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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding

Case No. 105 CV 049053

**ANTELOPE VALLEY  
GROUNDWATER CASES**

Judicial Council Coordination Proceeding  
No. 4408

Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co.

Hon. Jack Komar

Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co.

**RESPONSE OF CITY OF LOS ANGELES  
TO PUBLIC WATER SUPPLIERS'  
MOTION FOR CLASS CERTIFICATION**

Wm. Bolthouse Farms, Inc. v. City of  
Lancaster

Hearing:

Diamond Farming Co. v. City of  
Lancaster

Date: March 12, 2007  
Time: 9:00 a.m.  
Dept.: 1

Diamond Farming Co. v. Palmdale Water  
District

1 Defendant City of Los Angeles, a public entity, by and through its Department of Water  
2 and Power and on behalf of its Department of Airports, hereby responds to the Motion for Class  
3 Certification made by cross-complainants California Water Service Company, City of Lancaster,  
4 City of Palmdale, Littlerock Creek irrigation District, Los Angeles County Waterworks District  
5 No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation  
6 District, and Quartz Hill Water District (collectively “the Public Water Suppliers”) as follows:

7  
8 SUMMARY

9 The City of Los Angeles (“the City”) agrees that this case should be simplified by  
10 certification of a defendant class, however, the City opposes the Public Water Suppliers’ current  
11 motion for class certification because the class definition is too broad and treats private and public  
12 entities as a single group despite the actual and potential legal differences between the two  
13 groups. The City urges the Court to exercise its discretion to exclude from any certified  
14 defendant class all public, governmental entities that own land in the adjudication area of the  
15 Antelope Valley Groundwater Basin.

16 ARGUMENT

17 The sheer number of individually owned parcels within the court-defined adjudication  
18 area of the Antelope Valley Groundwater Basin may render individual litigation by each  
19 landowner unduly burdensome to the court and too costly and impracticable for the participants.  
20 Consequently, the City supports efforts to simplify this complex litigation through class  
21 certification or other procedures. With regard to the Public Water Suppliers’ current motion for  
22 class certification, however, the City objects to the certification of the class because the current  
23 definition is overly broad, lumping together private individuals and public entities such as the  
24 City despite clear and material differences.

25 The Public Water Suppliers propose a defendant class defined as “[a]ll owners of land  
26 within the adjudication area that is not within the service area of a public entity, public utility, or  
27 mutual water company.” (Public Water Suppliers’ Motion for Class Certification (“Motion”) at 5)  
28 This expansive class would include the City, the United States Air Force Base, the State of

1 California and all other public entities among the thousands of individual private property  
2 owners within the adjudication area, despite the fact that the distinction between private entities  
3 and government entities looms large in the law and in this case, particularly with respect to  
4 defenses. As acknowledged by the Public Water Suppliers, the determination of a proper class  
5 requires that class members have similar defenses and that they will have a “common defense to  
6 . . . prescriptive rights claims.” (Motion at 13) This requirement cannot be satisfied by the class  
7 definition proposed; public overlyers have a statutory defense against prescription is that is  
8 unavailable to the private overlyers in the class. Civil Code Section 1007.

9 Civil Code section 1007 declares that “no possession by any person, firm or corporation  
10 no matter how long continued of any land, *water, water right*, easement, or other property . . .  
11 owned by the state or any public entity, shall ever ripen into any title, interest, or right against the  
12 owner thereof.” (emphasis added) This defense has been recognized in groundwater  
13 adjudications as protecting public entities against prescription claims made by both private and  
14 other governmental parties. *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199,  
15 270-277. Thus, the City and other public entities within the adjudication area are immune from  
16 all claims of prescription, whereas private individuals and other private entities that would  
17 comprise the vast majority of the proposed defendant class are not. Thus, the City objects to  
18 being made part of a defendant class that includes a majority of private landowners that will have  
19 to face and defend against different claims in the groundwater basin adjudication, particularly  
20 prescription.

21 The Court should also consider that public entities like the City are politically created for  
22 specific purposes and to serve specific constituencies. Public entities such as the City must also  
23 adhere to myriad laws and regulations that are not applicable to private entities. As discussed  
24 above regarding Civil Code Section 1007, laws applicable to individuals do not necessarily apply  
25 to public entities. Furthermore, the City has an entirely different governance and decision-  
26 making structure than most private entities involved in this case, many of which are likely  
27 individual, private landowners. At this time, it is unknown exactly how this lawsuit will progress  
28 or what legal strategies and claims will arise. Given these uncertainties, the City again urges the

1 Court to recognize these obvious differences and potential conflicts and to exclude the City and  
2 other public entities from the proposed defendant class.

3 The federal case cited by the Public Water Suppliers, while involving certification of a  
4 defendant class, also does not support the expansive definition of the proposed defendant class  
5 they have proposed. Before discussing the class action issue, the Court in that case cautioned that  
6 “[g]enerally, where appropriative water rights are involved in a general stream adjudication, each  
7 individual appropriator must be brought before the court.” *United States v. Truckee-Carson*  
8 *Irrigation District* (1975) 71 F.R.D. 10, 14. The Court then found creation of a limited defendant  
9 class particularly justified because all seven class defendants in the case had water rights “fixed  
10 under the terms of his contract” and “each certificate holder would be affected equally by a  
11 proportionate reduction of their water rights.” *United States v. Truckee-Carson Irrigation*  
12 *District* (1975) 71 F.R.D. 10, 15. The Court went on to state that “the defenses of each member  
13 of the class would be *identical* and there would be no claims of any one member which would be  
14 adverse to any other member.” (emphasis added) *Id.* at 16. The facts in this case are different.  
15 Here, there is no common bond among defendants such as the contracts in *Truckee-Carson*  
16 *Irrigation District*. Furthermore, as discussed above, the City’s defenses are not identical to those  
17 of the private party defendants.

#### 18 CONCLUSION

19 The Public Water Suppliers have the burden of showing the existence of a well-defined  
20 community of interest in questions of law and fact. *Cannon U.S.A. v. Superior Court* (1998) 68  
21 Cal.App.4<sup>th</sup> 1, 5. When seeking class certification, a plaintiff must show more than “a reasonable  
22 possibility” that a class action is proper. *Hamwi v. Citinational-Buckeye Inv. Co.* (1977) 72  
23 Cal.App.3d 462, 471. Defendant class actions, in particular, raise the issue of full and fair  
24 representation for defendants and require more than a “bare compliance” with the requirements  
25 for certification. *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 844.

26 The Public Water Suppliers have not met their burden to establish the commonality of  
27 interests required for the Court to certify the proposed defendant class. They have ignored the  
28 obvious and material differences between public entities such as the City and the thousands of

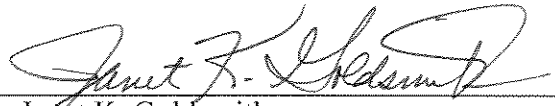
1 individual landowners in the adjudication area. Certification of a defendant class as currently  
2 defined would combine groups of defendants with disparate legal defenses and potentially  
3 divergent legal goals and strategies, which is inimical to the purpose of class certification.

4 The Court has "great discretion" in deciding the appropriateness of class certification.  
5 *Linder v. Thrifty Oil* (2000) 23 Cal.4<sup>th</sup> 429, 435-436, see also *In re Tobacco II Cases* (2006) 142  
6 Cal.App.4<sup>th</sup> 891. Consequently, based upon all the reasons discussed above, the City urges the  
7 Court to exercise its discretion to redefine the defendant class as excluding the City and other  
8 public entities.

9  
10 Dated: February 23, 2007

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