

EDGAR B. WASHBURN (BAR NO. 34038)  
WILLIAM M. SLOAN (BAR NO. 203583)  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: 415.268.7000  
Facsimile: 415.268.7522  
Email: wsloan@mofo.com

Attorneys for U.S. BORAX INC.

RICHARD G. ZIMMER (BAR NO. 107263)  
T. MARK SMITH (BAR NO. 162370)  
CLIFFORD & BROWN  
1430 Truxtun Avenue, Suite 900  
Bakersfield, California 93301-5230  
Telephone: 661.322.6023  
Facsimile: 661.322.3508  
Email: rzimmer@clifford-brownlaw.com

Attorneys for BOLTHOUSE PROPERTIES, LLC  
and WM. BOLTHOUSE FARMS, INC.

*(List of Counsel Continues on Next Page)*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding  
Special Title (Rule 1550(b))

**ANTELOPE VALLEY GROUNDWATER CASES**

Included Actions:

**Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co.**  
Superior Court of California, County of Los Angeles,  
Case No. BC 325 201

**Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co.**  
Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348

**Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.**  
Superior Court of California, County of Riverside,  
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668  
(Consolidated Actions)

Judicial Council Coordination  
Proceeding No. 4408

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

Assigned to  
The Honorable Jack Komar

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
DISMISS PUBLIC WATER  
SUPPLIERS' CROSS-  
COMPLAINT**

Date: June 19, 2009  
Time: 2:00 p.m.  
Dept: 17C

1 *List of Counsel (Continued):*

2 BOB H. JOYCE (BAR NO. 84607)  
3 ANDREW SHEFFIELD (BAR NO. 220735)  
4 KEVIN E. THELEN (BAR NO. 252665)  
5 LAW OFFICES OF LEBEAU THELEN, LLP  
6 5001 East Commercenter Drive, Suite 300  
7 Post Office Box 12092  
8 Bakersfield, California 93389-2092  
9 Telephone: 661.325.8962  
10 Facsimile: 661.325.1127  
11 Email: *bjoyce@lebeauthelen.com*

12 Attorneys for DIAMOND FARMING COMPANY, a  
13 California corporation, CRYSTAL ORGANIC  
14 FARMS, a limited liability company, GRIMMWAY  
15 Enterprises, Inc., and LAPIS LAND COMPANY,  
16 LLC.

17 ROBERT M. DOUGHERTY (BAR NO. 41317)  
18 JESSE T. MORRISON (BAR NO. 247185)  
19 COVINGTON & CROWE, LLP  
20 1131 West Sixth Street, Suite 300  
21 Ontario, California 91762  
22 Telephone: 909.983.9393  
23 Facsimile: 909.391.6762  
24 Email: *jmorrison@covcrowe.com*

25 Attorneys for A.V. UNITED MUTUAL GROUP

26 MICHAEL T. FIFE (BAR NO. 203025)  
27 BRADLEY J. HERREMA (BAR NO. 228976)  
28 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
Santa Barbara, California 93101  
Telephone: 805.963.7000  
Facsimile: 805.965.4333  
Email: *mfife@bhfs.com*

Attorneys for the ANTELOPE VALLEY  
GROUNDWATER AGREEMENT ASSOCIATION  
("AGWA")

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES.....	ii
NOTICE OF MOTION .....	1
MEMORANDUM OF POINTS AND AUTHORITIES.....	3
I. INTRODUCTION.....	4
II. STATEMENT OF FACTS.....	5
III. ARGUMENT .....	7
A. The Wood and Willis Classes Are Indispensable Parties Under California Civil Procedure Code Section 389 Whose Joinder Is Not Feasible .....	7
1. Complete Relief to the Public Water Suppliers Cannot be Achieved Without Joinder of the Willis and Wood Classes.....	8
2. Adjudication of This Case in the Absence of the Non-Joined Parties Would Harm the Rights of the Willis and Wood Classes. ....	9
3. Adjudication in the Absence of the Willis and Wood Classes Would Harm the Existing Parties.....	10
4. The Public Water Suppliers' Lawsuit Should Be Dismissed Because Joinder of the Willis and Wood Classes Is Not Feasible.....	11
B. The Dismissal of the Public Water Suppliers' Lawsuit for Failure to Join Indispensable Parties Is Further Supported by the McCarran Amendment .....	14
IV. CONCLUSION .....	15

## TABLE OF AUTHORITIES

### Page(s)

#### CASES

<i>Bank of California v. Superior Court of the City &amp; County of San Francisco,</i> 16 Cal. 2d 516 (1940).....	7, 8, 12
<i>Countrywide Home Loans, Inc. v. Superior Court,</i> 69 Cal. App. 4th 785 (1999).....	8, 9, 10
<i>County of San Joaquin v. State Water Resources Control Board,</i> 54 Cal. App. 4th 1144 (1997).....	10
<i>Dugan v. Rank,</i> 372 U.S. 609 (1963) .....	13
<i>Gardner v. Stager,</i> 103 F.3d 886 (9th Cir. 1996).....	13
<i>Hartman Ranch Co. v. Associated Oil Co.,</i> 10 Cal. 2d 232 (1937).....	7
<i>Kraus v. Willow Park Public Golf Course,</i> 73 Cal. App. 3d 354 (Cal. App. 1st Dist. 1977) .....	10
<i>Olszewski v. Scripps Health,</i> 30 Cal. App. 4th 798 (2003).....	7
<i>Save Our Bay, Inc. v. San Diego Unified Port District,</i> 42 Cal. App. 4th 686 (1996).....	7
<i>Showtime Game Brokers v. Blockbuster Video,</i> 151 F.R.D. 641 (S.D. Ind. 1993) .....	9
<i>Sierra Club, Inc. v. California Coastal Commission,</i> 95 Cal. App. 3d 495 (1979).....	12
<i>Simons v. Horowitz,</i> 151 Cal. App. 3d 834 (1984).....	11
<i>United States v. District Court in and for Eagle County, Colorado,</i> 401 U.S. 520 (1971) .....	14

**TABLE OF AUTHORITIES**  
**(continued)**

**Page(s)**

**STATUTES, RULES & REGULATIONS**

43 United States Code

§ 666 ..... 13

California Civil Procedure Code

§ 389 ..... 4, 6, 10

§ 389(a) ..... 6, 7, 10, 11

§ 389(a)(2)(i) ..... 8

§ 389(a)(2)(ii) ..... 9

§ 389(b) ..... 11, 12, 13

Federal Rule of Civil Procedure

Rule 19 ..... 9, 10

**OTHER AUTHORITIES**

Senate Report No. 82-755 (1951) ..... 14

1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that this Motion to Dismiss has been set for hearing on June 19,  
4 2009, at 2:00 p.m., or as soon thereafter as counsel can be heard, in Department 17C of the Santa  
5 Clara County Superior Court.

6 This Motion to Dismiss and Memorandum of Points and Authorities in support thereof are  
7 directed to the First-Amended Cross-Complaint of Public Water Suppliers for Declaratory and  
8 Injunctive Relief and Adjudication of Water Rights for failure to join indispensable parties, filed on  
9 January 10, 2007. This Motion is brought pursuant to California Civil Procedure Code section 389  
10 and 43 U.S.C. section 666 (the McCarran Amendment).

11 This Motion will be based on this Notice of Motion, the Memorandum of Points and  
12 Authorities in support thereof, the Declaration of William Sloan, and on such oral argument of  
13 counsel and further evidence as may be presented at the hearing on the Motion.

14 Dated: May 28, 2009

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

16 By: William M. Sloan

17 William M. Sloan

18 Attorneys for U.S. BORAX, INC.

19 RICHARD G. ZIMMER (BAR NO. 107263)  
T. MARK SMITH (BAR NO. 162370)  
20 CLIFFORD & BROWN

21 By: /s/ Richard G. Zimmer\*

22 Richard G. Zimmer

23 Attorneys for BOLTHOUSE PROPERTIES,  
LLC and WM. BOLTHOUSE FARMS, INC.

24 \* Signatures to the Notice of Motion are attached following the signatures to the Memorandum of  
25 Points and Authorities.

BOB H. JOYCE (BAR NO. 84607)  
ANDREW SHEFFIELD (BAR NO. 220735)  
KEVIN E. THELEN (BAR NO. 252665)  
LAW OFFICES OF LEBEAU THELEN, LLP

By: /s/ Bob H. Joyce\*

Bob H. Joyce

Attorneys for DIAMOND FARMING  
COMPANY, a California corporation,  
CRYSTAL ORGANIC FARMS, a limited  
liability company, GRIMMWAY Enterprises,  
Inc., and LAPIS LAND COMPANY, LLC.

ROBERT M. DOUGHERTY (BAR NO. 41317)  
JESSE T. MORRISON (BAR NO. 247185)  
COVINGTON & CROWE, LLP

By: /s/ Jesse T. Morrison\*

Jesse T. Morrison

Attorneys for A.V. UNITED MUTUAL  
GROUP

MICHAEL T. FIFE (BAR NO. 203025)  
BRADLEY J. HERREMA (BAR NO. 228976)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Michael T. Fife\*

Michael T. Fife

Attorneys for the ANTELOPE VALLEY  
GROUNDWATER AGREEMENT  
ASSOCIATION ("AGWA")

\* Signatures to the Notice of Motion are attached following the signatures to the Memorandum of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 This Motion to Dismiss is brought by more than 60 Cross-Defendants that have been named  
3 and served in the "comprehensive adjudication" filed by the Public Water Suppliers—an adjudication  
4 that is now in its fourth year and still does not even have all of the necessary parties. Specifically,  
5 Cross-Defendants U.S. Borax, Inc.; Bolthouse Properties, LLC; Wm. Bolthouse Farms, Inc.;  
6 Diamond Farming Company; Crystal Organic Farms; Grimmway Enterprises, Inc.; Lapis Land  
7 Company, LLC; White Fence Farms Mutual Water Co., Inc.; El Dorado Mutual Water Co.; West  
8 Side Park Mutual Water Co.; Shadow Acres Mutual Water Co.; Antelope Park Mutual Water Co.;  
9 Averydale Mutual Water Co.; Sundale Mutual Water Co.; Evergreen Mutual Water Co.; Aqua J  
10 Mutual Water Co.; Bleich Flat Mutual Water Co.; Colorado Mutual Water Co.; Sunnyside Farms  
11 Mutual Water Co.; Land Projects Mutual Water Co.; Tierra Bonita Mutual Water Co.; Landale  
12 Mutual Water Co.; B.J. Calandri; John Calandri; John Calandri as Trustee of the John and B.J.  
13 Calandri 2001 Trust; Forrest G. Godde; Forrest G. Godde as Trustee of the Forrest G. Godde Trust;  
14 Lawrence A. Godde; Lawrence A. Godde and Godde Trust; Kootenai Properties, Inc.; Gailen Kyle;  
15 Gailen Kyle as Trustee of the Kyle Trust; James W. Kyle; James W. Kyle as Trustee of the Kyle  
16 Family Trust; Julia Kyle; Wanda E. Kyle; Eugene B. Nebeker; R and M Ranch, Inc.; Edgar C. Ritter;  
17 Paula E. Ritter; Paula E. Ritter as Trustee of the Ritter Family Trust; Hines Family Trust; Malloy  
18 Family Partners; Consolidated Rock Products; Calmat Land Company; Marygrace H. Santoro;  
19 Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev. Trust; Helen Stathatos; Savas  
20 Stathatos; Savas Stathatos as Trustee for the Stathatos Family Trust; Dennis L. & Marjorie E. Groven  
21 Trust; Scott S. and Kay B. Harter; Habod Javadi; Eugene V., Beverly A., and Paul S. Kindig; Paul S.  
22 and Sharon R. Kindig; Jose Maritorena Living Trust; Richard H. Miner; Jeffrey L. and Nancee J.  
23 Siebert; Barry S. Munz, Terry A. Munz and Kathleen M. Munz; Beverly Tobias; Leo L. Simi; White  
24 Fence Farms Mutual Water Co. No. 3.; William R. Barnes & Eldora M. Barnes Family Trust of 1989;  
25 Del Sur Ranch, LLC; Healy Enterprises, Inc.; John and Adrienne Reza; Sahara Nursery; Sal and  
26 Connie L. Cardile; and Gene T. Bahlman (collectively, "Defendants") submit these points and  
27 authorities in support of their Motion to Dismiss the Public Water Suppliers' First-Amended Cross-  
28 Complaint for failure to join indispensable parties.



1     **I.     INTRODUCTION**

2             These proceedings are devolving into a free-for-all that is already visiting substantial  
3     prejudice on many of the parties. The Public Water Suppliers have sued a large number of  
4     landowners, including the United States, in order to obtain a comprehensive groundwater  
5     adjudication, implicating the water rights of all overlying landowners to the Antelope Valley  
6     Groundwater Basin.<sup>1</sup> Inherent to the “comprehensive adjudication” of rights to a single water source  
7     is the zero-sum principle that the allocation of the right to pump water by one user will necessarily  
8     affect the allocation of that right to all other users. Indeed, in one of its most recent pleadings, the  
9     United States confirmed:

10             ***All overlying landowners*** within the geographical boundaries of the  
11             adjudication area (parties with correlative usufructuary rights), parties  
12             who produce water from the aquifer that the Court identified as the  
13             common source of groundwater in the jurisdictional area (parties with  
14             appropriative rights), and the United States (as owner of federal  
15             reserved rights) ***are necessary parties to this action. The United States***  
16             ***remains a party to this litigation because the Court decided that the***  
17             ***adjudication, as currently structured, will be a comprehensive***  
18             ***adjudication of all rights to groundwater in the aquifer. See*** 43  
19             U.S.C. § 666(a); Phase I Order, Nov. 8, 2006 at 2 (‘These boundaries  
20             are established for purposes of ensuring that the most reasonably  
21             inclusive boundaries will be used to ensure a complete and final  
22             adjudication of rights to the ground water.’)

23     (Fed. Defs.’ Response in Opp. to Sheep Creek Water Co.’s Mot. to be Excluded from the Antelope  
24     Valley Groundwater Adjudication [attached as Ex. B to Sloan Decl.] (emphasis added).)  
25     Additionally, the Public Water Suppliers themselves have conceded that:

26             ***[A]ll parties are affected*** by a determination of how much the Wood  
27             class members have pumped. ***There are two principal objectives in***  
28             ***this case – to determine all the water rights to the groundwater in the***  
29             ***Antelope Valley, and to fashion a physical solution.*** The members of  
30             the Wood class are by definition holders of overlying rights. As such,  
31             they share correlatively with the overlying rights of the other  
32             landowners. [citation omitted] This is true whether or not the Public

---

33             <sup>1</sup> Paragraph 15 of the Public Water Suppliers’ First-Amended Cross-Complaint expressly states  
34             that “[t]his is an action to *comprehensively adjudicate* the rights of *all* claimants to the use of a source  
35             of water located entirely within California, i.e., the Basin, and for the ongoing administration of *all*  
36             such claimants’ rights.” (First-Amended Cross-Complaint of Public Water Suppliers for Declaratory  
37             and Injunctive Relief and Adjudication of Water Rights (“Cross-Complaint”) at ¶ 15) (emphasis  
38             added) [attached as Ex. A to the Declaration of William Sloan in Support of Defs.’ Motion to Dismiss  
39             (“Sloan Decl.”)].)

1 Water Suppliers have acquired prescriptive rights. After accounting for  
2 any prescriptive rights and federal reserved rights, the remaining native  
3 safe yield will be divided among the Wood class and the other  
4 landowners.

5 (Opp. to Richard Wood’s Mot. for Order Allocating Costs of Court-Appointed Expert Witnesses at  
6 2:15-14 [attached as Ex. C to Sloan Decl.] (emphasis added).) Therefore, pursuant to California Civil  
7 Procedure Code section 389 and the policies underlying the McCarran Amendment, all overlying  
8 landowners and any other water rights holders within the Basin are indispensable parties to the  
9 comprehensive groundwater adjudication lawsuit brought by the Public Water Suppliers.

10 Given the tremendous number of indispensable parties and the impossibility of certifying the  
11 requisite *defendant classes*, however, joinder of these indispensable parties into one lawsuit is not  
12 feasible. Additionally, because all remaining parties to the adjudication will continue to suffer  
13 significant prejudice should these indispensable parties not be joined, this Court should dismiss the  
14 Public Water Suppliers’ lawsuit in its entirety.

## 15 **II. STATEMENT OF FACTS**

16 Relevant to the present motion, on January 10, 2007, the Los Angeles County Waterworks  
17 District No. 40, on behalf of all Public Water Suppliers,<sup>2</sup> filed a First-Amended Cross-Complaint  
18 seeking declaratory and injunctive relief and a “comprehensive” adjudication of all water rights  
19 within the Antelope Valley Groundwater Basin (“Basin”). (Cross-Complaint at 1.) The Cross-  
20 Complaint named as cross-defendants individuals and entities who owned, or had possessory interests  
21 in, land within the geographic boundaries of the Basin. (*Id.* at ¶¶ 11-12.)

22 In substance, the Cross-Complaint alleges that the Basin has been in a state of overdraft for  
23 more than five consecutive years, and that demand has overtaken the natural supply of water in the  
24 Basin. (*Id.* at ¶ 31.) According to the Cross-Complaint, the depletion in water levels has led to land  
25 subsidence throughout the Basin, (*Id.* at ¶¶ 26-27), and is being caused by all cross-defendants’

---

26 <sup>2</sup> The Public Water Suppliers include: California Water Service Company, City of Lancaster, City  
27 of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Waterworks District No. 40,  
28 Palmdale Water District, Rosamund Community Services District, Palm Ranch Irrigation District,  
and Quartz Hill Water District.

1 continued pumping of groundwater above the Basin’s safe-yield. (*Id.* at ¶ 32.) The Public Water  
2 Suppliers allege that the cross-defendants’ continued extraction of water from the Basin has deprived  
3 the Public Water Suppliers of their rights to provide water to their customers. (*Id.* at ¶ 35.) The  
4 Cross-Complaint also alleges that the Public Water Suppliers have obtained appropriative and  
5 prescriptive rights to groundwater within the Basin that are superior to the cross-defendants’  
6 overlying rights. (*Id.* at ¶¶ 37-39, 43, 47.) The Public Water Suppliers also claim that their rights to  
7 water in the Basin take priority over and are paramount to the rights possessed by the cross-  
8 defendants. (*Id.* at ¶ 61.)

9 In seeking a “comprehensive adjudication” of all of the rights to the water in the Basin, the  
10 Public Water Suppliers’ action seeks declaratory relief from the Court determining both qualitative  
11 and quantitative water rights, as well as priority of those rights, of all overlying landowners and users  
12 of the water in the Basin. Specifically, their action seeks a determination of: (a) the priority and  
13 amount of water that each party is entitled to pump; (b) the Basin’s safe yield; (c) the overlying rights  
14 of each defendant and person with appropriative or prescriptive rights to pump water from the Basin;  
15 (d) a physical solution to the water rights dispute and enforcement thereof; (e) the priority and  
16 paramount nature of the Public Water Suppliers’ rights to pump water vis-à-vis any other rights;  
17 (f) the Public Water Suppliers’ sole right to pump imported water in the Basin; (g) the Public Water  
18 Suppliers’ sole right to recapture return flows in the Basin; and (h) the Defendants’ rights to  
19 unreasonable use of water in the Basin.

20 Long after the Public Water Suppliers commenced their action, two separate *plaintiff* class  
21 actions were filed—one on behalf of dormant, non-pumpers of Basin water, and the other on behalf  
22 of small pumpers of Basin water—for the purpose of seeking a judicial determination of their rights  
23 to use groundwater in the Basin vis-à-vis the Public Water Suppliers. The non-pumper class action  
24 was filed by class representative Rebecca Willis and was “coordinated” with the Antelope Valley  
25 Groundwater cases as an “add-on” action on April 13, 2007. (Order Granting Petition for  
26 Coordination of Add-On Case [attached as Ex. D to Sloan Decl.].) The Court granted Willis’ motion  
27 for class certification on September 11, 2007. (Order Certifying Plaintiff Class [attached as Ex. E to  
28 Sloan Decl.].) The small pumper class action was filed by class representative Richard Wood, and

1 was transferred to Judge Komar as an “add-on” action to the Antelope Valley Groundwater cases on  
2 June 25, 2008 by Judge Lichtman. (Order Transferring Wood Class Action to Judge Komar [attached  
3 as Ex. F to Sloan Decl.].) The Court certified the Wood class action on September 2, 2008. (Order  
4 Certifying Small Pumper Class [attached as Ex. G to Sloan Decl.].) As of the filing of this motion,  
5 neither class has been named as a cross-defendant in the Public Water Suppliers’ comprehensive  
6 adjudication lawsuit.

7 The Court has completed two preliminary phases of trial in this action to determine the  
8 boundaries and characteristics of the groundwater basin that is being adjudicated. However, as the  
9 litigation now progresses towards deciding the crucial issues of whether the basin is in overdraft and  
10 what the basin’s safe-yield is, a decision about what parties are indispensable to this comprehensive  
11 adjudication must be made. Indicative of this need, representatives for the Wood class (and possibly  
12 the Willis class) have been actively engaging in settlement talks with the Public Water Suppliers, and  
13 have excluded all other water rights holders despite the fact that any agreement they might reach will  
14 necessarily impact the rights of all other water rights holders in the Basin.

### 15 **III. ARGUMENT**

#### 16 **A. The Wood and Willis Classes Are Indispensable Parties Under California Civil** 17 **Procedure Code Section 389 Whose Joinder Is Not Feasible**

18 The Willis and Wood classes are “indispensable parties” to the Public Water Suppliers’  
19 comprehensive groundwater adjudication lawsuit within the meaning of California Civil Procedure  
20 Code section 389(a). California’s compulsory joinder rule, Civil Procedure Code section 389,  
21 requires that a plaintiff must join as parties to the action any person whose interest is such that

22 (1) In his or her absence complete relief cannot be accorded among  
23 those already parties; or

24 (2) any judgment rendered in his or her absence might either (i) as a  
25 practical matter impair or impede his or her ability to protect that  
26 interest or (ii) leave any of the persons already parties before the court  
exposed to a risk of additional liability or inconsistent obligations by  
reason of his or her claimed interest. If he or she has not been so joined,  
the court shall order that he or she be made a party.

27 ///

28 ///

1 See Cal. Civ. Proc. Code § 389(a);<sup>3</sup> see also *Olszewski v. Scripps Health*, 30 Cal. App. 4th 798, 808-  
2 809 (2003) (“a person is an indispensable party . . . when the judgment to be rendered necessarily  
3 must affect his rights.”). Section 389(a) contains two distinct clauses, which if either one is satisfied,  
4 renders a non-joined party a necessary party. Under either clause, the Willis and Wood classes are  
5 indispensable parties to the current action.

6 **1. Complete Relief to the Public Water Suppliers Cannot be Achieved**  
7 **Without Joinder of the Willis and Wood Classes.**

8 “The controlling test for determining whether a person is an indispensable party is, ‘where the  
9 plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a  
10 third person not joined, that third person is an indispensable party.’” *Save Our Bay, Inc. v. San Diego*  
11 *Unified Port Dist.*, 42 Cal. App. 4th 686, 692 (1996) (affirming the trial court’s grant of summary  
12 judgment based on finding that a landowner whose land was necessary to complete a recreational  
13 marina project was an indispensable party and that his interests were not represented and would be  
14 affected by the judgment) (quoting *Bank of Cal. v. Super. Ct. of the City & County of San Francisco*,  
15 16 Cal. 2d 516, 522 (1940)). In other words, “a person is an indispensable party if his or her legal  
16 rights must necessarily be affected by the judgment.” *Id.* (quoting *Hartman Ranch Co. v. Associated*  
17 *Oil Co.*, 10 Cal. 2d 232, 262 (1937)).

18 Here, there is no question that the legal rights of all landowners, including the Willis and  
19 Wood classes, would be affected by the judgment in the Public Water Suppliers’ case. Indeed, both  
20

---

21 <sup>3</sup> California Code of Civil Procedure 389(a), states that

22 A person who is subject to service of process and whose joinder will not deprive the  
23 court of jurisdiction over the subject matter of the action shall be joined as a party in  
24 the action if (1) in his or her absence complete relief cannot be accorded among those  
25 already parties, or (2) he or she claims an interest relating to the subject of the action  
26 and is so situated that the disposition of the action in his or her absence may (i) as a  
27 practical matter impair or impede his or her ability to protect that interest or (ii) leave  
28 any of the persons already parties subject to a substantial risk of incurring double,  
multiple, or otherwise inconsistent obligations by reason of his or her claimed  
interest. If he or she has not been so joined, the court shall order that he or she be  
made a party.

Cal. Civ. Proc. Code § 389(a).

1 the Willis and Wood classes have each filed separate lawsuits seeking to enforce their rights to the  
2 water in the Basin and seeking forms of relief that overlap and conflict with the relief sought in the  
3 instant case (i.e., a court determination that their rights to pump water in the Basin take priority over  
4 other persons' or entities' rights to use water). Thus, the Willis and Wood classes are indispensable  
5 parties to the instant case.

6 The Public Water Suppliers seek a "comprehensive adjudication" of the water rights to the  
7 Basin, which would necessarily implicate the Willis and Wood classes' rights to use the water in the  
8 Basin. Where a number of persons have an undetermined interest in the same property, each is an  
9 indispensable party to any action by the other to obtain his share of the property. *See Bank of Cal.*,  
10 16 Cal. 2d at 521 (the judgment obtained by any one claimant for part of the property or fund would  
11 necessarily determine the amount remaining available for the others).

12 **2. Adjudication of This Case in the Absence of the Non-Joined Parties**  
13 **Would Harm the Rights of the Willis and Wood Classes.**

14 Section 389(a)(2)(i) "recognizes the importance of protecting the person whose joinder is in  
15 question against the practical prejudice to him which may arise through a disposition of the action in  
16 his absence." *Countrywide Home Loans Inc. v. Super. Ct.*, 69 Cal. App. 4th 785, 793 (1999). Under  
17 this clause, a party is "necessary" and "should be joined if they claim an interest relating to the  
18 subject of the action, and the disposition of the action, in their absence, could impair or impede their  
19 ability to protect that interest." *Id.* at 795.

20 The rights of landowners would be affected, and possibly harmed, if this action were allowed  
21 to proceed to judgment without the Willis and Wood classes as cross-defendants in the  
22 comprehensive adjudication. The fact that both classes have initiated separate lawsuits seeking to  
23 protect their rights to use the water in the Basin is clear evidence that if their interests are not  
24 represented in the Public Water Suppliers' case—which seeks a "comprehensive adjudication" of  
25 water rights in the Basin—these interests will likely be harmed.

26 Nevertheless, the Wood class has affirmatively declared that it is not a party to the  
27 comprehensive adjudication, even though any physical solution the court may arrive at will  
28 necessarily affect the class members' rights. (*See, e.g.*, Richard Wood's Mot. for Order Allocating

1 Costs of Court-Appointed Expert Witness at 4:3-8 (“the landowners are not parties to the Wood  
2 action. Wood has not sued them; the class has not sued them”) [attached as Ex. H to Sloan Decl.]).  
3 At the same time, recent filings by the Wood class demonstrate that any resolution of the water rights  
4 of small pumpers in the Basin would necessarily prejudice the water rights of overlying landowners.  
5 Specifically, the Wood class has expressly stated that:

6 It is likely that any settlement or judgment in this [the Wood] case  
7 would entail an allocation of some *di minimis* pumping exemption, or  
8 free production allowance, to this group of largely single-family  
9 residential pumpers. In this scenario, the case cannot be settled, or  
fairly adjudicated, using a fixed free-pumping allowance without doing  
harm to the rights of either the small pumpers, or the rights of the other  
overlying landowners.

10 (Pls.’ *Ex Parte* Application for Order Staying Class Notice at 4:18-23 [attached as Ex. I to Sloan  
11 Decl.]; *see also* Pls.’ *Ex Parte* Application for Order Staying Class Notice and Lifting Stay on Court  
12 Appointed Expert at 3:13-18 [attached as Ex. J to Sloan Decl.].)

13 Likewise, the Willis class, representing landowners who have not yet pumped water from  
14 their land (the “dormant pumpers”), has stated that their “overlying rights need to be apportioned in a  
15 fair and equitable manner among all persons holding rights to the Basin’s water.” (Willis Compl.  
16 ¶ 27 [attached as Ex. K to Sloan Decl.]; Pl. Willis’ Second Order Modifying Definition of Pl. Class  
17 at 3 [attached as Ex. L to Sloan Decl.].) By virtue of the fact that the Willis and Wood Classes seek  
18 to protect their rights to use water in the Basin, adjudication of the Public Water Suppliers’ suit in  
19 their absence would harm these rights. (*See* Willis Compl. ¶ 30; Wood Compl. ¶ 1.)

### 20 **3. Adjudication in the Absence of the Willis and Wood Classes Would Harm** 21 **the Existing Parties.**

22 Finally, Civil Procedure Code section 389(a)(2)(ii) “recognizes the need for considering  
23 whether a party may be left, after the adjudication, in a position where a person not joined can subject  
24 him to a double or otherwise inconsistent liability.” *Countrywide Home Loans*, 69 Cal. App. 4th at  
25 793. Thus, joinder is required if “in the absence of [the non-parties] the action would expose  
26 defendants to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.”  
27 *Id.* at 796; *see also*, *Showtime Game Brokers v. Blockbuster Video*, 151 F.R.D. 641, 647 (S.D. Ind.  
28 1993) (Federal Rule of Civil Procedure “Rule 19 is designed to protect the interests of absent persons

1 as well as those already before the court from multiple litigation or inconsistent judicial  
2 determinations. Moreover, the public and the courts have an interest in an effective and expeditious  
3 resolution of cases.”).<sup>4</sup>

4 Here, the Wood class has represented in court that it is in settlement negotiations with the  
5 Public Water Suppliers. (*See generally* excerpt from May 6, 2009 Hearing Transcript at 9:10-25,  
6 10:25-11:14 (addressing settlement discussions between Wood Class and Public Water Suppliers to  
7 the exclusion of other landowners) [attached as Ex. M to Sloan Decl.].) Any settlement arrived at in  
8 these negotiations would necessarily affect the rights of all other landowners claiming rights to use  
9 the water in the Basin. Allowing these negotiations to move forward in the absence of all other water  
10 rights holders would prejudice any landowner’s ability to represent its interests in the current  
11 adjudication.<sup>5</sup>

12 **4. The Public Water Suppliers’ Lawsuit Should Be Dismissed Because**  
13 **Joinder of the Willis and Wood Classes Is Not Feasible.**

14 As indispensable parties, the Willis and Wood Classes must be joined with the Public Water  
15 Suppliers’ action. The law is clear that where an absentee is found by the court to be needed for a  
16 just adjudication of the case, “the court must order his joinder if feasible.” *Kraus v. Willow Park*  
17 *Public Golf Course*, 73 Cal. App. 3d 354, 365 (Cal. App. 1st Dist. 1977); Cal. Civ. Proc. Code  
18 § 389(a).

19  
20 <sup>4</sup> Since California Code of Civil Procedure section 389 is modeled after the Federal Rule of Civil  
21 Procedure, Rule 19, “[i]t is therefore appropriate to use federal precedents as a guide to application of  
22 the statute.” *Countrywide Home Loans*, 69 Cal. App. 4th at 792; *see also*, *County of San Joaquin v.*  
*State Water Res. Control Bd.*, 54 Cal. App. 4th 1144, 1152 (1997).

23 <sup>5</sup> The face of the Cross-Complaint also contemplates a broad defendant class; however, the  
24 subsequent procedural facts indicate that the Willis and Wood classes have not been named as cross-  
25 defendants. (*See, e.g.*, Richard Wood’s Notice of Motion and Motion for Order Allocating Costs of  
26 Court-Appointed Expert Witness at 4:3-6) (“While Wood is cognizant that the Court has articulated  
27 an intention to allocate the expert costs across both the water purveyors and landowner parties, the  
28 landowners are not parties to the Wood action.”) [attached as Ex. F to Sloan Decl.].) If the Court  
properly finds that the Willis and Wood classes must be cross-defendants in the “comprehensive  
adjudication,” the Court should not entertain settlement negotiations until all parties claiming water  
rights to the Basin are included. Any arrangement for a determination of water rights in a  
comprehensive adjudication must include the consent and participation of all parties in order to be  
binding on any party.



1 Here, however, the joinder of both the Willis and Wood classes to the already unwieldy  
2 Public Water Suppliers' adjudication is not feasible. Indeed, the Wood Class has expressed a desire  
3 to stay out of this action rather than be a member of a "mal-formed class."<sup>6</sup> The obstacles to class  
4 formation and joinder are evident. For example, despite the passage of nearly a year since the Wood  
5 class was certified, the following problems still exist with respect to the Wood class: (1) the class list  
6 for notification purposes supposedly contains thousands of parcels that are owned by people who do  
7 not fall under the small pumper class definition (i.e., mutual water company shareholders and public  
8 water supplier customers); (2) the proposed class list includes pumpers and non-pumpers of water;  
9 (3) according to the Wood class counsel, the number of proposed members in the Wood class jumped  
10 from 7,500 to 15,000 just weeks ago; (4) shareholder lists have not yet been obtained from the mutual  
11 water companies to determine what persons are improperly on the small pumper class list; and  
12 (5) public water supplier customers may be on the small pumper class list. (*See* Pls.' *Ex Parte*  
13 Application for Order Staying Class Notice [attached as Ex. I to Sloan Decl.].) The present  
14 difficulties with the Wood class alone clearly demonstrate that joinder of the classes to the Public  
15 Water Suppliers' lawsuit is not feasible.

16 Given the conflicting and competing interests between the Willis and Wood classes and the  
17 cross-defendants to the Public Water Suppliers' litigation, a defendant class could never be certified  
18 due to inadequacy of representation and notice concerns. *See Simons v. Horowitz*, 151 Cal. App. 3d  
19 834, 844-45 (1984). Further, practical efficiency considerations make compulsory joinder a near  
20 impossibility.

21 Where a party who is necessary to the action under section 389(a) cannot be joined to the suit,  
22 the court must determine whether "in equity and good conscience the action should proceed among  
23 the parties before it, or should be dismissed without prejudice." Cal. Civ. Proc. Code § 389(b).  
24 There are four factors that the court must consider: (1) to what extent a judgment rendered in the  
25 person's absence might be prejudicial to him or those already parties; (2) the extent to which, by

26 \_\_\_\_\_  
27 <sup>6</sup> Specifically, the Wood Class stated that "[t]he interests of the small pumper are better served  
28 outside this adjudication or individually represented, rather than inside a mal-formed class." (Pl. *Ex Parte*  
Application for Order Staying Class Notice at 6 [attached as Ex. G to Sloan Decl.].)

1 protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can  
2 be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate;  
3 (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed  
4 for non-joinder. *Id.* The decision whether to proceed with the action in the absence of the Willis and  
5 Wood classes is within the court's discretion, as governed by Civil Procedure Code section 389(b).  
6 *Sierra Club, Inc. v. Cal. Coastal Comm'n*, 95 Cal. App. 3d 495, 500 (1979).

7 The California Supreme Court has explained that indispensable parties typically exist in cases  
8 where a number of persons have undetermined interests in the same property, such as this current  
9 water rights dispute:

10 Typical are the situations ***where a number of persons have***  
11 ***undetermined interests in the same property***, or in a particular trust  
12 fund, and one of them seeks, in an action, to recover the whole, to fix  
13 his share, or to recover a portion claimed by him. ***The other persons***  
14 ***with similar interests are indispensable parties.*** The reason is that a  
***judgment in favor of one claimant for part of the property or fund***  
***would necessarily determine the amount or extent which remains***  
***available to the others.*** Hence, any judgment in the action would  
inevitably affect their rights.

15 *Bank of Cal.*, 16 Cal. 2d at 521 (emphasis added). As discussed above, a judgment rendered in the  
16 absence of the Willis and Wood classes in this case—a “comprehensive adjudication” of rights to use  
17 and pump water from the Basin—would prejudice the ability of landowners both within and outside  
18 the classes to protect their water rights. The very relief that the Public Water Suppliers seek in this  
19 lawsuit would directly affect and injure the interests of both party and non-party landowners. The  
20 judgment would plainly be subject to later collateral attack by the non-joined parties and would thus  
21 be inadequate. *See Sierra Club*, 95 Cal. App. 3d at 502 (holding that a developer of a real estate  
22 project was an indispensable party to an action brought by a third party to set aside a permit  
23 authorizing the project, and affirming dismissal of the suit for failure to join the developer).

24 Furthermore, counsel for the Public Water Suppliers pointed out the prejudice that would be  
25 faced by absent parties during this Court's April 14, 2009 hearing: “The concern that all of us—  
26 many of us have in this case is that, like, any basin it is a zero sum gain. So when you start allocating  
27 water to one group of individuals, that may necessarily require that there are other individuals who  
28

///

1 may go without.” (Excerpt from April 24th Hearing Transcript at 13:10-14) [attached as Ex. N to  
2 Sloan Decl.].)

3 Therefore, pursuant to California Civil Procedure Code section 389(b), this Court should  
4 grant Defendants’ motion to dismiss for failure to join the Willis and Wood classes as indispensable  
5 parties.

6 **B. The Dismissal of the Public Water Suppliers’ Lawsuit for Failure to Join**  
7 **Indispensable Parties Is Further Supported by the McCarran Amendment**

8 The members of the Willis and Wood classes must be considered indispensable parties to the  
9 Public Water Suppliers’ lawsuit for the additional reason that their joinder is required by the  
10 McCarran Amendment in order for the Court to retain subject matter jurisdiction over the United  
11 States, a large water rights holder within the Basin. *See* 43 U.S.C. § 666.

12 As this Court is well aware, the McCarran Amendment provides for a limited waiver of the  
13 sovereign immunity of the United States enabling states to adjudicate federal water rights under  
14 certain circumstances. The McCarran Amendment provides, in relevant part:

15 Consent is hereby given to join the United States as a defendant in any  
16 suit (1) for the adjudication of rights to the use of water of a river  
17 system or other source, or (2) for the administration of such rights,  
where it appears that the United States is . . . a necessary party to such  
suit.

18 43 U.S.C. § 666. It is well established that this waiver “is limited to comprehensive adjudications of  
19 all of the water rights of various users of a specific water system,” *Gardner v. Stager*, 103 F.3d 886,  
20 888 (9th Cir. 1996), and is only applicable in a “general adjudication” of all of the rights of various  
21 owners, not the private rights of selected landowners. *See Dugan v. Rank*, 372 U.S. 609, 618 (1963).  
22 Indeed, the Senate Report on the McCarran Amendment clearly set forth Congress’ intent to limit the  
23 waiver of sovereign immunity to comprehensive adjudications:

24 S. 18 is not intended . . . to be used for any other purpose than to allow  
25 the United States to be joined in a suit wherein it is necessary to  
26 adjudicate all of the rights of various owners on a given stream. This is  
27 so because unless all the parties owning or in the process of acquiring  
28 water rights on a particular stream can be joined as *parties defendant*,  
any subsequent decree would be of little value.

1 *United States v. Dist. Ct. in and for Eagle County, Colo.*, 401 U.S. 520, 525 (1971) (quoting S. Rep.  
2 No. 82-755, at 9 (1951) (emphasis added)). Thus, the McCarran Amendment’s limited waiver of  
3 sovereign immunity is only available for the comprehensive adjudication of all water rights in a  
4 stream system.

5 Here, it is indisputable that unless the members of the Willis and Wood classes are considered  
6 to be parties to the Public Water Suppliers’ lawsuit, the McCarran Amendment’s comprehensiveness  
7 requirement will not be satisfied. As certified, both classes are made up of landowners claiming  
8 overlying rights to groundwater within the Basin. (*See* Order Certifying Small Pumpers Class  
9 Action; Plaintiff Willis’ Second Order Modifying Definition of Plaintiff Class.) Therefore, their  
10 absence from the Public Water Suppliers’ action seeking an adjudication of rights within the Basin  
11 would render the McCarran Amendment’s waiver of sovereign immunity inapplicable. Thus,  
12 because the Willis and Wood classes cannot be joined as indispensable parties, and the United States  
13 will no longer be a party to the Public Water Suppliers’ lawsuit given the failure of the suit to satisfy  
14 the McCarran Amendment’s comprehensiveness requirement, the McCarran Amendment further  
15 supports dismissal of this action.

#### 16 **IV. CONCLUSION**

17 All parties—including the Public Water Suppliers, the Willis and Wood classes, and the  
18 United States—apparently agree that *all* overlying landowners within the Basin are necessary parties  
19 to this comprehensive groundwater adjudication. As the Public Water Suppliers’ lawsuit is the only  
20 lawsuit seeking a comprehensive adjudication, and is the only one required to satisfy the McCarran  
21 Amendment, all necessary parties must be named in the Public Water Suppliers’ case. Therefore,  
22 both overlying landowner classes must be named as cross-defendants by the Public Water Suppliers.

23 Because it is not feasible to join the classes as indispensable parties, Defendants respectfully  
24 request that the Court dismiss the action. Alternatively, the Court should order the Public Water  
25 Suppliers to take all necessary steps to properly name and serve the classes as cross-defendants in  
26 their “comprehensive adjudication.”

27 ///

28 ///

1 Dated: May 28, 2009

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

3 By: William M. Sloan

4 William M. Sloan

5 Attorneys for U.S. BORAX, INC.

6 RICHARD G. ZIMMER (BAR NO. 107263)  
7 T. MARK SMITH (BAR NO. 162370)  
8 CLIFFORD & BROWN

9 By: \_\_\_\_\_

10 Richard G. Zimmer

11 Attorneys for BOLTHOUSE PROPERTIES,  
12 LLC and WM. BOLTHOUSE FARMS, INC.

13 BOB H. JOYCE (BAR NO. 84607)  
14 ANDREW SHEFFIELD (BAR NO. 220735)  
15 KEVIN E. THELEN (BAR NO. 252665)  
16 LAW OFFICES OF LEBEAU THELEN, LLP

17 By: \_\_\_\_\_

18 Bob H. Joyce

19 Attorneys for DIAMOND FARMING  
20 COMPANY, a California corporation,  
21 CRYSTAL ORGANIC FARMS, a limited  
22 liability company, GRIMMWAY Enterprises,  
23 Inc., and LAPIS LAND COMPANY, LLC.

24 ROBERT M. DOUGHERTY (BAR NO. 41317)  
25 JESSE T. MORRISON (BAR NO. 247185)  
26 COVINGTON & CROWE, LLP

27 By: \_\_\_\_\_

28 Jesse T. Morrison

Attorneys for A.V. UNITED MUTUAL  
GROUP

1 Dated: May 28, 2009

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

3 By: \_\_\_\_\_

4 William M. Sloan  
5 Attorneys for U.S. BORAX, INC.

6 RICHARD G. ZIMMER (BAR NO. 107263)  
7 T. MARK SMITH (BAR NO. 162370)  
8 CLIFFORD & BROWN

9 By: \_\_\_\_\_

10 Richard G. Zimmer  
11 Attorneys for BOLTHOUSE PROPERTIES,  
12 LLC and WM. BOLTHOUSE FARMS, INC.

13 BOB H. JOYCE (BAR NO. 84607)  
14 ANDREW SHEFFIELD (BAR NO. 220735)  
15 KEVIN E. THELEN (BAR NO. 252665)  
16 LAW OFFICES OF LEBEAU THELEN, LLP

17 By: \_\_\_\_\_

18 Bob H. Joyce  
19 Attorneys for DIAMOND FARMING  
20 COMPANY, a California corporation,  
21 CRYSTAL ORGANIC FARMS, a limited  
22 liability company, GRIMMWAY Enterprises,  
23 Inc., and LAPIS LAND COMPANY, LLC.

24 ROBERT M. DOUGHERTY (BAR NO. 41317)  
25 JESSE T. MORRISON (BAR NO. 247185)  
26 COVINGTON & CROWE, LLP

27 By: \_\_\_\_\_

28 Jesse T. Morrison  
Attorneys for A.V. UNITED MUTUAL  
GROUP

1 Dated: May 28, 2009

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

3 By: \_\_\_\_\_

4 William M. Sloan

5 Attorneys for U.S. BORAX, INC.

6 RICHARD G. ZIMMER (BAR NO. 107263)  
7 T. MARK SMITH (BAR NO. 162370)  
CLIFFORD & BROWN

8 By: \_\_\_\_\_

9 Richard G. Zimmer

10 Attorneys for BOLTHOUSE PROPERTIES,  
LLC and WM. BOLTHOUSE FARMS, INC.

11 BOB H. JOYCE (BAR NO. 84607)  
12 ANDREW SHEFFIELD (BAR NO. 220735)  
13 KEVIN E. THELEN (BAR NO. 252665)  
LAW OFFICES OF LEBEAU THELEN, LLP

14 By: \_\_\_\_\_

15 Bob H. Joyce

16 Attorneys for DIAMOND FARMING  
COMPANY, a California corporation,  
17 CRYSTAL ORGANIC FARMS, a limited  
liability company, GRIMMWAY Enterprises,  
Inc., and LAPIS LAND COMPANY, LLC.

18 ROBERT M. DOUGHERTY (BAR NO. 41317)  
19 JESSE T. MORRISON (BAR NO. 247185)  
20 COVINGTON & CROWE, LLP

21 By: \_\_\_\_\_

22 Jesse T. Morrison

23 Attorneys for A.V. UNITED MUTUAL  
24 GROUP

1 Dated: May 28, 2009

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

3 By: \_\_\_\_\_

4 William M. Sloan  
5 Attorneys for U.S. BORAX, INC.

6 RICHARD G. ZIMMER (BAR NO. 107263)  
7 T. MARK SMITH (BAR NO. 162370)  
8 CLIFFORD & BROWN

9 By: \_\_\_\_\_

10 Richard G. Zimmer  
11 Attorneys for BOLTHOUSE PROPERTIES,  
12 LLC and WM. BOLTHOUSE FARMS, INC.

13 BOB H. JOYCE (BAR NO. 84607)  
14 ANDREW SHEFFIELD (BAR NO. 220735)  
15 KEVIN E. THELEN (BAR NO. 252665)  
16 LAW OFFICES OF LEBEAU THELEN, LLP

17 By: \_\_\_\_\_

18 Bob H. Joyce  
19 Attorneys for DIAMOND FARMING  
20 COMPANY, a California corporation,  
21 CRYSTAL ORGANIC FARMS, a limited  
22 liability company, GRIMMWAY Enterprises,  
23 Inc., and LAPIS LAND COMPANY, LLC.

24 ROBERT M. DOUGHERTY (BAR NO. 41317)  
25 JESSE T. MORRISON (BAR NO. 247185)  
26 COVINGTON & CROWE, LLP

27 By: \_\_\_\_\_

28 Jesse T. Morrison  
Attorneys for A.V. UNITED MUTUAL  
GROUP



MICHAEL T. FIFE (BAR NO. 203025)  
BRADLEY J. HERREMA (BAR NO. 228976)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

Michael T. Fife

Attorneys for the ANTELOPE VALLEY  
GROUNDWATER AGREEMENT  
ASSOCIATION ("AGWA")

1 NOTICE OF MOTION

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that this Motion to Dismiss has been set for hearing on June 19,  
4 2009, at 2:00 p.m., or as soon thereafter as counsel can be heard, in Department 17C of the Santa  
5 Clara County Superior Court.

6 This Motion to Dismiss and Memorandum of Points and Authorities in support thereof are  
7 directed to the First-Amended Cross-Complaint of Public Water Suppliers for Declaratory and  
8 Injunctive Relief and Adjudication of Water Rights for failure to join indispensable parties, filed on  
9 January 10, 2007. This Motion is brought pursuant to California Code of Civil Procedure section 389  
10 and 43 U.S.C. section 666 (the McCarran Amendment).

11 This Motion will be based on this Notice of Motion, the Memorandum of Points and  
12 Authorities in support thereof, the Declaration of William Sloan, and on such oral argument of  
13 counsel and further evidence as may be presented at the hearing on the Motion.

14 Dated: May 28, 2009

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

16 By: \_\_\_\_\_

17 William M. Sloan

18 Attorneys for U.S. BORAX, INC.

19 RICHARD G. ZIMMER (BAR NO. 107263)  
T. MARK SMITH (BAR NO. 162370)  
20 CLIFFORD & BROWN

21 By: \_\_\_\_\_

22 Richard G. Zimmer

23 Attorneys for BOLTHOUSE PROPERTIES,  
24 LLC and WM. BOLTHOUSE FARMS, INC.

1 BOB H. JOYCE (BAR NO. 84607)  
2 ANDREW SHEFFIELD (BAR NO. 220735)  
3 KEVIN E. THELEN (BAR NO. 252665)  
4 LAW OFFICES OF LEBEAU THELEN, LLP

By: 

Bob H. Joyce

Attorneys for DIAMOND FARMING  
COMPANY, a California corporation,  
CRYSTAL ORGANIC FARMS, a limited  
liability company, GRIMMWAY Enterprises,  
Inc., and LAPIS LAND COMPANY, LLC.

8 ROBERT M. DOUGHERTY (BAR NO. 41317)  
9 JESSE T. MORRISON (BAR NO. 247185)  
10 COVINGTON & CROWE, LLP

By: \_\_\_\_\_

Jesse T. Morrison

Attorneys for A.V. UNITED MUTUAL  
GROUP

13 MICHAEL T. FIFE (BAR NO. 203025)  
14 BRADLEY J. HERREMA (BAR NO. 228976)  
15 BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: \_\_\_\_\_

Michael T. Fife

Attorneys for the ANTELOPE VALLEY  
GROUNDWATER AGREEMENT  
ASSOCIATION ("AGWA")

1 BOB H. JOYCE (BAR NO. 84607)  
2 ANDREW SHEFFIELD (BAR NO. 220735)  
3 KEVIN E. THELEN (BAR NO. 252665)  
4 LAW OFFICES OF LEBEAU THELEN, LLP

5 By: \_\_\_\_\_

6 Bob H. Joyce

7 Attorneys for DIAMOND FARMING  
8 COMPANY, a California corporation,  
9 CRYSTAL ORGANIC FARMS, a limited  
10 liability company, GRIMMWAY Enterprises,  
11 Inc., and LAPIS LAND COMPANY, LLC.

12 ROBERT M. DOUGHERTY (BAR NO. 41317)  
13 JESSE T. MORRISON (BAR NO. 247185)  
14 COVINGTON & CROWE, LLP

15 By: \_\_\_\_\_

16 Jesse T. Morrison

17 Attorneys for A.V. UNITED MUTUAL  
18 GROUP

19 MICHAEL T. FIFE (BAR NO. 203025)  
20 BRADLEY J. HERREMA (BAR NO. 228976)  
21 BROWNSTEIN HYATT FARBER SCHRECK, LLP

22 By: \_\_\_\_\_

23 Michael T. Fife

24 Attorneys for the ANTELOPE VALLEY  
25 GROUNDWATER AGREEMENT  
26 ASSOCIATION ("AGWA")  
27  
28


1 BOB H. JOYCE (BAR NO. 84607)  
2 ANDREW SHEFFIELD (BAR NO. 220735)  
3 KEVIN E. THELEN (BAR NO. 252665)  
4 LAW OFFICES OF LEBEAU THELEN, LLP

5 By: \_\_\_\_\_  
6 Bob H. Joyce  
7 Attorneys for DIAMOND FARMING  
8 COMPANY, a California corporation,  
9 CRYSTAL ORGANIC FARMS, a limited  
10 liability company, GRIMMWAY Enterprises,  
11 Inc., and LAPIS LAND COMPANY, LLC.

12 ROBERT M. DOUGHERTY (BAR NO. 41317)  
13 JESSE T. MORRISON (BAR NO. 247185)  
14 COVINGTON & CROWE, LLP

15 By: \_\_\_\_\_  
16 Jesse T. Morrison  
17 Attorneys for A.V. UNITED MUTUAL  
18 GROUP

19 MICHAEL T. FIFE (BAR NO. 203025)  
20 BRADLEY J. HERREMA (BAR NO. 228976)  
21 BROWNSTEIN HYATT FARBER SCHRECK, LLP

22 By:  \_\_\_\_\_  
23 Michael T. Fife  
24 Attorneys for the ANTELOPE VALLEY  
25 GROUNDWATER AGREEMENT  
26 ASSOCIATION ("AGWA")  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I further declare that on May 28, 2009, I served a copy of the attached DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PUBLIC WATER SUPPLIERS' CROSS-COMPLAINT by electronically posting a true copy thereof to Santa Clara County Superior Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C — <http://www.scefiling.org> ) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope Valley Groundwater matter).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed at San Francisco, California, on May 28, 2009.

Catherine G. Berke  
(signature)