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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
10

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

Judicial Council Coordination
Proceeding No. 4408

13 **ANTELOPE VALLEY GROUNDWATER**
14 **CASES**

[Assigned to The Honorable Jack Komar, Judge
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

15 **REPLY MEMORANDUM IN SUPPORT OF**
16 **MOTION TO TRANSFER AND**
17 **CONSOLIDATE FOR ALL PURPOSES**

18 Date: October 13, 2009

19 Time: 10:00 a.m.

20 Dept.: 17, San Jose

21 The city of Palmdale, city of Lancaster, California Water Service Co., Palmdale Water District,
22 Quartz Hill Water District, Littlerock Creek Irrigation District and Palm Ranch Irrigation District
23 respectfully submit this reply memorandum in support of their motion for transfer and complete
24 consolidation. It appears that all parties agree on the desirability of a single judgment in these
25 coordinated cases. It would set forth all the parties' water rights in one place; it would allow for efficient
26 administration of a physical solution; and it would help satisfy the comprehensiveness requirement of
27 the McCarran Amendment. Nobody asserts that the subject cases and pleadings do not concern common
28 questions of law and fact. Nobody is asking for separate trials of the coordinated cases. Nobody has

1 asserted that any harm will come from consolidation. The only question is whether the Court has the
2 authority to order complete consolidation to achieve these desirable goals.

3 The original moving papers demonstrated that the Court has this authority under Code of Civil
4 Procedure sections 1048 and 128(a)(3) and Rule 3.541(b), California Rules of Court. In response to the
5 Court's request, the Public Water Suppliers filed (a) a matrix listing all complaints and cross-complaints
6 proposed to be consolidated; (b) a chart depicting the causes of action asserted by and against the
7 parties; and (c) a suggested alignment of the parties if consolidation is granted.

8
9 **I. The Classes' Declaratory Relief Cause of Action Puts Their Water Rights At Issue.**

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11 A number of landowner parties filed a supplemental opposition, restating earlier legal arguments
12 and also stating that the proposed alignment of parties did nothing to alter the status quo of the
13 pleadings. The landowners concluded by arguing that the Public Water Suppliers should add the existing
14 classes as cross-defendants to the Public Water Suppliers' cross complaint, or alternatively certify a new
15 defendant class. (See Supplemental Opposition filed Sept. 18, 2009 at p. 7 and Ex. B.) This argument
16 ignores the central point of the Public Water Suppliers' earlier reply memorandum: The classes, by
17 suing for declaratory relief, put their water rights at issue, as much as if they had been named as cross-
18 defendants. The Court, in response to the declaratory relief cause of action, has the authority to give
19 complete relief, including both a comprehensive *inter se* adjudication of water rights and a physical
20 solution. (See Reply Memorandum filed Aug. 7, 2009 at pp. 6 – 8.)

21 In reality, no change in the existing pleadings is necessary.

22
23 **II. The Court Has Authority To Order Complete Consolidation of These Complex**
24 **Consolidated Actions.**

25
26 The landowners' supplemental opposition reiterated two arguments against consolidation,
27 arguing that complex cases may never be consolidated and that complete consolidation is only allowed
28 when parties are identical. (See Supplemental Opposition filed Sept. 18, 2009 at pp. 3 – 5.) These

1 arguments were refuted in the Public Water Suppliers' moving papers and earlier reply memorandum.
2 The landowners attempted to distinguish one of the cases cited by the Public Water Suppliers,
3 *Committee for Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191. They said that
4 that case involved only a consolidation for trial, not a complete consolidation. They quoted the trial
5 court's order requiring separate findings and judgments. (*Id.* at 194.)

6 The landowners are correct that the *trial court* consolidated the cases only for trial. However, the
7 court of appeal held that this was *improper*, because the various parties' contentions were not
8 independent, but all related to the same fundamental issue: the validity of the defendant's actions.
9 Therefore, the cases were required to be consolidated for all purposes, including entry of judgment. (*Id.*
10 at 198.) The court of appeal dismissed the appeal for this reason. (*Id.* at 199.)

11 Similarly, here, the various parties' contentions are not independent, but all relate to the
12 comprehensive determination of water rights. As in *Indian Wells*, identity of parties is not required in
13 such a situation. (See also *Paduano v. Paduano* (1989) 215 Cal.App.3d 346, 351 (consolidation
14 appropriate "because the primary subject matter, and the object of both proceedings, was the same").)

15 In addition, as pointed out in the moving papers, Code of Civil Procedure section 1048 does not
16 require identity of parties, and applies by its terms to all cases, complex or not. The only requirement is
17 that there be a common question of law or fact, which has already been found for these coordinated
18 cases.

19 20 **III. Consolidation Will Not Prejudice Settlement With The Classes.**

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22 Rebecca Willis filed an opposition asserting that consolidation would jeopardize the proposed
23 settlement between the Public Water Suppliers, the federal government, and the two classes. The only
24 reason given for this assertion is that any such settlement could likely not be finalized until the claims of
25 all the other landowners had been determined. That is incorrect. The consolidation would not expand or
26 restrict the claims made in the existing pleadings. It would still be possible for the classes' claims
27 against the Public Water Suppliers to be settled separately, subject to appropriate notice and court
28

1 approval requirements. The only difference would be that the settlement would ultimately be part of the
2 single judgment entered by the Court following consolidation.

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4 **IV. The Motion Was Served In Compliance With The Court's Electronic Service Order.**

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6 There is no dispute that this motion was served in full compliance with the Court's electronic
7 filing and service standing order, dated August 28, 2006. The court rules do not call for service that is
8 any more extensive than that for any other motion.

9 It should be noted that many cross-defendants filed the model answer approved by the Court.
10 The model answer expressly provides that the answering party "do[es] not intend to participate at trial or
11 other proceedings unless ordered by the Court to do so...." It appears that the Court's service list reflects
12 this, and does not include parties filing the model answer on the service list.

13
14 **V. Conclusion.**

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16 The proposed alignment of parties suggested by the Public Water Suppliers represents a
17 workable way to manage the consolidated cases, without requiring any changes in the existing
18 pleadings. The Court has the authority to and should grant the motion for transfer and consolidation.
19 Granting the motion now will enable the case to move forward.

20
21 Dated: September 23, 2009

LAGERLOF, SENECAL, GOSNEY & KRUSE, LLP

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23 By: _____
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