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Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Included actions:

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 Pursuant to the Court's Minute Order following the August 17, 2009 case
2 management conference permitting parties to file responses to the briefs opposing the City
3 of Palmdale's, *et al.* (collectively the "Public Water Suppliers or PWS"), Notice of Motion
4 and Motion to Transfer and to Consolidate for All Purposes; Memorandum of Points and
5 Authorities; Declaration of Whitney G. McDonald ("*PWS Consolidation Motion*"), filed
6 July 15, 2009, the United States responds as follows.

7 The United States disagrees with the arguments of the Antelope Valley
8 Groundwater Agreement Association (AVGA). The cases coordinated in this matter share
9 a predominating issue of law and fact - the determination of each potential right to
10 groundwater in the Antelope Valley groundwater basin. In each case, including the Class
11 actions which seek, *inter alia*, definition of correlative rights to groundwater and
12 compensation for alleged injury to those rights, it is necessary to establish each party's
13 respective rights. Consequently, the cases are appropriate for complete consolidation.
14 Further, the consolidation will not violate procedural rules because the cases have been
15 transferred and coordinated and Judge Komar may "exercise all the powers over each
16 coordinated action" necessary for effective litigation of each party's right to groundwater.
17 *See* Judicial Council's August 31, 2005 order. Handling these proceedings as a single
18 comprehensive action is necessary. It will permit the Court to issue legal determinations
19 and factual findings binding on all parties and, ultimately, result in one judgment and
20 decree determining the relative rights to groundwater in the Antelope Valley Basin. This
21 result will not only comport with the requirements of the McCarran Amendment, but also
22 assist in the administration of the Basin and its water uses.

23 The United States also believes the Willis Class misstates the effect of a potential
24 settlement between the Classes and Public Water Suppliers on the need for consolidation.
25 A settlement will not moot the need to consolidate these cases. *See* Rebecca Willis' and
26 the Class' Supplemental Memorandum of Points and Authorities in Opposition to Motion
27 to Consolidate, at 2 ("[the] proposed settlement renders consolidation unnecessary.")
28 First, although the United States supports the settlement concepts reached through the

1 mediation process with Judge Robie, that support is dependent on this case being a
2 comprehensive adjudication of all rights in the Basin so that the United States is not
3 subject to multiple piecemeal actions. Consolidation and a single decree binding on all
4 parties is the means to achieve this goal and potentially satisfy the McCarran Amendment.
5

6 Furthermore, contrary to the Willis Class assertion that they would have no claims
7 at issue because their rights would be defined in the proposed settlement, the settlement
8 with only the Public Water Suppliers would not resolve their rights against any other
9 water user in the Basin. The overlying landowners, as the Willis Class recognizes, have
10 an interest in the combination of their class action “with other cases to determine all the
11 groundwater rights in the Basin.” (Willis) Notice of Class Action, at 1 (attached as Exh. A
12 to Plaintiff Willis’ Order Modifying Class Definition and Allowing Parties to Opt in the
13 Plaintiff Class, filed May 22, 2008). Should a final settlement be reached with the Public
14 Water Suppliers and the United States, the class will still have a continuing interest in
15 defense of the settlement against non-settling parties who also have groundwater rights in
16 the Basin. This defense of the settled Class rights can best be accomplished after
17 consolidation because a ruling on any challenge to the settlement (or a fairness hearing on
18 the settlement) will bind all parties in the consolidated action. Therefore, it appears that
19 the Willis class has it backwards. The settlement will not be “held captive for years to
20 disputes between the PWS and other landowners.” *Id.* at 3. Rather, a settlement approved
21 by the Court in a consolidated proceeding will expedite the ultimate goal of a single
22 judgment and decree determining groundwater rights mutually binding on all parties.

23 Accordingly, the United States renews its support of the consolidation motion as a
24 necessary procedure for the comprehensive determination of water rights within the
25 groundwater basin.
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2 Respectfully submitted this 23rd day of September, 2009.

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4 JOHN C. CRUDEN
5 Acting Assistant Attorney General
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7 /s/
8 _____
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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 September 23, 2009, I caused the foregoing documents described as; **FEDERAL DEFENDANTS' RESPONSE TO OPPOSITION 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.

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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 September 23, 2009, at Denver, Colorado.

/s/ Linda Shumard
Linda Shumard
Legal Support Assistant