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11 SPC DEL SUR RANCH LLC

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

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

Judicial Council Coordination  
Proceeding No. 4408

16 **ANTELOPE VALLEY GROUNDWATER**  
17 **CASES**

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

18 **Included Actions:**

**DEFENDANT AND CROSS-DEFENDANT  
SPC DEL SUR RANCH LLC'S  
OPPOSITION TO PUBLIC WATER  
SUPPLIERS' MOTION FOR CLASS  
CERTIFICATION**

19 Los Angeles County Waterworks District  
20 No. 40 v. Diamond Farming Co.  
21 Superior Court of California, County of  
22 Los Angeles, Case No. BC 325 201  
23 Los Angeles County Waterworks District  
24 No. 40 v. Diamond Farming Co.  
25 Superior Court of California, County of Kern,  
26 Case No. S-1500-CV-254-348  
27 Wm. Bolthouse Farms, Inc. v. City of Lancaster  
28 Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California, County of Riverside,  
Consolidated Actions, Case Nos. RIC 353 840,  
RIC 344 436, RIC 344 668

DATE: March 12, 2007  
TIME: 1:30 p.m.  
DEPT: 1

**AND RELATED CROSS-ACTIONS.**

Defendant and Cross-Defendant SPC Del Sur Ranch LLC ("SPC") hereby opposes the  
class certification motion filed by Cross-Complainants California Water Service Company; City of  
Lancaster; City of Palmdale; Little Rock Creek Irrigation District; Los Angeles County  
Waterworks District No. 40; Palmdale Water District; Rosamond Community Services District;

1 Palm Ranch Irrigation District; and Quartz Hill Water District (collectively, the "Public Water  
2 Suppliers"), as follows:

3 **I. INTRODUCTION**

4 As currently defined, the class proposed by the Public Water Suppliers is ambiguous. It is  
5 defined as all owners of land within the adjudicated boundaries of the Antelope Valley  
6 Groundwater Basin that are not within the service area of a public entity, public utility, or mutual  
7 water company. It is unclear, however, under this definition whether owners of land in the  
8 adjudicated area that are within such a service area, but are not yet currently being serviced by a  
9 public entity, public utility or mutual water company, would be included in the proposed class.  
10 Further, the definition of the proposed class does not contemplate those owners with land in the  
11 process of being annexed into a service area and land with vested service rights versus those  
12 whose land is still in the process of obtaining commitments from a service provider. Moreover,  
13 such annexation and service commitments can change over time, none of which is considered in  
14 the proposed class definition.

15 If the proposed class includes owners with land that has been or is in the process of being  
16 annexed into a water service area without yet having obtained vested water service rights, SPC  
17 might be included as a member of the class. SPC owns property located within the adjudicated  
18 area and does not yet have water service from a public entity, public utility or mutual water  
19 company, although SPC's land has been or soon will be annexed into such a service area, and such  
20 service is planned by SPC for the near future.

21 If SPC would be a member of the proposed class as currently defined, SPC respectfully  
22 requests that it be excluded from the proposed class. SPC is a named defendant and cross-  
23 defendant who has appeared in this action. SPC should be permitted to continue to appear and be  
24 represented by its own counsel in this action, as it has done since it first appeared in this case over  
25 a year ago. Alternatively, SPC requests that the Court deny certification of the proposed class and  
26 appointment of the proposed class representative. The proposed members of the class do not share  
27 common interests in this water rights adjudication, and the State of California is not an adequate  
28 class representative.

1 **II. FACTUAL BACKGROUND**

2 SPC is the owner of certain real property located in the City of Lancaster, California  
3 ("SPC's Property"). *See* accompanying Declaration of Matt Wheelwright ("Wheelwright Decl."),  
4 ¶ 2. SPC's Property totals over 640 acres within the Antelope Valley Groundwater Basin  
5 boundaries adjudicated by this Court on November 3, 2006. *Id.*, ¶¶ 2-3.

6 SPC's Property is not currently receiving water service from a public entity, public utility  
7 or mutual water company. However, SPC's Property has been or is in the process of being  
8 annexed into the water service area of Los Angeles County Waterworks District No. 40, and SPC  
9 is currently discussing a water service agreement with Los Angeles County Waterworks District  
10 No. 40, with the goal of obtaining water service from that district in the near future. *Id.*, ¶ 4.

11 SPC is a named defendant and cross-defendant in this action. SPC filed an Answer to the  
12 Complaint by Los Angeles County Waterworks District No. 40 on January 25, 2006; the Cross-  
13 Complaints by nearly all of the Public Water Suppliers, including Rosamond Community Services  
14 District, Los Angeles County Waterworks District No. 40, Palmdale Water District; City of  
15 Palmdale, City of Lancaster, Quartz Hill Water District, Little Rock Creek Irrigation District, and  
16 California Water Service Company on February 22, 2006; and the Cross-Complaint by Antelope  
17 Valley-East Kern Water Agency on October 2, 2006. *Id.*, ¶ 5.

18 **III. SPC HAS THE RIGHT TO OPT OUT OF THE PROPOSED CLASS**

19 The Public Water Suppliers propose a class in which each class member has the express  
20 right to opt out of the class. *See* Motion, p. 13. This right to opt out of the proposed class  
21 comports with California law. *See Salton City Area Property Owners Ass'n v. M. Penn Phillips*  
22 *Co.* (1977) 75 Cal.App.3d 184, 189 ("Class members are never forcibly represented in the action;  
23 that they may opt out always means there may be more than one action on the same factual and  
24 legal premises"); *Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1603 (holding that  
25 right to opt out is required if class is certified under "common question" ground in FRCP 23(b));  
26 *Home Savings and Loan Ass'n v. Superior Court* (1974) 42 Cal.App.3d 1006, 1010 ("After the  
27 members of the class have been properly notified of the action, they are required to decide whether  
28 to remain members of the class represented by plaintiffs' counsel and become bound by a

1 favorable or unfavorable judgment in the action, whether to intervene in the action through  
2 counsel of their own choosing, or whether to 'opt out' of the action and pursue their own  
3 independent remedies. . . .").

4 If SPC would be a member of the proposed class as currently defined, SPC requests that it  
5 be permitted to opt out of the proposed class. By opting out, SPC does not wish to file a separate  
6 claim or obtain independent relief in a different action before a different court. Rather, SPC  
7 wishes to remain a party (as it must, since it is a named defendant and cross-defendant) and  
8 continue to be represented by its own counsel *in this action*. Once SPC has a water service  
9 agreement with Los Angeles County Waterworks District No. 40, SPC may no longer fall within  
10 the definition of the proposed class. Until that time, however, SPC requests that it be excluded  
11 from the proposed class, and be permitted to appear by its own counsel and not that of any class  
12 representative.

13 **IV. IN THE ALTERNATIVE, SPC REQUESTS THAT CLASS CERTIFICATION BE**  
14 **DENIED**

15 Alternatively, if the Court is not inclined to exclude SPC from the proposed class, SPC  
16 requests that class certification be denied. The proposed class members do not share common  
17 interests in this litigation because they are property owners in direct competition for water rights in  
18 the basin. In addition, the State of California is not an adequate class representative, since it is  
19 competing with the proposed class members for water rights, and it is a political body that  
20 naturally has interests with regard to local water districts, either favorable or unfavorable, that  
21 individual property owners do not.

22 **A. The Landowner Parties In This Case Do Not Share Common Interests**

23 Successful certification of a class requires a demonstration of commonality of interests  
24 between class members. *See Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. Class  
25 members' interests conflict when they are in competition with each other in relation to the subject  
26 matter of the litigation. Such competition requires denial of class certification because the class  
27 members' common interests are outweighed by their individual interests. *See Global Minerals &*  
28 *Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 852-854 (trial court abused its

1 discretion in certifying class when class members had "serious and extensive conflicts of interest"  
2 because they were in competition with each other in copper production business); *In re Beer*  
3 *Distribution Anti-Trust Litigation*, 188 F.R.D. 549, 554 (N.D.Cal. 1998) (class certification denied  
4 for putative class of beer distributors because proposed class and representative parties  
5 "vigorously compete[d] with one another for distribution of their beer products.").

6 Here, the proposed class consists of landowners that are in direct competition with each  
7 other for water rights in the Antelope Valley Groundwater Basin. Such competition defeats the  
8 class because the proposed class members do not have common interests and should not be  
9 collectively represented by one class representative. The proposed class certification should  
10 therefore be denied.

11 The cases cited by the Public Water Suppliers for the proposition that class actions are  
12 proper in water rights cases are inapposite. In *Orange County Water Dist. v. City of Riverside*  
13 (1959) 173 Cal.App.2d 137, the Orange County Water District filed suit on behalf of itself and  
14 agricultural property owners within the district's boundaries against cities that were allegedly  
15 taking water from the district and its overlying users. *Id.* at 151-152, 164-168. Unlike the case at  
16 bar, *Orange County* was not a case involving competing rights between members of the landowner  
17 class. Rather, it was a case where the landowners were united behind their water district to protect  
18 their collective water rights against the appropriating cities. The court held that the district was  
19 empowered to represent the rights of its overlying water users for their protection. *Id.* at 167-168.

20 *City of Chino v. Superior Court* (1967) 255 Cal.App.2d 747, also filed by the Orange  
21 County Water District, was a follow-on case to *Orange County*, in which the district again sought  
22 a declaration of rights of water within the Santa Ana River System. *City of Chino*, 255  
23 Cal.App.2d at 753-754. This time, however, the district brought suit on behalf of itself and *all*  
24 water users within the district. *Id.* Certain petitioners challenged the district's right to bring a  
25 class action as pled, because the action "involves the rights of several classes having conflicting  
26 interests." *Id.* at 754. The court, however, did not rule on the class certification question, holding  
27 that the district's right to sue in its own right was based on the legislation that created it, rendering  
28 "immaterial that [the district] may not qualify to bring a class action." *Id.*

1 The Public Water Suppliers also cite *Putah Creek Adjudication*, Sacramento County  
2 Superior Court Case No. 2565, an unpublished case that is not citable pursuant to California Rule  
3 of Court 8.1115(a). Thus, this case should not be relied on by the Court. Nevertheless, although it  
4 is not possible to glean the facts of this case from the three-page order that is attached to the Public  
5 Water Suppliers' Motion, it should be noted that page 3 of the order requires a notice to the class  
6 members stating that they shall be given the "option of proceeding as an individual party."

7 Lastly, *United States v. Truckee-Carson Irrigation District*, 71 F.R.D. 10 (D. Nev. 1975),  
8 permitted a class action *expressly because* that case involved a general stream adjudication, and  
9 "not a fight among all appropriators on the stream to establish their rights." *Id.* at 14. The  
10 members of the class were not in competition with each other regarding their water rights in that  
11 case. Instead, they were collectively adverse to the United States and the Pyramid Lake Paiute  
12 Tribe of Indians, who were seeking to diminish the class members' collective water rights. *Id.* at  
13 14-15. Each class member's water rights were fixed by contract, and no member "could or would  
14 be in a position to establish in himself a superior right to water from that common source of  
15 supply as against any other certificate holder." *Id.* at 15. However, "[a]s against the efforts of the  
16 United States and the Tribe to reduce that common source of supply, the interests of each member  
17 of the class are identical in both fact and law." *Id.*

18 Where, as here, however, the members of the proposed class are in direct competition with  
19 each other for water rights, they lack the requisite common interests to constitute a class.

20 **B. The State Of California Is Not An Adequate Class Representative**

21 For the reasons discussed above, the State of California is not an adequate class  
22 representative, since it is a landowner competing for water rights against the proposed class, as  
23 conceded by the Public Water Suppliers' Motion (p. 13.). *Global Minerals*, 113 Cal.App.4th at  
24 851; *see also J.P. Morgan & Co. v. Superior Court* (2003) 113 Cal.App.4th 195, 212-215.

25 In addition, the State is a political body that naturally has interests with local water  
26 districts, either favorable or unfavorable, that individual property owners do not. For example, it  
27 is likely that the State may be in favor of allowing a particular water district more or less water  
28 based on its political relationship with that district, whereas individual landowners like SPC have

1 no such political relationships. They are simply seeking their individual water rights. Therefore,  
2 the State's interests are not aligned with the proposed class, and it could not adequately represent  
3 the class. *See Stephens v. Montgomery Ward* (1987) 193 Cal.App.3d 411, 422.

4 **V. CONCLUSION**

5 Based on the foregoing, if SPC would be a member of the proposed class as currently  
6 defined, SPC respectfully requests that it be excluded from the proposed class and instead be  
7 permitted to continue to appear in this action through its own counsel. Alternatively, SPC requests  
8 that the Court deny certification of the proposed class.

9  
10 Dated: February 26, 2007

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

11  
12 By: Michael J. Hattam /for  
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14 Defendant and Cross-Defendant  
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<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>	<b>COURT USE ONLY</b>
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<b>SHORT CASE TITLE</b>  Coordination Proceeding Special Title (Rule 1550(b)) <b>ANTELOPE VALLEY GROUNDWATER CASES</b>	
Attorneys for Defendant and Cross-Defendant SPC DEL SUR RANCH LLC	JCCP No. 4408  Santa Clara Case No. 1-05-CV-049053

**PROOF OF SERVICE BY ELECTRONIC TRANSMISSION**

I am employed in the county of San Diego, state of California. I am over the age of 18 and not a party to the within action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

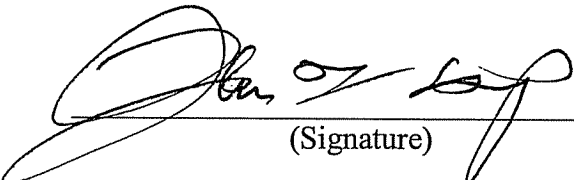
On February 26, 2007, I served on the designated recipients listed in the SCEFiling system the within:

➤ **DEFENDANT AND CROSS-DEFENDANT SPC DEL SUR RANCH  
LLC'S OPPOSITION TO PUBLIC WATER SUPPLIERS' MOTION  
FOR CLASS CERTIFICATION**

☒ (VIA ELECTRONIC MAIL) by posting the documents listed above to Santa Clara Superior Court website: [www.scefiling.org](http://www.scefiling.org) regarding the Antelope Valley Groundwater matter.

Executed on February 26, 2007, at San Diego, California. I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

\_\_\_\_\_  
John T. Kaup  
(Type or print name)

\_\_\_\_\_  
  
(Signature)