

NOTICE

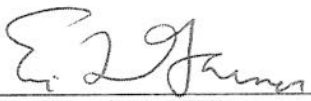
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on 11-4, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 07 of the above-captioned court, located at 4050 Main Street, Riverside, California, Los Angeles County Waterworks District No. 40 will and hereby does move the Court for an order permitting the filing of a cross-complaint, a copy of which is attached hereto. This motion will be made under Code of Civil Procedure section 428.50 on the grounds that the proposed cross-complaint arises out of the same subject matter as the consolidated complaints but was not pleaded previously because the parties have been engaged in lengthy settlement discussions at the direction of the Court; that groundwater levels and other facts have changed since plaintiffs filed their complaints; allowing such filing at the present time is in the interests of justice; and will promote the efficient resolution of the claims between all parties in these cases as well as other persons and entities who have an interest in the Antelope Valley Groundwater Basin.

This motion is based on this notice, the attached memorandum of points and authorities, the attached declaration of Jeffrey V. Dunn, and any other matter properly before the court at the time of the hearing.

Dated: September 30, 2004

BEST BEST & KRIEGER LLP

By: 
ERIC L. GARNER
JEFFREY V. DUNN
Attorneys for Defendant,
Los Angeles County Waterworks District
No. 40

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 I. INTRODUCTION

4
5 The Antelope Valley Groundwater Basin encompasses 940 square miles in the Mojave
6 Desert. The Basin provides water to desert communities including the cities of Lancaster and
7 Palmdale as well as to Edwards Air Force Base and farmers.

8
9 For over 80 years, the Los Angeles County Waterworks District No. 40, Antelope Valley
10 (the "Waterworks District") has provided water to the public in the Antelope Valley. During that
11 time, the Basin has experienced overdraft conditions including chronic declines in groundwater
12 levels and land subsidence. Although the District has worked with other governmental entities
13 and private interests to create a groundwater management program, those efforts were
14 undermined when plaintiffs filed these cases seeking priority water rights in 1999. Nevertheless,
15 with the Court's continued direction and encouragement, the District continued to pursue a
16 negotiated solution to these cases and the Basin's overdraft conditions.

17
18 During the last several years, conditions have changed dramatically in the Basin. The
19 most notable change comes from agriculture. Estimated groundwater pumping by agriculture has
20 increased substantially with resulting declines in groundwater levels. The United States
21 Geological Survey concluded last year that there will be additional land subsidence in the Basin
22 due to excessive groundwater pumping. Stated simply, while the District worked for a negotiated
23 resolution of these cases, the Basin continued to deteriorate and the public welfare is threatened
24 by increasing overdraft conditions.

25
26 The parties participated in a three-day mediation before a retired Superior Court judge in
27 the summer of 2003. The mediation was unsuccessful in resolving these cases. The mediator
28 stated that it was his opinion that the municipal entities needed to seek a general adjudication of

1 the rights to Basin water.

2
3 News of the failed mediation reached other interests in the Basin including a group of
4 established farmers in the Antelope Valley other than the plaintiffs (the "Other Farming
5 Interests"). That group became concerned that the current litigation could determine certain
6 Basin water rights and issues in their absence. The group therefore engaged legal counsel and has
7 appeared and is expected to appear before the Court in support of this motion.
8

9 Last year, upon learning that third parties may have an interest in the current litigation, the
10 Court directed the parties already in the case to continue settlement discussions, vacated the trial
11 date, and allowed the parties to pursue settlement with the involvement of the others, including
12 the Other Farming Interests. Subsequently, there have been numerous face-to-face meetings,
13 weekly teleconferences for an extended period of time, as well as smaller meetings of parties and
14 experts. However, within the last several weeks, the parties reached an impasse, amidst
15 information that Basin conditions are deteriorating. For these reasons, the Los Angeles County
16 Board of Supervisors and the governing board of the Waterworks District, (with one vote absent)
17 voted unanimously less than two weeks ago to authorize counsel to pursue this motion, or
18 alternatively a separate action, to adjudicate rights to Basin water. Thus, the District seeks an
19 adjudication of Basin water rights to protect the District's ability to provide water to the public, to
20 avoid further depletion of scarce groundwater supplies in the Basin, and to help avoid further land
21 subsidence.
22

23 II. FACTUAL BACKGROUND

24

25 The Waterworks District is the largest supplier of potable water to the urban communities
26 in the Antelope Valley. Protecting the District's water supplies is critical to the health and
27 welfare of the public in the Antelope Valley. The District relies on two sources of water,
28 groundwater from the Basin and imported state water project water purchased from the Antelope

1 Valley-East Kern Water Agency ("AVEK"). For example, basin groundwater has historically
2 comprised approximately 40 percent of the District's annual supply and it is a more reliable and
3 affordable source of water for the District's customers than is imported water from AVEK. Due
4 to the relative unreliability of consistent supplies of imported AVEK water and its substantially
5 higher cost, Basin groundwater is critical for the District to be able to serve its customers now and
6 in the future.

7
8 The District currently extracts approximately 20,000 acre-feet per year on average from
9 the Basin. However, because the parties that take water from the Basin are not currently subject
10 to legal limits on pumping, the Basin is and has been in a state of overdraft. Consequently, the
11 Basin has experienced land subsidence and chronic declines in well levels. Moreover, in the past
12 five years, agricultural water production from the Basin increased dramatically by over 40 percent
13 and is expected to continue to grow. New urban development will also add further demands on
14 the Basin. In the long-term, the Basin cannot sustain the current and expected water depletion.

15
16 Due to concerns regarding the viability of the Basin's groundwater supplies, the District
17 and other municipal purveyors and interested parties, including the Cities of Palmdale and
18 Lancaster and the federal government, made substantial investments in studies and related
19 attempts in the 1990's to reach a voluntary plan to curtail unlimited pumping from the Basin.

20
21 III. THE CURRENT LITIGATION

22
23 Unfortunately, the efforts of the District and other groundwater users to arrive at a
24 voluntary groundwater management plan for the Basin were undercut when two large- scale
25 agricultural companies, Diamond Farming Company and Wm. Bolthouse Farms, Inc., the
26 plaintiffs in this litigation, filed declaratory relief actions in 1999 seeking priority rights to Basin
27 groundwater. Their cases were transferred to the Riverside County Superior Court as a neutral
28 venue under Code of Civil Procedure section 394, where they were consolidated and designated

1 “complex” under the California Rules of Court.

2
3 The District and seven other municipal users of groundwater, including the City of
4 Lancaster, the Rosamond Community Services District, the Palmdale Water District, and the
5 Antelope Valley Water Company, are defendants in this litigation. The District and these entities
6 have endeavored throughout the litigation to settle these cases in a manner which avoids the costs
7 of trial and the significant expense required to adjudicate rights in the Basin. (Dunn Decl., ¶ 2.)
8

9 The court has generally refrained from conducting a trial over the past five years and has
10 encouraged the parties to pursue settlement efforts. (Although the parties started a preliminary
11 phase 1 trial years ago, the Court refrained from issuing any decisions in said phase 1. Rather, the
12 Court stopped the trial to allow settlement negotiations.) For example, last year, a three-day
13 mediation session was held before a retired superior court judge. Although the mediation was
14 unsuccessful, the parties have continued to pursue settlement at the Court’s direction.
15 Additionally, the parties have had engaged in extensive negotiations in meetings and
16 teleconferences over the last five years. Recently, the parties’ experts worked to reach a
17 consensus on Basin data including yield and production. However, those efforts have been
18 unsuccessful and Basin conditions have continued to deteriorate. (Dunn Decl., ¶¶ 2-4.)
19

20 IV. THE PROPOSED CROSS-COMPLAINT OR A SEPARATE COORDINATED
21 ACTION
22

23 Although the District has earnestly attempted to settle the existing litigation in a manner
24 that will equitably provide for the long-term water needs of all members of the Antelope Valley
25 community, the District's efforts have not been successful. Consequently, the Board of
26 Supervisors for Los Angeles County acting as the governing board of the District made a decision
27 that, in light of the parties inability to reach a settlement at this time, a comprehensive
28 adjudication of water rights in the Basin is now needed to protect the public from overdraft

1 conditions in the Basin. (Dunn Decl., ¶¶ 5-6.)

2
3 The two primary goals of the proposed adjudication are to: 1) protect the Basin as a viable
4 long-term source of water for the Antelope Valley by curtailing unlimited groundwater pumping,
5 and 2) to prevent additional land subsidence caused by groundwater pumping.
6

7 The District has been working to develop a program to purchase water from AVEK in
8 "wet" years (when water is less costly) and store the water in the Basin for use in "dry" years
9 (when water is scarce and expensive). Such a water banking program could save the public
10 millions of dollars annually and provide a more secure and reliable source of water in times of
11 shortage. However, the inability to stop others from using the stored water makes a water
12 banking strategy of limited use unless and until an adjudication is completed. With court-
13 supervised management, the District could proceed with a water-banking program that would
14 make imported water, including AVEK's, a less expensive and more reliable source for the
15 District.
16

17 The preferred vehicle for the proposed adjudication is a cross-complaint in this case.
18 However, if the Court declines to allow a cross-complaint, the District plans a separate action
19 which is expected would need to be coordinated with this case. (Dunn Decl., ¶ 7.)
20

21 The proposed cross-complaint or separate coordinated action will be served against all
22 significant property owners and extractors of water from the Basin. Although all of the essential
23 parties have not yet been identified, the District estimates that 200 to 300 new parties will need to
24 be added to the case. For example, approximately 70 mutual water companies in the Antelope
25 Valley will need to be served as well as major property owners. (Dunn Decl., ¶ 8.)
26

27 The District is informed and believes that other Antelope Valley municipal water
28 suppliers support the adjudication as well as certain agricultural interests in the Basin, including

1 the Other Farming Interests. The District is engaged in discussions with these parties and entities
2 to facilitate a Basin adjudication and reach a negotiated resolution. (Dunn Decl., ¶ 9.)
3

4 The adjudication will ensure that the Basin is a viable long-term source of water for the
5 Antelope Valley. The adjudication will avoid even higher costs to the District and others by
6 allowing the parties to obtain judicial recognition of their rights to groundwater supplies and to
7 avoid further land subsidence in the Basin. The groundwater adjudication will also allow the
8 District and other municipal water suppliers to more accurately determine their ability to provide
9 water to additional customers in the Basin. (Dunn Decl., ¶ 10.)
10

11 V. LEAVE OF COURT SHOULD BE GIVEN TO ALLOW THE CROSS-
12 COMPLAINT
13

14 Code of Civil Procedure section 428.50, in relevant part, provides that a “party shall
15 obtain leave of court to file any cross-complaint. . . . Leave may be granted in the interests of
16 justice.” As shown below, the interests of justice and the public welfare require a general
17 adjudication of rights to Basin water.
18

19 A. There Are New and Changed Facts Since Plaintiffs Filed their Complaints in 1999.
20

21 After plaintiffs filed complaints in 1999, the Basin suffered from declining groundwater
22 levels and land subsidence due to new and increased existing agricultural groundwater pumping.
23 Only three months ago, the State of California, as part of its Farmland Mapping and Monitoring
24 Program, reported that “[t]he increased farming . . . in the Antelope Valley near Lancaster was the
25 most unexpected news in a new report on changes in Southern California land use. . . .” (Los
26 Angeles Times, “Growers Are Returning to L.A. County” June 15, 2004, attached as Exhibit “A”
27 to the Declaration of Jeffrey V. Dunn.) Additionally, recent reports by the United States
28 Geological Survey predict increased land subsidence from the groundwater pumping.

1 As part of the increase in agriculture, plaintiffs have amended their complaints in 2000,
2 2001, and 2003 to add new properties to their water rights claims. As recently as October, 2003,
3 plaintiff Bolthouse sought leave of court to file a second amended complaint to add new claims of
4 priority rights.

5
6 B. Other Persons and Entities Have A Stake In the Outcome of The Litigation.
7

8 Basin issues in these cases impact numerous other persons and entities. Non-party
9 persons and entities have stated their intent to become involved in these cases when they learned
10 that the parties failed to reach a settlement after the three-day mediation before a retired Superior
11 Court judge. (Dunn Decl., ¶ 3.)
12

13 The Other Farming Interests have obtained legal counsel and appeared before the court in
14 these cases. They have taken the position that these cases in their present form (*i.e.*, no existing
15 adjudication) will not solve the Basin's problems. The Other Farming Interests and certain other
16 non-parties in the Basin have expressed their support for a Basin-wide adjudication. (Dunn Decl.,
17 ¶ 3.)
18

19 C. In the Absence of a Basin Adjudication, Plaintiffs' Cases Will Not Solve Basin
20 Overdraft Conditions.
21

22 In these cases plaintiffs claim superior water rights in the Basin. To resolve competing
23 claims in a groundwater basin, courts determine whether public entities have prescriptive or
24 appropriative rights. These water rights are determined by examining basin-wide groundwater
25 levels for a court finding of surplus or overdraft conditions. Once a court finds overdraft
26 conditions, California water law requires court findings and a judgment that protects the basin
27 from overdraft conditions. (*See, City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d
28 199; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908.) Specifically, agricultural

1 property owners are required to reduce their pumping on a correlative basis with all other
2 agricultural pumpers. (*Id.*)
3

4 If the Court proceeds with the existing cases and in the absence of other persons and
5 entities with interests in the Basin, the Court may find overdraft conditions but will have no
6 jurisdiction over non-parties to limit their pumping (or otherwise impose a solution to the Basin's
7 overdraft conditions). In the absence of adjudication, the plaintiffs may argue that they cannot be
8 ordered to limit their pumping to a safe yield because no other agricultural pumping would be
9 similarly limited. In other words, the Court will be unable to order agricultural users to limit and
10 reduce their pumping on a correlative basis. Thus, a Basin adjudication provides jurisdiction that
11 allows the Court to enter appropriate rulings and judgment to protect the Basin.
12

13 D. There Will Be Adjudication By Cross-Complaint or By Separate Action Later
14 Coordinated With These Consolidated Actions.
15

16 In the event the Court decides not to allow the cross-complaint, the District has been
17 authorized to file a separate action in the Superior Court and seek to coordinate the action with
18 these consolidated cases. (*See Weil & Brown, CAL. PRAC. GUIDE: CIV.PRO.*
19 *BEFORE TRIAL* (The Rutter Group 2004) sec. 6:523, pp. 6-107-108.) The interests of justice
20 are served by having this Court proceed with the adjudication as opposed to a new separate case
21 with the delay and expense of coordination and consolidation proceedings.
22

23 E. There is a Public Policy of Encouraging Court Settlements That Outweighs Delay.
24

25 The Court designated these consolidated cases as "complex" for case management
26 purposes and encouraged the parties to settle the cases. With the Court's approval, the parties
27 have engaged in a lengthy negotiation process. Settlement efforts have extended over almost five
28 years and include long time periods with weekly teleconferences, meetings with non-parties,

1 expert witness only meetings, and numerous face-to-face settlement meetings.

2
3 There is no trial date. Public policy favoring settlement outweighs the delay involved in
4 filing the cross-complaint. (*Silver Organizations Ltd v. Frank* (1990) 217 Cal.App.3rd 94, 100.)
5 The delay associated with these settlement efforts has not prejudiced the plaintiffs – they have
6 pumped groundwater without interruption and have increased their pumping.

7
8 VI. CONCLUSION

9
10 For all the above reasons and in the interests of justice and the public welfare, Los
11 Angeles County Waterworks District No. 40 respectfully requests that the Court grant the motion
12 for leave to file a cross-complaint.

13
14
15 Dated: September 30, 2004

BEST BEST & KRIEGER LLP

16
17 By: 

18 ERIC L. GARNER
19 JEFFREY V. DUNN
20 Attorneys for Defendant,
21 Los Angeles County Waterworks District
22 No. 40
23
24
25
26
27
28

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare as follows:

1. I am an attorney licensed to practice law in California courts. I have personal knowledge of the following matters except as to those matters stated upon information and belief. I would so testify in court.

2. After plaintiffs filed these cases in 1999, the parties have been involved in numerous face-to-face meetings, weekly teleconferences, meetings with experts, meetings and teleconferences with persons and entities who are not parties to these cases but have an interest in the Antelope Valley Groundwater Basin, and a three-day mediation before retired Superior Court Judge Leroy Simmons in the summer of 2003. To date, these efforts have not led to a settlement.

3. At the conclusion of the three-day mediation before Judge Simmons, retired, he told legal counsel and representatives of the defendant public agencies that he believed the Basin needed a general adjudication of Basin water rights. Since that time, the parties have been contacted by third parties (the "Other Farming Interests"). The group has retained the law firm of Hatch & Parent and they have appeared at certain post-mediation court hearings and in the settlement negotiations. The Other Farming Interests have stated that they do not believe the present procedural posture of the existing cases will resolve issues in the Basin and that certain issues should not be decided in the absence of the Other Farming Interests.

4. There is information that conditions have changed dramatically in the Basin during the last several years. This information has been gathered and recently provided to the parties. The most notable change comes from agriculture. Estimated groundwater pumping by agriculture has increased substantially. Attached as Exhibit "A" is a true and correct copy of a June 15, 2004 article from the Los Angeles Times entitled "Growers Are Returning to L.A. County." Last year,

1 the United States Geological Survey ("U.S.G.S.") issued a report on land subsidence in the
2 Antelope Valley that concludes there will be additional land subsidence in the Basin due to
3 excessive groundwater pumping. This public information is available from the U.S.G.S.
4

5 5. Within the last several weeks, the parties reached an impasse in their settlement
6 discussions. Recent information provided to the parties by the experts indicates that demands
7 upon the Basin have and are increasing and Basin conditions are deteriorating.
8

9 6. Two weeks ago, the Los Angeles County Board of Supervisors (with one vote
10 absent) voted unanimously less than two weeks ago to adjudicate rights to Basin water. Thus, the
11 District seeks an adjudication of Basin water rights to protect the District's ability to provide
12 water to the public, to avoid further depletion of scarce groundwater supplies in the Basin, and to
13 help avoid further land subsidence.
14

15 7. The preferred option for the adjudication is a cross-complaint in this case.
16 However, if the Court declines to allow a cross-complaint, a separate action will be filed which
17 would be coordinated with these cases.
18

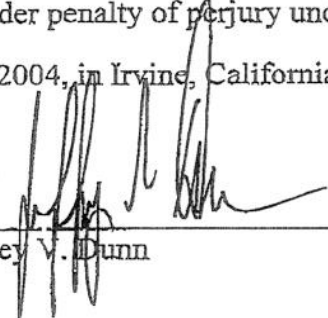
19 8. The proposed cross-complaint or separate coordinated action will be served
20 against all significant property owners and extractors of water from the Basin. Although all of the
21 essential parties have not yet been identified, the District estimates that 200 to 300 new parties
22 will need to be added to the case. Upon information and belief there are approximately 70 mutual
23 water companies in the Antelope Valley that will need to be served as well as major property
24 owners.
25

26 9. I have spoken to legal counsel for various entities who are not parties in these
27 cases. They have expressed their support the adjudication as well as certain agricultural interests
28 in the Basin. The District is engaged in discussions with these parties and others to facilitate a

1 Basin adjudication and reach a negotiated resolution.

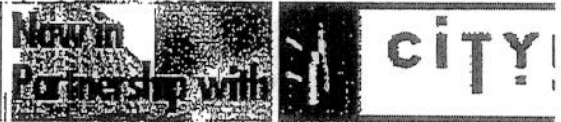
2
3 10. Although the time and expense of the groundwater adjudication is substantial, the
4 adjudication will ensure that the Basin is a viable long-term source of water for the Antelope
5 Valley. The adjudication will avoid even higher costs to the District and others by allowing the
6 parties to obtain judicial recognition of their rights to groundwater supplies and to avoid further
7 land subsidence in the Basin. The groundwater adjudication will also allow the District and other
8 municipal water suppliers to more accurately determine their ability to provide water to additional
9 customers in the Basin.

10
11 I declare the foregoing true and correct under penalty of perjury under the laws of
12 California. Executed this 30th day of September, 2004, in Irvine, California.

13
14 
15 _____
16 Jeffrey V. Dunn
17
18
19
20
21
22
23
24
25
26
27
28



latimes.com



SEARCH

 © 2004
 Served by Google

Home | Home Delivery | Site Map | Archives | Print Edition | Advertis



Hi, sandraschwarzmann

Member Services

Logout

PLACE
classifieds and more

- Careers
- Cars
- Homes
- Apartments

Search newspaper ads

Find grocery coupons

Search personals

place an ad

calendarlive.com

Art, Theater, Night Life
Movies, Music, TV, Dining

California

 Los Angeles
 Orange County
 S.F. Valley
 Ventura County
 Inland Empire
 Ongoing Local Stories

Columns

 Steve Lopez
 Patt Morrison
 George Skelton
 Dana Parsons
 Steve Harvey

Features

 Good Turns
 Behind the Wheel
 In the Classroom
 Surroundings
 On the Law

Community Papers

 Burbank Leader
 Claremont-Upland
 Voice
 Coastline Pilot
 Daily Pilot
 Huntington Beach
 Independent
 News-Press
 Rancho Cucamonga
 Voice

The World

The Nation

California | Local

Business

Politics | Election 2004

Sports

Travel

Editorials, Op-Ed

Sections

Arts & Entertainment

Books

Chess

Columns

Education

June 15, 2004

Growers Are Returning to L.A. County

■ A report finds the region, reversing years of urbanization, added nearly 3,600 acres of farm specialty vegetables.

By Daryl Kelley and Janet Wilson, Times Staff Writers

After decades in which cropland in Los Angeles County was used mostly to grow housing subdivisions, a new state report shows that farming is making a surprising comeback, driven, in part, by increased growing of specialty crops.

The increased farming of baby carrots, organic onions, potatoes and parsnips in the Antelope Valley near Lancaster was the most unexpected news in a new report on changes in Southern California land use, state officials said Monday.

ADVERTISEMENT

See your local Audi dealer
for the Audi of your future.
Click here

Never Follow socalaudiodealers.com

ADVERTISEMENT

"It's heartening and interesting to see this uptick in Los Angeles County," said Darryl Young, director of the State Department of Conservation. "It's encouraging that high-value specialty crops are being grown close to their market."

Ben Faber, a farm advisor with UC Cooperative Extension in Ventura, said that over the

long-term, specialty farmers will continue to have a place in Southern California.

"If you are in Riverside, if you are in San Bernardino, if you are in Antelope Valley or Ventura County, you are in the right place at the right time as a farmer.... You're close enough to the consumer to deliver fresh produce 12 months a year," he said. "L.A. has a huge mouth and a huge belly, and we are always looking for something new."

From 2000 to the end of 2002, Los Angeles County added nearly 3,600

Photos



Planting
(Stepher



Tending
(Stepher



Emerge
(Stepher

Times

Transien
Slayings

A Bump
Homes

O.C. Pri
Resume

Military
Gas Fac

Panels
LAX

Environment
Food
Health
Highway 1
Home
Kids' Reading Room
Magazine
Obituaries
Outdoors
Real Estate
Religion
Science & Medicine
Style & Culture
Sunday Opinion
Technology
Times Poll
Corrections

Editions

Print Edition
National (PDF)
Wireless

Extras

College Connection
Sweepstakes
Crossword
Horoscope
Lottery
Multimedia
Traffic
Weather
Week in Focus

Archives

Enter Keyword(s):

GO

Detailed Search
SITE MAP

Los Angeles Times**HOME DELIVERY**

- Subscribe
- Manage My Account
- Gift Subscription
- College Discount
- Mail Subscriptions

IN THE COMMUNITY

- Times in Education
- Reading by 9
- LA Times Books
- Student Journalism
- LA Times Family Fund
- Times-Mirror Foundation
- LA Times Events

MEDIA CENTER CLICK HERE**About The Times****PLACE**

classifieds and more

- Careers
- Cars
- Homes
- Rentals
- Newspaper Ads
- Grocery Coupons
- Personals
- Times Guides
- Recycler.com

Partners

acres of prime cropland and produced the county's highest level of farming activity since the state land-use mapping began in 1984, the report said. Before the postwar population boom, the county was the largest producer of farm crops in the United States.

The new report on five counties in Southern California is one in a series set for release this year as part of the state Farmland Mapping and Monitoring Program, which documents land use on about 46 million acres of public and private land every two years.

The Inland Empire, the state's fastest-growing region for more than a decade, continued its breakneck conversion of agricultural and vacant land to urban uses, according to the study.

Riverside and San Bernardino counties, which have changed more than any other area in California since 1990, converted 20,000 acres of land to urban uses from 2000-02 as Southern California continued to fuel the state's population growth, the state reported.

"The Inland Empire ... is seeing growth pressure that has been unprecedented based on the demand for housing," Young said.

But if the trends in the Inland Empire were predictable, Los Angeles County's small shift back to farming was not, state officials said.

"This was a surprise," said Molly A. Penberth, manager of the mapping program, apparently a singular situation."

She said Los Angeles County's irrigated cropland increased by 3,600 acres to 34,200 of 2002, the highest total since 41,000 acres were in production two decades ago.

Farming in the Antelope Valley dropped sharply in the early 1980s, she said, because water levels fell, making it too expensive to raise crops. But now the farmers are

"Everything's a function of the crop," she said. "Specialty crop value is higher, so more."

Bakersfield farmer Bob Grimm helped create that trend by leasing fallow fields at Lancaster in recent years to grow about 2,500 acres of carrots, including the Bunnies miniatures now popular as snacks.

Grimm, who farms more than 3,500 acres in the Antelope Valley, said the region degree difference in temperature between daytime and nighttime that carrots need drying up in the summer.

"It's kind of a unique situation," Grimm said. "It's a higher elevation, so it doesn't Kern County. Farmers are just trying to find a niche so they can survive."

On one of Grimm's Lancaster farms Monday, manager David Rizzo said his company also moving into the Antelope Valley. "More potato growers from Bakersfield are here," he said.

TOP

Click
to
Los Angeles
delivers
Los Angeles

SUBSCRIBE
Los Angeles
click here

Click
below to
abstract

LOS ANGELES
LOS ANGELES
AGRICULTURE
USE
LAND
AGRICULTURE

Click**Pro**

Small farmers in the Inland Empire are also switching to carrots and other special make a living.

In Riverside County, long an agricultural powerhouse, there has been surprising growth in certain niche farm products, especially in the Coachella Valley, said Steve Pastor, director of the Riverside Farm Bureau. "Baby carrots are very popular and Oriental carrots are very popular on a smaller scale, too," he said.

But that sort of agriculture is often only a holding action as growth sweeps toward the coast.

Transformation of Riverside and San Bernardino counties from an agricultural region to a sprawling megalopolis is emblematic of the overall change in California since World War II.

Together, those two counties accounted for nearly 22% of all farm and vacant land during the 1990s, with Riverside County alone accounting for 14%. And the story for 2000-02, except San Bernardino County surpassed Riverside County in urbanization.

"It's not really a surprise that our farmlands are being converted into homes, because there are more areas to build homes in Orange and Los Angeles counties," said Rachael Scott, executive director of the San Bernardino County Farm Bureau. "There's really no choice in this area ... there's a lot more for houses."

The two counties accounted for 84% of the nearly 43,000 acres of grazing and cropland lost during those two years in a five-county region including Ventura, Orange and Los Angeles counties. San Diego County was not counted because mapping is not yet complete. The Inland Empire also accounted for 78% of the 25,500 acres added to the region's cities. San Bernardino County alone accounted for more than half of the region's lost agricultural land and its urbanization.

From 2000 to 2002, San Bernardino County took more than 23,000 acres of agricultural land — mostly grazing land — out of production, compared with about 13,000 in Riverside County.

About 3,300 acres of agricultural land were lost in Orange County and about 2,000 in San Bernardino County. San Bernardino County added about 12,000 acres of land to cities, while Riverside County added about 8,000, Orange County added about 4,600 and Ventura County added about 3,000.

Prospects for the future also reflect escalating growth: About 44,000 acres of agricultural land in Riverside County are slated for development, while jurisdictions in San Bernardino County report withdrawal of 15,000 acres from agriculture, possibly for future development.

Officially, Los Angeles County's urban areas did not grow at all during 2000-02, but that reflected statistical adjustments prompted by more detailed satellite mapping, not officials said.

The purpose of the mapping program is not to oppose growth, but to provide information so cities and counties better plan for growth, Young said.

"We don't have a problem with lesser-quality farmland being lost to legitimate development," Young said. "We do have a problem with losing productive land that is necessary from a food security standpoint, so we don't have to rely on foreign sources."

BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
JEFFREY V. DUNN, Bar No. 131926
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502
TELEPHONE: (951) 686-1450
TELECOPIER: (951) 686-3083

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE
SECTION 6103

OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
RICHARD D. WEISS, Bar No. 89791
ASSISTANT COUNTY COUNSEL
FREDERICK W PFAEFFLE, Bar No. 145742
SENIOR DEPUTY COUNTY COUNSEL
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-1901
TELECOPIER: (213) 458-4020

Attorneys for Cross-Complainant,

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

DIAMOND FARMING COMPANY,
et al.,

Plaintiffs,

vs.

CITY OF LANCASTER, et al.,

Defendants.

Lead Case No. RIC 344436
Case No. RIC 344668
Case No. RIC 353840

Judge: Gary B. Tranbarger
Dept.: 7

[PROPOSED] CROSS-COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND ADJUDICATION OF WATER
RIGHTS

Complaint Filed: October 29, 1999
Trial Date: Vacated

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40,

Cross-complainant,

vs.

DIAMOND FARMING COMPANY, a
corporation; and WM. BOLTHOUSE
FARMS, INC., a corporation;

1 and ROES 1 through 10,000 inclusive,
2 Cross-defendants.

3
4
5 Cross-complainant Los Angeles County Waterworks District No 40 alleges:
6

7 **INTRODUCTION**
8

9 1. This action seeks a judicial determination of all rights to ground water within the
10 Antelope Valley Groundwater Basin. The adjudication is necessary to protect and conserve the
11 vital water groundwater supply of the Antelope Valley. The groundwater supply is vital to the
12 health, safety and welfare of tens of thousands of persons and entities in communities who
13 depend upon water deliveries from Los Angeles County Waterworks District No. 40, Antelope
14 Valley (the "District"). For these reasons, the District files this cross-complaint to promote and
15 protect the general public welfare in the Antelope Valley, to protect the District's rights to pump
16 and deliver water to the public, and to protect the Antelope Valley from loss of groundwater
17 supply, degradation of the quality of groundwater, land subsidence and higher costs to provide
18 public water service.
19

20 2. Los Angeles County Waterworks District No. 40 is a public agency lawfully
21 organized to provide water to the public in a large portion of the Antelope Valley. District
22 customers need a reliable and safe groundwater supply for domestic and business needs. To
23 provide water to the public, the District has drilled and equipped wells to pump groundwater.
24 The District has also constructed, maintained and operated a waterworks delivery system to
25 supply groundwater to users within the District. Without an adequate and safe groundwater
26 supply, the residents and businesses in the Antelope Valley would likely not have enough water.
27
28

1 3. The District has pumped groundwater since 1919. The District is informed and
2 believes, and thereon alleges, that it has pumped groundwater for more than five consecutive
3 years during which the Antelope Valley Groundwater Basin was in a state of overdraft. Thus,
4 District pumping is and has been open, notorious and under claim of right which is hostile to
5 rights, if any, of any other person or entity including cross-defendants and/or their predecessors in
6 interest.

7
8 4. In addition to pumping groundwater, the District purchases State Water Project
9 water from the Antelope Valley-East Kern Water Agency. The District distributes the purchased
10 State Project water through the District's waterworks systems for public use.

11
12 5. The District's purchase and delivery of Project water augments the natural supply
13 of groundwater in the Basin. District customers use Project water for a variety of uses and thus, a
14 portion of the Project water percolates into the Basin and commingles with the Basin's natural
15 water.

16
17 6. The District is pursuing required approvals to allow the option for the construction
18 and operation of injection wells or other means by which State Water Project water or other water
19 imported from outside the Basin may be injected or placed for storage in the Basin. By storing
20 Project or other imported water in the Basin, the District could recover the stored water during
21 times of drought, water supply emergencies, or other water shortages to ensure a safe and reliable
22 supply of water to the public.

23
24 7. To provide water to the public, the District has and claims the following rights,
25 each of which is paramount and superior to any overlying rights or other water rights, if any,
26 claimed by cross-defendants:

27
28 A. The right to pump groundwater from the Antelope Valley Groundwater

1 Basin in an annual amount equal to the highest volume of groundwater extracted by the District in
2 any year preceding entry of judgment in this action according to proof, but not less than 18,944
3 acre feet;

4
5 B. The right to pump or authorize others to extract from the Antelope Valley
6 Groundwater Basin a volume of water equal in quantity to that volume of water previously
7 purchased by the District from the Antelope Valley-East Kern Water Agency and which has
8 augmented the supply of water in the Basin in any year preceding entry of judgment in this action
9 according to proof, but not less than 18,944 acre feet;

10
11 C. The right to pump or authorize others to extract from the Antelope Valley
12 Groundwater Basin a volume of water equal in quantity to that volume of water purchased in the
13 future by the District from the Antelope Valley-East Kern Water Agency which augments the
14 supply of water in the Basin; and

15
16 D. The right to pump or authorize others to extract from the Antelope Valley
17 Basin a volume of water equal in quantity to that volume of water injected into the Basin or
18 placed within the Basin by the District or on its behalf.

19
20 8. The District has made all filings and recordation required under *Water Code*
21 section 4999 *et seq.*

22
23 **PARTIES**

24
25 9. The District is informed and believes, and on that basis alleges, that plaintiffs
26 Diamond Farming Company, a corporation; and Wm. Bolthouse Farms, Inc., a corporation, are
27 entities who own and/or lease real property within the Antelope Valley Groundwater Basin; and
28 who claim an interest or right to use Basin water.

1 10. The District is informed and believes, and on that basis alleges, that cross-
2 defendant Roes 1 through 10,000, inclusive, own and/or lease real property within the Antelope
3 Valley Groundwater Basin, extract water from the Basin, claim some right, title or interest to
4 Basin water, and/or that their claims are adverse to the District's rights and claims. The District is
5 unaware of their true names and capacities and therefore sues those cross-defendants by fictitious
6 names. The District will seek leave to amend this cross-complaint to add such names and
7 capacities when ascertained.
8

9 **THE ANTELOPE VALLEY GROUNDWATER BASIN IS AND HAS BEEN IN A STATE**
10 **OF OVERDRAFT**
11

12 11. The Antelope Valley Groundwater Basin is located in Los Angeles and Kern
13 counties. The Basin is located in an arid valley in the Mojave Desert , about 50 miles northeast of
14 Los Angeles. The Basin encompasses about 940 square miles.
15

16 12. To date, there has been no limit upon groundwater pumping in the Basin. As a
17 result of this lack of groundwater control and management over the past eighty years, the Basin
18 has lost an estimated eight million acre feet of water. This loss of groundwater has caused
19 chronic declines in groundwater levels and land subsidence. Land subsidence and chronic
20 declines in groundwater levels continue because of unlimited groundwater pumping in the Basin.
21 The land subsidence, loss of groundwater storage, and declining groundwater levels injure the
22 public welfare and threaten the communities who depend upon the Basin water.
23

24 13. Although agricultural pumping decreased for a limited time when groundwater
25 levels became too low for agriculture to pump water from the Basin, agricultural pumping has
26 increased after plaintiffs filed their complaints in these cases. During the same time, continued
27 urbanization in and around the cities of Palmdale and Lancaster has increased the public's need
28 for water.

Existing pumping causes damage and injury to the Basin including land subsidence. Land subsidence exists and will increase unless the court establishes a safe yield for the Basin and limits pumping to the Basin's safe yield.

14. The District is informed and believes and upon that basis alleges the Basin is and has been in an overdraft condition for more than five (5) consecutive years before the filing of plaintiffs' complaints and before the filing of this cross-complaint. During said time periods, total annual demands upon the Basin have exceeded and continue to exceed the supply of water from natural sources. Consequently, there is and has been a progressive and chronic decline in Basin water levels and the available natural supply is being and has been chronically depleted. Unless limited by order and judgment of the court, potable Basin water will be exhausted and land subsidence will continue.

15. Each cross-defendant has, and is now, pumping, appropriating and diverting water from the natural supply of the Basin. The District is informed and believes and upon that basis alleges that the combined extraction of water by cross-defendants constitutes a substantial portion of the annual production of water from the Antelope Valley Basin, and that each cross-defendant claims a right to take water and threatens to increase its taking of water without regard to the rights of the District. Cross-defendants' pumping reduces Basin water tables and contributes to the deficiency of the Basin water supply as a whole. The deficiency results in a shortage of water to the public who depend upon the District to supply water from the Basin. Cross-defendants' continued and increasing extraction of Basin water has resulted in, and will result in, a diminution, reduction and impairment of the Basin water supply; causes land subsidence; and has and will deprive the District of its rights to provide water for the public's health, welfare and benefit.

16. The District is informed and believes and thereon alleges there are conflicting claims of rights to the Basin and/or its water.

17. The District has appropriative and prescriptive rights to Basin groundwater as the District has pumped water from the Basin since 1919. Since that time, the District has pumped water from the Antelope Valley Basin and/or stored water in the Antelope Valley Basin by reasonable extraction means and has used the Antelope Valley Basin and/or its water for reasonable and beneficial purposes, and has done so under a claim of right in an actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse, use and/or manner for at least five years before filing this cross-complaint.

FIRST CAUSE OF ACTION

(For Declaratory Relief – Prescriptive Rights – Against all Cross-Defendants)

18. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 17, inclusive.

19. The District contends that no cross-defendant has a right to take or increase its take of Basin water, and that any right of any cross-defendant to do so is subordinate to the rights of the District and to the general welfare of the citizens, inhabitants and customers serviced by Los Angeles County Waterworks District No. 40, Antelope Valley.

20. An actual controversy has arisen between the District and cross-defendants. The District alleges, on information and belief, that cross-defendants dispute the contentions of the District as described in the immediately preceding paragraph.

21. The District seeks a judicial determination as to the correctness of its contentions and to the amount of Basin water to which the District and each cross-defendant are entitled to pump from the Basin.

SECOND CAUSE OF ACTION

(For Declaratory Relief – Physical Solution – Against all Cross-Defendants)

22. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 21, inclusive.

23. Upon information and belief, the District alleges that cross-defendants claim rights to Basin water and further claim they can increase their take without regard to the rights of the District. Unless restrained by order of the court, cross-defendants will continue to take larger and increasing amounts of Basin water to the great and irreparable damage and injury to the District and to the Basin. The damage and injury to the Basin cannot be compensated for in money damages.

24. By reason of the large and increasing amounts of Basin water extracted by cross-defendants as alleged above, the amount of Basin water available to the District has been reduced. Unless cross-defendants and each of them are enjoined and restrained, the aforementioned conditions will continue and will become more severe; and there will be further depletion of the Basin groundwater supply which will further permanently damage the Basin's ability to supply water to the public.

25. To prevent irreparable injury to the Basin, it is necessary that the court determine, impose and retain continuing jurisdiction to enforce a physical solution upon the parties who pump water from the Basin. The solution to the Basin problems may include, but is not limited to, a monetary assessment, and metering and assessments upon Basin water extraction to pay for the purchase, delivery of supplemental supply of water to the Basin, and the court appointment of a watermaster.

THIRD CAUSE OF ACTION

(For Declaratory Relief – Municipal Priority – Against all Cross-Defendants)

26. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 25, inclusive.

27. The District has the right to pump water from the Basin not only to meet existing public needs for water, but also to take increased amounts of Basin water as necessary to meet future public needs. The District's rights to Basin water exist not only as a result of the priority and extent of the District's appropriative and prescriptive rights, but exist as a matter of law and public policy of the State of California: "It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." (*Water Code* §106.)

28. *Water Code* Section 106.5 provides: "It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses. . . ."

29. Under *Water Code* sections 106 and 106.5, the District has a prior and paramount right to Basin water as against all non-municipal uses.

30. An actual controversy has arisen between the District and cross-defendants. The District alleges, on information and belief, that cross-defendants dispute the District's contentions as described in the paragraphs 26 through 29, inclusive. The District is informed and believes and on that basis alleges that the majority of groundwater pumped by cross-defendants is used for irrigation purposes.

31. The District seeks a judicial determination as to the correctness of its contentions

1 and to the amount of Basin water to which the parties are entitled to pump from the Basin. The
2 District also seeks a declaration that it has the right to pump water from the Basin to meet its
3 reasonable present and future needs, and that such rights are prior and paramount to the rights, if
4 any, of cross-defendants to the use of Basin water for irrigation purposes.

5
6 **FOURTH CAUSE OF ACTION**

7
8 (Declaratory Relief – Storage of Imported Water in The Basin – Against all Cross-Defendants)

9 32. The District alleges and incorporates by reference herein allegations in paragraphs
10 1 through 31, inclusive.

11
12 33. The District purchases and uses water from the State Water Project. Project water
13 is not native to the Basin and the imported Project water decreases the District's pumping from
14 the Basin. This imported water would not otherwise have been brought to the Basin but for the
15 District purchase and delivery. The District pays a substantial cost for this imported water
16 supply. This cost is an annual amount subject to cost increases over time.

17
18 34. As an importer of Project water, the District has the right to store imported Project
19 water in the Basin and the District has the sole right to pump or otherwise use the stored imported
20 Project water. The rights, if any, of cross-defendants are limited to the native supply of the Basin,
21 and cross-defendants rights, if any, do not extend to groundwater derived from any water
22 imported into the Basin by the District.

23
24 35. An actual controversy has arisen between the District and cross-defendants. The
25 District alleges, on information and belief, that cross-defendants dispute the District's contentions
26 described in paragraphs 32 through 34, inclusive.

27
28 36. The District seeks a judicial determination as to the correctness of its contentions,

1 that the District can store and recapture imported Project water in the Basin, and that the District
2 has the sole right to pump or otherwise use such stored Project water.

3
4
5 **FIFTH CAUSE OF ACTION**
6

7 (Declaratory Relief – Recapture of Return Flows

8 From Imported Water in The Basin – Against all Cross-Defendants)
9

10 37. The District alleges and incorporates by reference herein allegations in paragraphs
11 1 through 36, inclusive.

12
13 38. A portion of the water that the District imports and uses and continues to import
14 and use from outside the Basin returns or enters and will continue to return or enter the Basin and
15 are commonly known as “return flows.” These return flows augment the Basin’s water supply.
16

17 39. The District has the sole right to recapture return flows attributable to the water it
18 imports or is imported on the District’s behalf. The rights, if any, of cross-defendants are limited
19 to the Basin’s native supply, and do not extend to groundwater attributable to the District’s return
20 flows.
21

22 40. An actual controversy has arisen between the District and cross-defendants. The
23 District alleges, on information and belief, that cross-defendants dispute the contentions of the
24 District as described in paragraphs 36 through 39, inclusive.
25

26 41. The District seeks a judicial determination as to the correctness of its contentions
27 and that the District has the sole right to recapture its imported return flows in the Basin at the
28 present and into the future.

SIXTH CAUSE OF ACTION

(Unreasonable Use of Water - Against all Cross-Defendants)

42. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 41, inclusive.

43. Article X, Section 2 of the California Constitution requires the implementation of reasonable conservation measures to prevent waste, misuse and the unnecessary use of water. The District is informed and believes and on that basis alleges that some cross-defendants who use Basin water for agriculture are doing so as an unreasonable use of water. The Basin is located in an arid valley in the Mojave Desert, about 50 miles northeast of Los Angeles. The arid area of the Antelope Valley is not conducive to agriculture. Agriculture requires an unreasonable amount of Basin water in the arid Antelope Valley and agricultural pumping threatens established communities who depend upon Basin water.

44. The District is informed and believes and on that basis alleges that the use of water by many cross-defendants for irrigation purposes is unreasonable in the arid Antelope Valley and constitutes waste, unreasonable use or an unreasonable method of diversion or use within the meaning of Article X, Section 2 of the California Constitution, and is thereby unlawful.

45. An actual controversy has arisen between the District and cross-defendants. The District alleges, on information and belief, the cross-defendants dispute the District's contentions in paragraphs 42 through 44, inclusive.

46. The District seeks a judicial declaration that cross-defendants have no rights to unreasonable use, unreasonable methods of use, or waste of water, and their rights, if any, should be determined on reasonable use of water in the arid Antelope Valley than upon the amount of water actually used.

PRAYER FOR RELIEF

WHEREFORE, Los Angeles County Waterworks District No. 40, Antelope Valley prays
for judgment as follows:

1. Judicial declarations consistent with the District's contentions in paragraphs 21,
25, 31, 36, 41, and 46, above;

2. For preliminary and permanent injunctions which prohibit cross-defendants, and
each of them, from taking, wasting or failing to conserve water from the Antelope Valley
Groundwater Basin in any manner which interferes with the rights of the Los Angeles
Waterworks District No. 40, Antelope Valley to take water from or store water in the Basin to
meet its reasonable present and future needs;

3. For prejudgment interest as permitted law;

4. For attorney, appraisal and expert witness fees and costs incurred in this action;
and

5. Such other relief as the court deems just and proper.

Dated: September 30, 2004

BEST BEST & KRIEGER LLP

By: _____

ERIC L. GARNER
JEFFREY V. DUNN
Attorneys for Cross-complainant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

PROOF OF SERVICE

I, Lynda A. Serwy, 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, 3750 University Avenue, P.O. Box 1028, Riverside, California 92502. On September 30, 2004, I served the within document(s): NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE CROSS-COMPLAINT; DECLARATION OF JEFFREY V. DUNN

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.

☐ by causing personal delivery by _____ 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 _____ following the firm's ordinary business practices.

Robert H. Joyce, Esq.
LeBeau Thelen Lampe McIntosh & Crear LLP
5001 East Commercenter Drive, #300
P.O. Box 12092
Bakersfield, California 93389-2092

Phone: (661) 325-8962

Fax: (661) 325-1127

Douglas J. Evertz
Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660-6422

Phone: (949) 725-4000

Fax: (949) 725-4100

John Tootle
Corporate Counsel
California Water Service Company
3625 Del Amo Blvd., Suite 350
Mariner Court
Torrance, California 90503

Phone: (310) 257-1488

Fax: (310) 542-4654

Richard G. Zimmer, Esq.
Clifford & Brown
1430 Truxtun Avenue, Suite 900
Bakersfield, California 93301-5230

Phone: (661) 322-6023

Fax: (661) 322-3508

1 Thomas S. Bunn III, Esq.
2 Lagerlof Senecal Bradley Gosney & Kruse
3 301 North Lake Avenue, 10th Floor
Pasadena, California 91101-4108

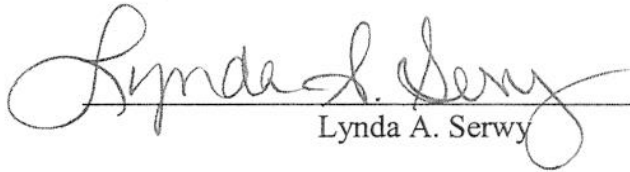
4 Phone: (626) 793-9400

5 Fax: (626) 793-5900

6 I am readily familiar with the firm's practice of collection and processing
7 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
8 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.

9 I declare that I am employed in the office of a member of the bar of this court at
10 whose direction the service was made.

11 Executed on September 30, 2004, at Riverside, California.

12 
13 Lynda A. Serwy
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28