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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

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

12 **ANTELOPE VALLEY GROUNDWATER CASES**

13 Included Actions:

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

Superior Court of California, County of Los Angeles,
16 Case No. BC 325 201

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

Superior Court of California, County of Kern,
19 Case No. S-1500-CV-254-348

20 **Wm. Bolthouse Farms, Inc. v. City of Lancaster**
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.

21 Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668
22 (Consolidated Actions)

Judicial Council Coordination
Proceeding No. 4408

Case No. 1-05-CV-049053

**CASE MANAGEMENT
CONFERENCE STATEMENT OF
U.S. BORAX INC.**

Date: August 17, 2009

Time: 9:00 a.m.

Dept: 17C (Santa Clara County)

Judge: Hon. Jack Komar

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25 At the last hearing, the Court acknowledged that it is “certainly not clear to me at this point”
26 what the status of the parties is. (7/24/09 Tr. at 8:3-5.) U.S. Borax submits that the status of the
27 parties is not clear to anyone. These proceedings must have an accounting of who has and has not
28 been served—all that is ever provided are summary narratives that amount to little more than saying

1 “trust us.” These token gestures are not sufficient. Serious jurisdictional concerns have been raised
2 and are still pending—they may not be ignored or brushed aside for the sake of convenience.

3 Appropriately, the Court also indicated at the last hearing that there is a need for “a chart
4 showing each party and their status so that it is very clear as to who is in the case and who has been
5 served and who has answered” (7/24/09 Tr. at 8:5-7.) U.S. Borax believes it is imperative that
6 the parties prosecuting this action explain who they are—and are not—suing. Far too much time,
7 money and effort has been expended to allow the type of ad hoc litigation that some of the parties are
8 pursuing. U.S. Borax also suggests that the status of parties must be resolved *before* any further steps
9 are taken in this litigation.¹ This is not a “delay tactic” as some pleadings have alluded; this is
10 following the basic rules of civil procedure and observing due process. U.S. Borax has had an expert
11 participate in all stages of these proceedings, and is prepared for the next phase of trial if or when the
12 time comes, but the current posture of this litigation does not allow for much of anything to happen.

13 Significant jurisdictional flaws are still outstanding. Two examples are illustrative. First, the
14 operative First Amended Cross-Complaint plainly contains affirmative class action allegations, but
15 *there is no defendant class in this case yet*. Neither of the existing classes considers itself to be the
16 defendant class named in the Cross-Complaint. Even more importantly, the thousands of class
17 members have not been advised that they are facing causes of action for prescriptive rights,
18 appropriative rights, physical solution, unreasonable use, recapture of return flows, and storage of
19 imported water. How can a trial on the amount of available water take place when thousands of
20 potentially impacted parties don’t realize what interests they have at stake? U.S. Borax would
21 welcome an assurance from class counsel that they have discussed the potential rights involved with
22 storage space with their class members, or the legal ramifications of a cause of action for
23 unreasonable use—it is probably a safe bet those discussions haven’t happened. And consolidation
24 will not resolve this problem.

25 ¹ It is not even clear who is, and is not, requesting a trial date. Los Angeles County
26 Waterworks District No. 40 requested a trial date, but its counsel did not indicate whether its other
27 client, Rosamond Community Services District, joins in the request. Moreover, several of the cross-
28 complainants, including the City of Lancaster and Palmdale Water District, have requested a stay so
that the parties can attempt to reach a settlement, but District 40 has opposed that request. As best
can be gleaned, some of the cross-complainants are asking for a trial date and some are not.

1 Second, four mutual water companies were recently dismissed *with prejudice* by two of the
2 cross-complainants, but not others. For the cross-complainants that filed those dismissals, they can
3 no longer sue the United States because they cannot satisfy the comprehensiveness requirement of the
4 McCarran Amendment. Those entities are gone forever from the action as it was brought by the two
5 cross-complainants. On that basis alone, U.S. Borax believes that it has proper grounds to seek
6 dismissal of the cross-complaint, at least as to those certain cross-complainants. Again, consolidation
7 does not resolve this jurisdictional impediment. These types of serious jurisdictional issues must be
8 resolved before proceeding with a trial on substantive issues that will impact the rights of everyone in
9 the valley.

10 This case is not at issue, and any setting of a trial date would be premature. U.S. Borax again
11 suggests that the only appropriate avenue left available is to dismiss the adjudication—for the reasons
12 already briefed, consolidation is not an available option. At the very least, the cross-complainants
13 should provide a complete accounting of the status of parties to the First Amended Cross-Complaint,
14 including who they are and are not suing. Once that is completed, the Court should allow further
15 dispositive motions. With respect to the classes, some solution must be reached in determining
16 whether the existing classes are to serve collectively as the defendant class named in the First
17 Amended Cross-Complaint. Neither class counsel appears to believe that they are defending against
18 causes of action for storage, unreasonable use, or virtually any of the other causes of action—yet it
19 seems abundantly clear that the class members have rights implicated by those causes of action.
20 Finally, U.S. Borax also renews its request for a written decision on the pending Motion to Dismiss
21 should the Court reach a decision on that motion at the hearing on August 17.

22 Dated: August 13, 2009

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

25 By: /s/ William M. Sloan
26 William M. Sloan
27 Attorneys for U.S. BORAX INC.
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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on August 13, 2009, I served a copy of:

**CASE MANAGEMENT CONFERENCE STATEMENT OF
U.S. BORAX INC.**

☒ **BY ELECTRONIC SERVICE** 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).

☐ **BY U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

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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.

Executed at San Francisco, California, August 13, 2009.

Catherine L. Berté
(typed)


(signature)