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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding) Judicial Council Coordination
Special Title (Rule 1550(b))) Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER CASES

Included actions:) FEDERAL DEFENDANTS'
) RESPONSE TO MOTION TO
) TRANSFER AND CONSOLIDATE

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., et al.

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

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., et al.

Kern County Superior Court, 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 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 respectfully submits its response to the City of Palmdale's, *et al.*
2 (collectively the "Public Water Suppliers or PWS"), Notice of Motion and Motion to
3 Transfer and to Consolidate for All Purposes; Memorandum of Points and Authorities;
4 Declaration of Whitney G. McDonald ("*PWS Consolidation Motion*"), filed July 15, 2009.
5 The PWS state that "consolidation will allow for the entry of single statements of decision
6 in subsequent phases and a single judgment [and] . . . permit the Court to handle these
7 already coordinated and complex proceedings as a single action." *Id.* at 4.

8 **1. Overview.**

9 As an initial matter, the United States not only supports the goals of consolidation,
10 but maintains that these goals are imperative. To retain jurisdiction over the United States
11 the litigation must achieve a mutually binding adjudication of all rights to water in the
12 groundwater basin. As we stated in our June 18, 2009 brief on this matter, the present
13 coordination of complex cases may lead to separate and non-mutually binding
14 determinations of rights and interests entered in separate decrees. *Federal Defendants'*
15 *Reply to Landowner Defendants' Motion to Dismiss Public Water Suppliers' Cross*
16 *Complaint and Responses Thereto*, at 2-3. This has the potential to produce only
17 piecemeal adjudication of limited rights that are neither binding on all users nor
18 enforceable by all users. Such an amalgam of decrees would not effect a comprehensive
19 adjudication of the rights to water in the Antelope Valley aquifer and would fail to satisfy
20 the requirements of the McCarran Act which provides the waiver of immunity for the
21 United States to be joined in this action. See *Colorado River Water Conservation Dist. v.*
22 *United States*, 424 U.S. 800, 819 (1976); see also *Arizona v. San Carlos Apache Tribe of*
23 *Arizona*, 463 U.S. 545, 569 (1983).

24 Consolidation, therefore, provides a mechanism to unify the case, result in a single
25 decree binding on all parties, and potentially satisfy the McCarran Amendment. To that
26 end, and because the cases have a common question of law or fact, complete consolidation
27 is appropriate here.
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2 **2. Consolidation is warranted because the cases involve a common question of**
3 **law and fact.**

4 A judge may consolidate actions when they involve a common question of law or
5 fact. Cal. Civ. Proc. Code § 1048(a) (2009). "Common questions" between cases are
6 areas of "overlap"; identical or similar parties and/or claims. *Medlock v. Taco Bell Corp.*,
7 2009 WL 1444343, at *1 (E.D. Cal. May 19, 2009). Pursuant to § 1048, "[w]hen actions
8 involving a common question of law or fact are pending before the court, it may order a
9 joint hearing or trial of any or all the matters in issue in the actions; it may order all the
10 actions consolidated and it may make such orders concerning proceedings therein as may
11 tend to avoid unnecessary costs or delay." Cal. Civ. Proc. Code § 1048(a).

12 Here, it has already been determined that the cases involve common questions of
13 law and fact because the cases have been coordinated. *See* Cal. Civ. Proc. Code § 404.
14 Moreover, one of the factors considered prior to coordination is if common questions of
15 law or fact are predominating or significant to the litigation. *Id.* at § 404.1.

16 The predominating common question in this case is the determination of rights to
17 groundwater in the Antelope Valley groundwater basin. All the parties share this
18 commonality including the dormant landowners, the small and large pumpers, the
19 municipal water providers, the purveyors, and the federal government. The Willis class of
20 non-pumping landowners, for example, recognize that the Antelope Valley groundwater
21 adjudication "has been combined with other cases to determine all the groundwater rights
22 in the Basin." (Willis) Notice of Class Action, at 1 (attached as Exh. A to Plaintiff Willis'
23 Order Modifying Class Definition and Allowing Parties to Opt in the Plaintiff Class, filed
24 May 22, 2008); *see also* Second Order Modifying Definition of Plaintiff [Willis] Class,
25 dated September 2, 2008, at 2 ("The claims asserted on behalf of the Class raise common
26 issues of fact and law, which predominate over any individual issues.") Moreover, this
27 class was certified "in light of the need to obtain a comprehensive allocation of water
28 rights that is binding on all landowners within the Basin." Order Certifying Plaintiff
Class, dated September 9, 2007, at 2, ¶ 7.

1 Similarly, the Wood class of small pumpers claims that “[t]here are common
2 question [sic] of law and fact as to all members of the Class, which predominate over any
3 questions affecting solely individual members of the Class. Specifically, the Class
4 members are united in establishing (1) their priority to the use of the Basin's groundwater
5 given their capacity as overlying landowners” First Amended Class Action
6 Complaint (Wood Class), dated June 20, 2008, pp. 7-8, ¶ 21. Because the coordinated
7 cases involve the common question of rights to groundwater these cases are appropriate
8 for complete consolidation.

9 **3. Consolidation for all purposes is proper.**

10 Section 1048 of the California Code has been interpreted by courts to permit
11 complete consolidation, or consolidation of particular issues for trial only. *See Sanchez v.*
12 *Superior Court of Santa Clara County*, 203 Cal. App. 3d 1391, 1396 (Cal. Ct. App. 1988).
13 Both complete consolidation and consolidation for trial require a common question of law
14 or fact. *Hamilton v. Asbestos Corp., Ltd.*, 22 Cal. 4th 1127, 1148 n.12 (Cal. 2000). In a
15 complete consolidation, however, "the pleadings are regarded as merged, one set of
16 findings is made, and one judgment is rendered." Judge Robert I. Weil & Judge Ira A.
17 Brown, Jr., Cal. Prac. Guide: Civ. Pro. Before Trial § 12:341.1 (The Rutter Group 2007);
18 *see also Sanchez*, 203 Cal. App. 3d at 1396. Otherwise stated, complete consolidation is
19 proper when “the causes of action might have been united.” *Smith v. Smith*, 80 Cal. 323,
20 324 (Cal. 1889). In these coordinated cases, all the causes, including determination of
21 safe yield, overdraft, prescription, rights priority, reserved rights, and a physical solution
22 unite to produce a determination of the parties’ relative rights to groundwater. Therefore,
23 complete consolidation is proper.

24 **4. The cases have already been transferred.**

25 In their Consolidation Motion, the Public Water Suppliers request that, “to the
26 extent not already transferred, the Court is authorized to order whatever transfers are
27 deemed necessary to allow complete consolidation.” PWS Consolidation Mtn. at 9. In
28 this case, however, the Judicial Council has already effected a transfer of the coordinated

1 actions by assigning the actions to Judge Komar and the Superior Court of Santa Clara
2 County. *See* Exhibit 2 attached to PWS Consolidation Mtn. Accordingly, no further
3 transfer of the respective cases is necessary prior to consolidation.

4 The California Rules define “transfer” as the “means to remove a coordinated
5 action or severable claim in [an] action from the court in which it is pending to any other
6 court under rule 3.543, without removing the action or claim from the coordination
7 proceeding.” Cal. Civ. Code § 3.501 (19) (2009). Here, the Judicial Council’s August 31,
8 2005 order effected a transfer by assigning Judge Komar as the coordination trial judge,
9 and vested him with the authority to “hear and determine the coordinated actions listed
10 below, at the site or sites that he finds appropriate.” PWS Consolidation Mtn. at Exh. 2.
11 The Judicial Council continues that, pursuant to the coordination, “the coordination trial
12 judge may exercise all the powers over each coordinated action of a judge of the court in
13 which that action is pending.” *Id.* Because the cases have already been effectively
14 transferred to Judge Komar, it is within his powers to consolidate without further action
15 by way of a transfer. Cal. Civ. Proc. Code § 1048(a) (2009).^{1/}

16 **5. Conclusion.**

17 A complete consolidation is necessary in order to achieve a comprehensive
18 adjudication and comport with the requirements set forth in the McCarran Amendment.
19 Because the predominating common question in this case is the determination of water
20 rights within the groundwater basin, complete consolidation is warranted.

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24 ^{1/} A coordination judge is vested with "whatever great breadth of discretion that may be
25 necessary and appropriate to ease the transition through the judicial system and the logjam of cases
26 which gives rise to coordination." *Ableson v. Nat'l Union Fire Ins. Co.*, 28 Cal. App. 4th 776, 786
27 (Cal Ct. App. 1994)(quoting *McGhan Medical Corp. v. Superior Court*, 11 Cal. App. 4th 804 (Cal.
28 Ct. App. 1992); *see also Fellner v. Steinbaum*, 132 Cal. App. 2d 509, 511 (Cal. Ct. App. 1955)
(concluding that the consolidation of two cases for trial was "committed to the sound discretion of
the trial judge"). Therefore, the United States agrees with the Public Water Suppliers that the Court
has authority to transfer cases to the extent transfer has not already occurred, but believes this action
is unnecessary in the instant case.

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2 Respectfully submitted this 3rd day of August, 2009.

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4 JOHN C. CRUDEN
5 Acting Assistant Attorney General
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7 /s/
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PROOF OF SERVICE

I, Linda 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, 8th Floor, Denver, Colorado 80294.

On August 3, 2009, I caused the foregoing documents described as; FEDERAL DEFENDANTS' RESPONSE TO MOTION TO TRANSFER AND CONSOLIDATE, to be served on the parties via the following service:

☒

BY ELECTRONIC SERVICE AS FOLLOWS by posting the documents(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 August 3, 2009, at Denver, Colorado.

/s/ Linda Shumard
Linda Shumard
Legal Support Assistant