

EDGAR B. WASHBURN (BAR NO. 34038)
WILLIAM M. SLOAN (BAR NO. 203583)
GEOFFREY R. PITTMAN (BAR NO. 253876)
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

Assigned to
The Honorable Jack Komar

**CROSS-DEFENDANTS'
OPPOSITION TO MOTION
TO CONSOLIDATE FOR
ALL PURPOSES**

Date: August 17, 2009
Time: 9:00 a.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")

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 28, 2009, more than 60 landowners¹ moved to dismiss the Public Water Suppliers'
4 First Amended Cross-Complaint for a failure to join indispensable parties. (*See* Defendants' Motion
5 to Dismiss Public Water Suppliers' Cross-Complaint ("Motion to Dismiss"). At hearing, this Court
6 deferred ruling on that motion, providing an opportunity for the Public Water Suppliers to bring a
7 separate Motion to Transfer and to Consolidate for All Purposes ("Motion to Consolidate") every
8 action and cross-action in the Antelope Valley Groundwater Cases. Following the Public Water
9 Suppliers' filing of their present Motion to Consolidate, however, it is only more clear that the
10 procedural flaws in these proceedings require the Court to dismiss the Public Water Suppliers' Cross-
11 Complaint for failure to join indispensable parties under California Civil Procedure Code section 389.

12 The Public Water Suppliers' motion depends on an improper contortion of the Rules of Court
13 and Code of Civil Procedure, in an unjustifiable attempt to allow this case to go forward. As
14 demonstrated below, complete consolidation is not appropriate where, as in this case, there are
15 several complex actions filed before different courts in different counties that involve different
16 parties. The Public Water Suppliers' reading of the law would, in essence, allow virtually any
17 combination of cases in this state to be consolidated. Needless to say, that is not the law. Thus, the
18 Cross-Defendants respectfully renew their request for the Court to dismiss the Public Water
19 Suppliers' action or, at the very least, to order that all indispensable parties be named and served
20 before the case is allowed to proceed any further.

21 **II. ARGUMENT**

22 As set forth in the initial Motion to Dismiss, California Civil Procedure Code section 389
23 requires that all overlying landowners and any other water rights holders within the Antelope Valley
24 Groundwater Basin (the "Basin"), including members of both the Willis and Wood classes, be joined
25 as defendants to the Public Water Suppliers' comprehensive groundwater adjudication. (*See* Motion
26

27 ¹ A complete list of these landowners is contained on page three of the cross-defendants' Motion to
28 Dismiss.

1 to Dismiss at 7:16-14:5.) To date, the Public Water Suppliers have failed to name and serve members
2 of the Willis and Wood classes as parties' defendant to their comprehensive adjudication. Further,
3 the Public Water Suppliers' latest attempt to avoid the indispensable parties' requirement by moving
4 for complete consolidation is unavailing, and must be rejected. Therefore, because the Public Water
5 Suppliers have failed to join indispensable parties, their action must be dismissed.

6 **A. Transfer and *Complete Consolidation of Complex Actions Filed in Different***
7 ***Courts in Different Counties that Involve Different Parties, Is Procedurally***
8 ***Improper.***

9 The Public Water Suppliers' suggestion that all of the procedural deficiencies outlined in the
10 Cross-Defendants' previous briefing can simply be resolved by the Court ordering all actions and
11 cross-actions to be transferred and then consolidated for all purposes is incorrect. Indeed, to follow
12 the Public Water Suppliers' logic would allow any and all actions filed in California, regardless of the
13 location of their filing or their complex or non-complex designation, to be consolidated for all
14 purposes. (*See* Motion to Consolidate at 3:12-16.) The Code of Civil Procedure and the Rules of
15 Court do not allow for such a result. As demonstrated below, the procedural rules require that the
16 Court either dismiss the Public Water Suppliers' action for failure to join indispensable parties or, at a
17 minimum, order that all indispensable parties be named and served as defendants pursuant to
18 California Civil Procedure Code section 389.

19 **1. Complex Actions Filed in Different Counties Cannot Be Transferred and**
20 **Completely Consolidated Under Either the Code of Civil Procedure or the**
21 **Rules of Court.**

22 The basic procedural rules relating to the coordination of complex actions filed in different
23 counties in California are well settled. Under California Civil Procedure Code section 404 et seq.,
24 such cases will be coordinated, i.e., assigned to a single judge, if they share a common question of
25 law or fact and the coordination judge determines that the factors set forth in California Civil
26 Procedure Code section 404.1 have been satisfied. Put differently, "[c]oordination is a procedure for
27 securing centralized case management of [complex] actions pending in different courts that share a
28 common question of fact or law." Cal. Judges Benchbook, Civil Proceedings Before Trial, § 2.89
(2d ed. 2008). Not surprisingly, the cases in this proceeding were properly coordinated under section
404 because Judge Velasquez determined that the requirements of sections 404 and 404.1 were

1 satisfied. (*See* Motion to Consolidate, Ex. 1.) However, contrary to the Public Water Suppliers’
2 assertions, coordination – and *not* consolidation – is all that the law permits with respect to
3 streamlining the adjudication process for complex actions filed in different counties.

4 Under California law, it is well established that “[c]oordination by transfer and consolidation
5 is available **only** for actions which are ‘not complex.’” 2-32 Mathew Bender Practice Guide:
6 California Pretrial Civil Procedure 32.15 (2009) (emphasis added). Indeed, in setting forth the
7 requirements for requesting that cases from different counties be transferred and consolidated, as the
8 Public Water Suppliers are requesting here, California Civil Procedure Code section 403 provides,
9 “[t]he motion shall be supported by a declaration stating facts showing that the actions meet the
10 standards specified in Section 404.1, **are not complex** as defined by the Judicial Council and that the
11 moving party has made a good faith effort to obtain agreement to the transfer from all parties to each
12 action.” Cal. Civ. Proc. Code § 403 (emphasis added). Under California law, all “‘complex’ cases
13 must be ‘coordinated’ with each other” and may not be consolidated under Code of Civil Procedure
14 section 1048(a). *See* Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (“Weil & Brown”),
15 § 12:345 (Rutter Group 2009). Thus, the law is clear that consolidation is not proper for complex
16 actions.

17 Here, it is undisputed that every action that has been coordinated as part of the Antelope
18 Valley Groundwater Cases is “complex,” as defined by California Rules of Court 3.400 et seq.
19 Indeed, the Public Water Suppliers’ Motion to Consolidate repeatedly concedes that these actions are
20 “coordinated and complex.” (*See* Motion to Consolidate at 4:20-21, 7:22, 8:11, 9:6.) Because the
21 actions sought to be consolidated by the Public Water Suppliers are complex, consolidation is
22 improper.

23 Additionally, it is equally well established that consolidation is appropriate only where the
24 cases are pending in the same county and before the same court. *See* 2-32 Mathew Bender, *supra*,
25 §32.08 (“Consolidation is the power of the court to order several actions or issues involving common
26 questions of law or fact **filed in the same county** to be tried together . . .”)(emphasis added); *see also*
27 Weil & Brown, *supra*, § 12:345. “Consolidation . . . cannot combine actions pending in different
28 counties.” 3 CEB, California Civil Procedure Before Trial, § 43.3 (June 2008). The text of

1 California Civil Procedure Code section 1048(a) is also instructive because it only allows
2 consolidation of actions “involving a common question of law or fact” pending before “the [same]
3 court.” Cal. Civ. Proc. Code § 1048(a). Here, because the actions were filed in different counties,
4 before different courts (i.e., the Los Angeles County Superior Court, Kern County Superior Court,
5 and Riverside County Superior Court), consolidation is improper.

6 Further, none of the authorities cited by the Public Water Suppliers compels a different
7 conclusion. First, all of the cases cited in the Motion to Consolidate to support the position that these
8 cases may be properly consolidated involved *non-complex* actions filed in the *same county* –
9 precisely the prerequisites to consolidation that are absent here. Second, to accept the Public Water
10 Suppliers’ argument that complex cases filed in different counties can somehow be transferred (and
11 later consolidated) under provisions of the Rules of Court, (Motion to Consolidate at 8:26-9:4),
12 would result in the complete negation of any meaningful distinction between the procedures of
13 consolidation and coordination contemplated by California Civil Procedure Code sections 403 and
14 404. Such an interpretation is not persuasive and should not be followed by the Court. Rule of Court
15 3.543(a), which gives coordination judges the power to transfer actions that have been coordinated,
16 has never been used in the manner suggested by the Public Water Suppliers, and this Court should
17 not do so here.

18 As set forth above, the only proper procedural method to bring these cases together before the
19 same court is through coordination, not through transfer and consolidation. *See* Cal. Civ. Proc. Code
20 § 404. However, as set forth in the Cross-Defendants’ Reply Brief, coordination is insufficient to
21 satisfy the requirements of section 389 of the California Civil Procedure Code, as well as the
22 comprehensive adjudication requirement of the McCarran Amendment (43 U.S.C. § 666). (Reply
23 Brief at 4:23-6:12.) Therefore, unless and until the Public Water Suppliers properly name and serve
24 all of the indispensable parties to their comprehensive adjudication, this Court must dismiss their
25 action.

1 **2. Complete Consolidation Is Also Improper Where, As Here, the Parties to**
2 **the Cases to be Consolidated are not Identical.**

3 As recognized by the Motion to Consolidate, “[t]here are two types of consolidation: a
4 complete consolidation resulting in a single action, and a consolidation of separate actions for trial.”
5 *Sanchez v. Super. Ct.*, 203 Cal. App. 3d 1391, 1396 (1988). Complete consolidation or consolidation
6 for all purposes, as requested by the Public Water Suppliers here, is only appropriate “where the
7 parties are identical and the causes could have been joined.” *Id.*; see also Weil & Brown, *supra*,
8 § 12:341.1. Here, as evidenced by the previous briefing filed regarding the Motion to Dismiss, the
9 parties to the cases that comprise the Antelope Valley Groundwater Cases are not identical, or even
10 substantially the same. The authorities cited by the Public Water Suppliers to the contrary are
11 distinguishable. While the court in *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App. 2d 861, 867
12 (1952) did allow complete consolidation of two cases where the plaintiff parties were not technically
13 identical, they were substantially the same. The first action was filed by Whitehead as an individual
14 for misappropriations up until the time that his business was incorporated, and the second action was
15 filed by the Whitehead Heater Co. for misappropriations occurring after the date of incorporation.
16 See *id.* at 866-67. Unlike *Jud Whitehead Heater Co.*, the parties to the coordinated actions in this
17 case are not substantially the same. Thus, complete consolidation is improper.²

18 **3. The Public Water Suppliers’ Motion to Consolidate for All Purposes Fails**
19 **for the Additional Reason that It Does Not Comply with CRC 3.350.**

20 Rule of Court 3.350 governs motions to consolidate and provides that movants *must* “[l]ist all
21 named parties in each case, the names of those who have appeared, and the names of their attorneys
22 of record.” Cal. Rule of Court 3.350(a)(1)(A). The Public Water Suppliers’ Motion to Consolidate
23
24
25

26 ² The other two cases cited by the Public Water Suppliers, *Paduano v. Paduano*, 215 Cal. App. 3d
27 346 (1989) and *Committee for Responsible Planning v. City of Indian Wells*, 225 Cal. App. 3d 191
28 (1990) are equally distinguishable because both of these actions involved substantially the same
parties as well.

1 fails to comply with these requirements, further demonstrating their willingness to disregard
2 procedural rules.³ For this additional reason, the Motion to Consolidate should be denied.

3 **B. Absent Complete Consolidation or Joinder of Indispensable Parties, the**
4 **McCarran Amendment’s Comprehensive Adjudication Requirement Will Also**
5 **Not be Satisfied.**

6 The Motion to Consolidate suggests that “complete consolidation should resolve the concerns
7 of the United States (and others) that these proceedings satisfy the requirements of the McCarran
8 Amendment by avoiding piecemeal litigation.” (Motion to Consolidate at 8:16-18). However, as
9 demonstrated above, because these cases cannot be completely consolidated, the McCarran
10 Amendment concerns cannot be resolved. As the legislative history of the McCarran Amendment
11 provides:

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

15 *United States v. Dis. Court in and for Eagle County, Colo.*, 401 U.S. 520, 525 (1971) (quoting S.
16 Rep. No. 82-755, at 9) (emphasis added). Here, in order for the McCarran Amendment concerns to
17 be satisfied, the Public Water Suppliers must name and serve all indispensable parties as “parties
18 defendant” to their lawsuit, as instructed by the legislative history of the McCarran Amendment
19 itself.

20 **C. The Procedural Deficiencies in these Coordinated Proceedings Require the Court**
21 **to Dismiss the Public Water Suppliers’ Cross-Complaint or Order All**
22 **Indispensable Parties Named and Served as Defendants.**

23 In addition to the procedural infirmities identified above, as well as in the Cross-Defendants’
24 previous briefing, the current procedural posture of the Antelope Valley Groundwater Cases further

25 ³ The Motion to Consolidate also fails to comply with Rule 3.350(a)(1)(B) because it does not
26 “[c]ontain the captions of all the cases sought to be consolidated,” and also fails to satisfy Rule of
27 Court 3.350(a)(2)(B) because it was not “served on all attorneys of record and all non-represented
28 parties in all of the cases sought to be consolidated . . .” Because the requirements Rule of Court
3.350 are *mandatory*, and not discretionary, the Public Water Suppliers’ failure to satisfy the dictates
of Rule 3.350 is a sufficient ground alone for the Court to deny the Motion to Consolidate.

1 demonstrates the need to grant the Cross-Defendants' Motion to Dismiss. First, since the Court's
2 June 19, 2009 hearing on the Motion to Dismiss, some of the Public Water Suppliers have dismissed
3 their claims against certain cross-defendants with prejudice. (*See* Docket Nos. 2971-72 on the
4 Court's e-filing website, <http://www.scefiling.org>.) This development further demonstrates that the
5 McCarran Amendment's comprehensive adjudication requirement cannot be satisfied as the case
6 currently stands.

7 Second, as the previous briefs have demonstrated, it is clear that neither the Wood nor Willis
8 class is seeking a comprehensive adjudication of groundwater rights within the Basin, as is expressly
9 sought by the Public Water Suppliers in their First-Amended Cross-Complaint. (*See* First-Amended
10 Cross-Complaint, ¶ 15.)

11 Lastly, it is undisputed that many, if not all, of the landowners who are not members of the
12 Wood or Willis classes are not parties to the cases that the plaintiff classes have initiated. Therefore,
13 it is clear that in order to satisfy the McCarran Amendment's comprehensive adjudication
14 requirement, the Public Water Suppliers must name and serve all of the members of the Wood and
15 Willis classes, as well as any other groundwater rights holders within the Basin, as parties defendant
16 to their lawsuit.

17 **III. CONCLUSION**

18 All parties – including the Public Water Suppliers and the Willis and Wood classes, agree that
19 *all* overlying landowners within the Basin are necessary parties to this comprehensive groundwater
20 adjudication. However, due to apparent concerns about expense and delay, the Public Water
21 Suppliers still have failed to name and serve all indispensable parties to their lawsuit. Instead, the
22 Public Water Suppliers have attempted to bend and contort the Rules of Court and Code of Civil
23 Procedure to avoid naming and serving all indispensable parties, while at the same time preserving
24 the appearance of a “comprehensive” adjudication to satisfy the McCarran Amendment. As
25 explained above, and in the Cross-Defendants' previous briefing, the Public Water Suppliers' novel
26 arguments must be rejected. Because coordination and consolidation are insufficient to protect the
27 rights of all of the parties to this comprehensive adjudication, the moving Cross-Defendants
28

1 respectfully request that the Court dismiss the action or, at the very least, order that the Public Water
2 Suppliers properly name and serve all indispensable parties as defendants in their lawsuit.

3
4 Dated: August 3, 2009

EDGAR B. WASHBURN
WILLIAM M. SLOAN
GEOFFREY R. PITTMAN
MORRISON & FOERSTER LLP

6 By: William M. Sloan
7 William M. Sloan
8 Attorneys for U.S. BORAX, INC.

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

11 By: _____
12 T. Mark Smith
13 Attorneys for BOLTHOUSE PROPERTIES,
14 LLC and WM. BOLTHOUSE FARMS, INC.

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

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

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

By: _____
Jesse T. Morrison
Attorneys for A.V. UNITED MUTUAL
GROUP

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MORRISON & FOERSTER LLP

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8 Attorneys for U.S. BORAX, INC.

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10 T. MARK SMITH (BAR NO. 162370)
CLIFFORD & BROWN

11 By:  _____

12 T. Mark Smith

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

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

17 By: _____

18 Bob H. Joyce

19 Attorneys for DIAMOND FARMING
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20 CRYSTAL ORGANIC FARMS, a limited
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21
22 ROBERT M. DOUGHERTY (BAR NO. 41317)
JESSE T. MORRISON (BAR NO. 247185)
23 COVINGTON & CROWE, LLP

24 By: /s/ Jesse T. Morrison _____

Jesse T. Morrison

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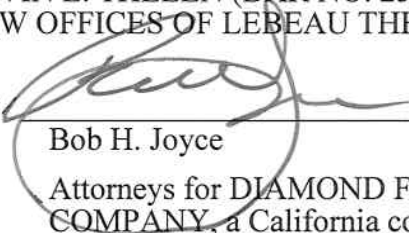
EDGAR B. WASHBURN
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GEOFFREY R. PITTMAN
MORRISON & FOERSTER LLP

6 By: _____
7 William M. Sloan
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9 RICHARD G. ZIMMER (BAR NO. 107263)
10 T. MARK SMITH (BAR NO. 162370)
CLIFFORD & BROWN

11 By: _____
12 Richard G. Zimmer
13 Attorneys for BOLTHOUSE PROPERTIES,
14 LLC and WM. BOLTHOUSE FARMS, INC.

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27 JESSE T. MORRISON (BAR NO. 247185)
28 COVINGTON & CROWE, LLP

By: /s/ Jesse T. Morrison
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MORRISON & FOERSTER LLP

6
7 By: _____
William M. Sloan
8 Attorneys for U.S. BORAX, INC.

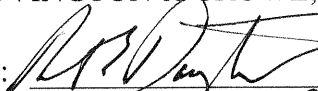
9 RICHARD G. ZIMMER (BAR NO. 107263)
10 T. MARK SMITH (BAR NO. 162370)
CLIFFORD & BROWN

11 By: _____
12 Richard G. Zimmer
13 Attorneys for BOLTHOUSE PROPERTIES,
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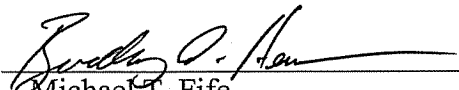
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LAW OFFICES OF LEBEAU THELEN, LLP

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18 Bob H. Joyce
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23 JESSE T. MORRISON (BAR NO. 247185)
COVINGTON & CROWE, LLP

24 By:  _____
Jesse T. Morrison Robert E. Dougherty
25 Attorneys for A.V. UNITED MUTUAL
26 GROUP
27
28

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

4 By: 
5 Michael T. Fife

6 Attorneys for the ANTELOPE VALLEY
7 GROUNDWATER AGREEMENT
8 ASSOCIATION ("AGWA")
9
10
11
12
13
14
15
16
17
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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 August 3, 2009.

Jennifer Doctor
(signature)

**THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ELECTRONIC FILING - WWW.SCEFILING.ORG**

c/o Glotrans
2915 McClure Street
Oakland, CA94609
TEL: (510) 208-4775
FAX: (510) 465-7348
EMAIL: Info@Glotrans.com

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES (JCCP 4408) Included Actions: Los Angeles County Waterworks District No. 40)	Antelope Valley Groundwater Cases (JCCP 4408)
)	
)	Lead Case No.1-05-CV-049053
)	
Plaintiff,)	Hon. Jack Komar
vs.)	
)	
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, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668)	
)	
Defendant.)	
)	
AND RELATED ACTIONS)	PROOF OF SERVICE
)	Electronic Proof of Service

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Mon. August 3, 2009 at 2:19 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Mon. August 3, 2009 at 2:19 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed on August 3, 2009 at Oakland, California.

Dated: August 3, 2009

For WWW.SCEFILING.ORG

Andy Jamieson

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Document(s) submitted by William Sloan of Morrison & Foerster LLP on Mon. August 3, 2009 at 2:19 PM PDT

1. Opposition: Cross-Defendants' Opposition to Motion to Consolidate for All Purposes

*Superior Court of California
County of Santa Clara*

191 North First Street
San Jose, California 95113
(408) 882-2700



DAVID H. YAMASAKI
Chief Executive Officer

CIVIL AND SMALL CLAIMS DIVISION

E-File Document Cover Sheet

Please send two complete sets of the electronically endorsed documents to the Superior Court within 3 days of receiving a confirmation email.

Please complete the following information and attach this sheet to the two sets of documents.

Case Number	E-File Acceptance Date
1-05-CV-049053 #G-17177	08/03/09

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