corporation, CRYSTAL ORGANIC  
FARMS, a limited liability company,  
GRIMMWAY ENTERPRISES, INC., and LAPIS  
LAND COMPANY, LLC

**PROOF OF SERVICE**

ANTELOPE VALLEY GROUNDWATER CASES  
JUDICIAL COUNCIL PROCEEDING NO. 4408  
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On August 3, 2009, I served the within **OBJECTION TO HEARING ON MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES**

☒ **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through [www.scefiling.org](http://www.scefiling.org) ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court  
111 North Hill Street  
Los Angeles, CA 90012  
Attn: **Department 1**  
(213) 893-1014

Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordinator)  
Carlotta Tillman  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Fax (415) 865-4315

☐ **(BY MAIL)** 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 at Bakersfield, California, in the ordinary course of business.

☐ **(OVERNIGHT/EXPRESS MAIL)** By enclosing a true copy thereof in a sealed envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary business practices from Kern County. I am readily familiar with this business' practice of collecting and processing correspondence for overnight/express/UPS mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with delivery fees paid/provided for at the facility regularly maintained by United States Postal Service (Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal Express/United Postal Service to receive documents]).

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on August 3, 2009, in Bakersfield, California.

  
**LEQUETTA HANSEN**