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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF LOS ANGELES

14 Coordination Proceeding Special Title
15 (Rule 1550 (b))

Judicial Council Coordination No. 4408

16 ANTELOPE VALLEY GROUNDWATER
17 CASES

Case No.: 1-05-CV-049053

18 Included actions:

**DIAMOND FARMING'S RESPONSE
TO UNITED STATES' MOTION FOR
JUDGMENT ON THE PLEADINGS
AND MEMORANDUM IN SUPPORT
THEREOF**

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

**DATE: September 21, 2006
TIME: 10:00 a.m.
DEPT: 1**

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

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

I.

INTRODUCTION

The United States Government attempts by its Motion for Judgment on the Pleadings to adjudicate by Motion, and as a matter of law, a jurisdictional issue which is fact intensive and factually dependent. This Court has already set a trial date to adjudicate in Phase I the appropriate jurisdictional boundary for this adjudication. At that time, it is expected and intended that this Court will take

1 evidence concerning the appropriate jurisdictional boundary, not only for the purposes of ensuring that
2 this adjudication includes “. . . **the undetermined claims of all parties with an interest in the relevant**
3 **water source. . . .**” (*United States v. Oregon* (9th Cir. 1994) 44 F.3d 758, cert. denied, 516 U.S. 943
4 (1995)) thus satisfying the jurisdictional requirements of the McCarran Amendment, 43 U.S.C. § 666(a),
5 but also and in addition, it is anticipated that in the Phase I Trial, this Court will consider the obvious
6 need to establish an appropriate boundary such that this Court has jurisdiction over all real property and
7 all parties necessary to a complete and comprehensive adjudication and ultimately all necessary to the
8 imposition of an effective “physical solution” as sought in the Cross-Complaint. In short, the Motion
9 by the United States Government is premature, and any determination by this Court, in the absence of
10 expert testimony, tested by cross-examination, would be premature and ill-considered. This Court
11 should deny the Motion by the United States Government without prejudice, and proceed with the Phase
12 I Trial. Therein, this Court will take and hear evidence so as to formulate and establish, based upon an
13 informed decision, an appropriate adjudication boundary which will ensure that all undetermined claims
14 of all parties with an interest in the relevant water source are before the Court.

15 II.

16 THE McCARRAN AMENDMENT

17 A review of the relevant authority clearly establishes that the waiver of sovereign immunity
18 contemplated by the McCarran Amendment is intended to permit the United States to be made a party
19 in water rights adjudications, limited by and subject to the legislative intent expressed therein.
20 Specifically, it was intended to permit the United States to be sued in State Court in a comprehensive
21 adjudication so as to avoid and, in fact, implement the legislative policy to avoid piecemeal adjudication
22 of water rights. (*Colorado River Water Conservation District v. United States* (1976) 424 U.S. 800,
23 819.) The McCarran Amendment does not presuppose nor does it require that competing claims to all
24 interrelated sources of water must in all adjudications be litigated concurrently in order to qualify an
25 adjudication as a “general” or “comprehensive” adjudication necessary to meet the legislative policy
26 embraced within 43 U.S.C. § 666(a).

27 In *United States v. Oregon* (9th Cir. 1994) 44 F.3d 758, cert. denied, 516 U.S. 943 (1995), that
28 court concluded that the adjudication must be such that it strives to avoid piecemeal litigation of water

1 rights, but need not determine the rights of all claimants to all hydrologically-related water sources.
2 There, the court considered a challenge to an adjudication that was limited to the undetermined claims
3 to surface flows in a river system. That adjudication did not include as a relevant water source the
4 residue of that river flow, i.e., groundwater. The court concluded that it was not necessary, in order to
5 meet the “comprehensive” standard, to adjudicate the claims to the residue, i.e., groundwater rights since
6 a determination of all undetermined and competing claims to the surface flow itself would be sufficiently
7 comprehensive as to those rights. However, that court also confirmed that the determination is not a
8 purely legal issue to be resolved by motion and as a matter of law, nor simply a hydrologically technical
9 issue, resolved by categorizing the undetermined claims and water as being overlying or appropriative
10 claims to groundwater or riparian or appropriative claims to surface water. Rather, the court in *United*
11 *States v. Oregon, supra*, makes clear as directed by U.S. Supreme Court precedent that “. . . the
12 adjudication must include the undetermined claims of all parties with an interest in the **relevant water**
13 **source.**” (*United States v. Oregon, supra*, p. 769.) Thus, it is necessary and imperative to meet the
14 legislative policy underlying the McCarran Amendment, and to ensure that this Court has jurisdiction
15 over all necessary parties and real property, to determine what the “relevant water source” is in the Phase
16 I trial of this adjudication. That determination both presupposes and necessitates evidence and thus the
17 Phase I Trial as previously scheduled and as presently contemplated.

18 III.

19 THE RELEVANT WATER SOURCE

20 As this Court will recall and as the Court’s file will reflect, on July 11, 2006, this Court issued
21 its Order directing all party litigants who intended to proffer evidence in the then scheduled Phase I Trial,
22 to provide and submit to the Court the identity of any witness which any party intended to call at trial,
23 a summary of the testimony anticipated to be proffered by that witness, and an estimate of the time
24 necessary for that testimony. In response to that Order, numerous parties filed expert witness
25 designation information and declarations and/or summaries of anticipated expert witness testimony.
26 This Court need only review those expert witness declarations and exhibits posted with this Court on
27 June 29, 2006, to conclude that there exist a wide divergence of opinion as between the experts
28 themselves as to what the appropriate adjudication boundary should be but also what sources of water

1 should be properly considered and/or included within the “relevant water source.” However, virtually
2 every expert witness uniformly and consistently agree that: **“Thus, for all practicable purposes,
3 incident precipitation on the Valley floor does not contribute to recharge of the underlying aquifer
4 system.”** (*Declaration of Joseph C. Scalmanini, P.E., Regarding the Boundaries of the Antelope Valley
5 for Adjudication Purposes - Kern and Los Angeles Counties, California, posted June 29, 2006, p. 13,
6 lines 24-25, Document No. 15-60.*)

7 Virtually every expert also agrees that the most significant source, if not the only source, of
8 groundwater recharge to the Antelope Valley is from precipitation on the mountains and hills
9 surrounding the Valley which runs off and into the Valley either as surface stream flows or as
10 groundwater underflow upgradient from the Valley floor. **“Run off that originates as precipitation
11 on the mountains and hills around the Antelope Valley has long been reported as the only source
12 of “native” (originating in the watersheds that surround the Valley and its underlying aquifer
13 system) water that contributes to groundwater recharge. Some of the surface water runoff that
14 reaches the Valley floor has historically been diverted for water supply, and some of those
15 diversions continue. Most of the balance of mountain runoff that reaches the Valley floor
16 continues to be the most significant, if not the only, source of “native” water that recharges the
17 aquifer system beneath the Valley.”** (*Declaration of Joseph C. Scalmanini, P.E., Regarding the
18 Boundaries of the Antelope Valley for Adjudication Purposes - Kern and Los Angeles Counties,
19 California, posted June 29, 2006, p. 14, lines 1-7, Document No. 15-60.*)

20 A determination of the “relevant water source,” is and will be fact intensive and necessitate a
21 contested trial to permit cross-examination and ensure a fully adjudicated and reasoned determination
22 of an appropriate adjudication boundary so as to satisfy both the McCarran Amendment and to also
23 ensure that this Court will have jurisdiction sufficient to implement, as and if necessary, the “physical
24 solution” sought.

25 Ultimately, this Court must discern after hearing all relevant evidence, whether or not the surface
26 water and upgradient under flow which is the source of what is called the groundwater is so inextricably
27 interconnected with and part of that water source that is the “relevant water source,” such that it is
28 impossible to comprehensively and meaningfully adjudicate the groundwater rights without considering

1 the source from which that groundwater originates. Such a proceeding is not new nor unique. We would
2 refer this Court to the California Supreme Court's decision in *City of Barstow v. Mojave Water Agency*
3 (2000) 23 Cal.4th 1224, wherein the California Supreme Court concluded that because the Mojave River
4 Basin was traversed by the Mojave River that both the surface and groundwater "constituted a single
5 interrelated source." Is that conclusion applicable in the Antelope Valley?

6 IV.

7 CONCLUSION

8 As is made clear by the District Court in *United States v. Oregon*, (9th Cir. 1994) 44 F.3d 758,
9 cert. denied, 516 U.S. 943 (1995), the relevant inquiry is and the standard to be met dictates that this
10 adjudication ". . . **must include the undetermined claims of all parties with an interest in the**
11 **relevant water source.**" Thus, the inquiry is: What is the "relevant" water source? That determination
12 is not one that can be made in a vacuum nor as a matter of law. That determination is fact dependent
13 and will necessitate the taking of evidence, subject to cross-examination, at and during the Phase I Trial
14 currently scheduled for October 10, 2006. It is respectfully submitted that the Motion by the United
15 States Government should be denied without prejudice and the matter should proceed to trial, and
16 thereafter, this Court can, after due consideration of the evidence proffered, establish an appropriate
17 adjudication boundary which will satisfy the dictates of the McCarran Amendment, and which will
18 likewise ensure that this Court has sufficient jurisdiction over all parties and all real property necessary
19 to the implementation of the anticipated physical solution sought by the municipal Purveyors.

20 Dated: September 1, 2006

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21
22 By: 

23 BOB H. JOYCE
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