

EXEMPT FROM FILING FEES UNDER  
GOVERNMENT CODE SECTION 6103

Attorneys for Federal Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

Coordination Proceeding  
Special Title (Rule 1550(b))

Judicial Council Coordination  
Proceeding No. 4408

## ANTELOPE VALLEY GROUNDWATER CASES

**Included actions:**

## UNITED STATES' OPPOSITION TO MOTION TO CERTIFY CLASS ACTION COMPLAINT

Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co., et al.  
Los Angeles County Superior Court, Case No. BC  
325 201

Hearing Date: August 11, 2008 at  
9:00 a.m.

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

Hearing Location: Los Angeles  
County Superior Court, Central  
District, Department 1, Room 534

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water District  
Riverside County Superior Court, Consolidated  
Action, Case nos. RIC 353 840, RIC 344 436, RIC  
344 668

## AND RELATED CROSS ACTIONS

1 The United States submits the following opposition to Plaintiff Richard A. Wood's  
2 Motion to Certify Class Action Complaint of small groundwater pumpers in the Antelope Valley  
3 groundwater basin.<sup>1/</sup> The United States does not oppose the formation of the class of small  
4 pumpers for the purpose of adjudicating such pumpers' rights to water. However, the United  
5 States does object to the scope of the class as defined in Paragraph 17 of the Complaint.  
6 Paragraph 17 defines the class as consisting of:

7 All private (i.e., non-governmental) persons and entities that own real  
8 property within the Basin, as adjudicated, and that have been pumping on their  
9 property within the five year period preceding the filing of this action. The Class  
10 excludes the defendants herein, any person, firm, trust, corporation, or other entity  
11 in which any defendant has a controlling interest or which is related to or  
12 affiliated with any of the defendants, and the representatives, heirs, affiliates,  
successors-in-interest or assigns of any such excluded party. The Class also  
excludes all persons to the extent their properties are connected to a municipal  
water system, public utility, or mutual water company from which they receive  
water service, as well as all property pumping 25 acre-feet per year or more on an  
average basis during the class period.

13 First Amended Class Action Complaint, at 7. Wood filed this class action on behalf of "a class  
14 of water-pumping Antelope Valley landowners who were not then represented in this water  
15 rights adjudication." Wood's Memorandum of Points and Authorities, at 4. The purported class  
16 of small groundwater pumpers, however, excludes persons "to the extent their properties are  
17 connected to a municipal water system, public utility, or mutual water company from which they  
18 receive water service." Complaint at ¶ 17. Merely because a small groundwater pumper is  
19 connected to a public water system does not change his or her status as a groundwater user. It  
20 makes no sense to include in the class persons who, for example, are pumping 24 acre feet of  
21 water annually for all their water needs, yet exclude persons who may be receiving water from a  
22 public water supplier and pumping 24 acre feet annually from a well.

23 Previously, the Court allowed the exclusion of persons connected to a public water supply  
24

25 <sup>1/</sup> Pursuant to the Court's May 22, 2008 *Order After Case Management Conference*, parties that  
26 have filed prior Answers are deemed to have responded to the small pumpers Class Complaint. The  
27 United States filed an Answer to the CROSS-COMPLAINT OF MUNICIPAL PURVEYORS FOR  
28 DECLARATORY AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS, on  
December 15, 2006. Therefore, the United States responds in opposition to the motion to certify the  
small pumpers Class Action, rather than file an Answer denying the allegations contained therein.

1 from the class of dormant overlying landowners. See ORDER CERTIFYING PLAINTIFF  
2 CLASS, dated September 11, 2007. As the Court explained at hearings on this matter, small  
3 landowners already receiving water from a public water source are unlikely to drill a well and  
4 directly use groundwater. That reasoning does not apply here, where persons connected to a  
5 public water supply, in addition, pump directly from the groundwater aquifer. Such an exclusion  
6 defies the small groundwater pumpers' stated goal. Rather than joining in this adjudication all  
7 water-pumping landowners who are not now represented in the adjudication, such an exclusion  
8 will leave out a number of persons directly pumping groundwater.

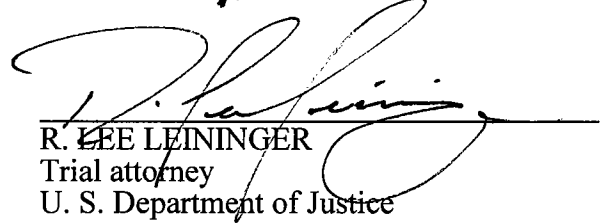
9 Further, as the United States has consistently maintained, excluding water rights holders  
10 or claimants from the adjudication potentially violates the McCarran Amendment, 43 U.S.C. §  
11 666. In our March 5, 2007, Response to Motion for Class Certification (filed by Public Water  
12 Suppliers) at 1-3, we argued that in order for the waiver of the United States' sovereign immunity  
13 under the McCarran Amendment to be effective, the adjudication must include all claimants or  
14 owners of right within the basin:

15 A fundamental requirement of a McCarran general stream adjudication is the  
16 determination of all rights to water within the adjudication boundary. *California v.*  
17 *United States*, 235 F.2d 647, 663 (9th Cir. 1956)(the type of adjudication required  
18 by the McCarran Amendment includes "all owners of lands on the watershed and  
19 all appropriators who use water from the stream" ); *California v. Rank*, 293 1:2d  
20 340, 347 (9th Cir. 1961) *rev'd on other grounds sub nom. Dugan v. Rank*, 372  
21 U.S. 609 (1963)(a general adjudication is "one in which the rights of all claimants  
22 on a stream system, as between themselves, are ascertained and officially stated")  
23 *Metropolitan Water Dist. For S. Cal. v. United States*, 830 F.2d 139, 144 (9<sup>th</sup>  
24 Cir.1987)("The McCarran amendment [authorizes]... only suits to adjudicate the  
25 rights of all claimants on a stream"); *United States v. Oregon*, 44 F.3d 758, 768  
26 (9th Cir. 1994)(noting that 'all existing water rights claims in the river system will  
27 have been determined when the adjudication is finished"); *Miller v. Jennings* (5<sup>th</sup>  
28 Cir. 1957) 243 F.2d 157, 159 (noting that there can be a McCarran adjudication  
"only in a proceeding where all persons who have rights are before the tribunal");  
*In re Snake River Basin Water System*, 764 P.2d 78, 85 (Idaho 1988) (ruling that  
"in order for the United States to be subject to the jurisdiction of the trial court in  
the Snake River basin adjudication, the rights of all claimants on the Snake River  
and all of its tributaries within the state of Idaho must be included in the  
adjudication.

*Id.* at 1. The exclusion of small groundwater pumpers connected to a public water system does  
not satisfy this requirement that all water right claimants be included in a McCarran general  
stream adjudication. Consequently, the definition of the small pumpers class should be modified  
to remove the exclusion of class members that receive water from a public water supplier, but

1 retaining the exclusion of “all property pumping 25 acre-feet per year or more on an average  
2 basis during the class period.”<sup>2/</sup>

3  
4 Respectfully submitted this 11 th day of July, 2008.

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7 R. LEE LEININGER  
8 Trial attorney  
9 U. S. Department of Justice  
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28 <sup>2/</sup> The United States understands that all well owners in the adjudication pumping more than  
25 acre-feet per annum have been or will be individually served by the public water suppliers.

## **PROOF OF SERVICE**

I, Linda C. Shumard, declare:

I am a resident of the State of Colorado and over the age of 18 years, and not a party to the within action. My business address is U.S. Department of Justice, Environmental and Natural Resources Section, 1961 Stout Street, 8<sup>th</sup> Floor, Denver, Colorado 80294.

On July 11, 2008, I caused the foregoing documents described as **UNITED STATES' OPPOSITION TO MOTION TO CERTIFY CLASS ACTION COMPLAINT**, to be served on the parties via the following service:

☒

BY ELECTRONIC SERVICE AS FOLLOWS by posting the document(s) listed above to the Santa Clara website in regard to the Antelope Valley Groundwater matter.

☐

BY MAIL AS FOLLOWS (to parties so indicated on attached service list): By placing true copies thereof enclosed in sealed envelopes addressed as indicated on the attached service list.

☐

BY OVERNIGHT COURIER: I caused the above-referenced document(s) be delivered to FEDERAL EXPRESS for delivery to the above address(es).

Executed on July 11, 2008, at Denver, Colorado.

/s/Linda C. Shumard  
Linda C. Shumard  
Legal Support Assistant