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7 Attorneys for Federal Defendants

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

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

) Judicial Council Coordination  
) Proceeding No. 4408

11 ANTELOPE VALLEY GROUNDWATER CASES

) **UNITED STATES' MOTION FOR**  
) **JUDGMENT ON THE**  
) **PLEADINGS AND**  
) **MEMORANDUM IN SUPPORT**

12 Included actions:

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

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

) Hearing Date: September 21, 2006 at  
) 10:00 a.m.

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

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

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

17 Wm. Bolthouse Farms, Inc. v. City of Lancaster

Diamond Farming Co. v. City of Lancaster

18 Diamond Farming Co. v. Palmdale Water Dist.

19 Superior Court of California, County of Riverside,  
consolidated actions, Case nos. RIC 353 840, RIC  
344 436, RIC 344 668

20 **Motion**

21 Pursuant to Cal. Civ. Proc. Code § 438, the United States hereby moves for judgment on  
22 the pleadings on the ground that the court lacks subject matter jurisdiction of the cause of action  
23 alleged in the *Cross-Complaint of Municipal Purveyors for Declaratory and Injunctive Relief*  
24 *and Adjudication of Water Rights* (hereinafter the Cross-Complaint). The allegations of  
25 jurisdiction contained in the Cross-Complaint do not comply with the McCarran Amendment, 43  
26 U.S.C. § 666. Consequently, the Court has no subject matter jurisdiction over the cause of  
27 action.  
28

1 **Memorandum**

2 On July 17, 2006, the Court issued an *Order Rescheduling Phase 1 Trial and Setting*  
3 *Hearing Date on Motion to Determine Compliance with the McCarran Act and Case*  
4 *Management Conference*. The Order directs the United States to file a motion to determine  
5 compliance with the McCarran Amendment (43 U.S.C. § 666). *Id.* at 2. The United States  
6 respectfully submits that the adjudication, as currently described, does not comply with  
7 McCarran. The Cross-Complaint seeks a “judicial determination of rights to all water within the  
8 Antelope Valley Groundwater Basin.” *Id.* at ¶ 1.<sup>1/</sup> The McCarran Amendment, however,  
9 requires the adjudication of all rights to water within the Antelope Valley groundwater basin and  
10 all rights to water supplying the groundwater basin; i.e., surface rights within the Antelope Valley  
11 watershed. Unless the adjudication is expanded to include all rights – surface and groundwater –  
12 in the Antelope Valley, this Court is lacking subject matter jurisdiction over the United States,  
13 and the cross-complaint against the United States must be dismissed.

14 **I. Argument**

15 1. The McCarran Amendment is a limited waiver of sovereign immunity.

16 It is beyond question that the United States cannot be sued without the consent of  
17 Congress. *United States v. Sherwood*, 312 U.S. 584, 586 (1941), *United States v. Shaw*, 309 U.S.  
18 495, 500 (1940). Waivers of sovereign immunity must be unequivocally expressed and when  
19 given must be construed strictly and narrowly. *Block v. North Dakota*, 461 U.S. 273, 287 (1983).  
20 Where Congress has waived sovereign immunity, its waiver is to be “construed strictly in favor  
21 of the sovereign.” *McMahon v. United States*, 342 U.S. 25, 27 (1951); Further,

22 A necessary corollary of this rule is that when Congress attaches conditions to  
23 legislation waiving the sovereign immunity of the United States, those conditions  
24 must be strictly observed, and exceptions thereto are not to be lightly implied.  
25 . . . . Accordingly, . . . we must be careful not to interpret it in a manner that would  
extend the waiver beyond that which Congress intended.

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26 <sup>1/</sup> The groundwater basin is defined as an alluvial aquifer. Cross-Complaint at ¶18. The  
27 Antelope Valley Groundwater Basin is alleged to include a portion of the Antelope Valley and is  
28 bounded by the San Gabriel Mountains on the south and the Tehachapi Mountains on the northwest.  
*Id.* at ¶ 19.

1 *Block v. North Dakota*, 461 U.S. at 287 (emphasis added); see also *United States v. Kubrick*, 444  
2 U.S. 111, 117-18 (1979). No official of the Executive Branch of the federal government, not  
3 even the Attorney General of the United States, has authority to waive sovereign immunity and  
4 thus confer jurisdiction where it does not otherwise exist. *United States v. Shaw*, 309 U.S. at  
5 501; *In re Bear River Drainage Area*, 271 P.2d 846, 848, 849 (1954).

6 The McCarran Amendment provides for a limited waiver of the sovereign immunity of  
7 the United States enabling states to adjudicate federal water rights under certain circumstances.

8 The McCarran Amendment states, *inter alia*:

9 Consent is hereby given to join the United States as a defendant in any suit (1) for  
10 the adjudication of rights to the use of water of a river system or other source, or  
11 (2) for the administration of such rights, where it appears that the United States is  
12 . . . a necessary party to such suit.

13 43 U.S.C. § 666.

14 Congress was specific in providing for a limited waiver. The legislative history is clear  
15 that the McCarran Amendment waiver is only available for the comprehensive adjudication of all  
16 water rights in a stream system. Only if these conditions are met is there a waiver of sovereign  
17 immunity enabling the exercise of jurisdiction over the United States and the adjudication of  
18 federal water rights. In the Senate Report on the McCarran Amendment, Congress described the  
19 character of the water adjudications for which sovereign immunity shall be waived:

20 All claimants are required to appear and prove their claims; no one can refuse  
21 without forfeiting his claim, and all have the same relations to the proceeding. It  
22 is intended to be universal and to result in a complete ascertainment of all existing  
23 rights. . . .

24 S. Rep. No. 82-755, at 5 (1951) (quoting *Pacific Livestock Co. v. Oregon Water Board*, 241 U.S.  
25 441, 447-448 (1916)). The Senate Report further made clear the comprehensive character  
26 required of McCarran Amendment adjudications by specifically incorporating a letter from  
27 Senator McCarran, sponsor of the legislation and Chairman of the Committee reporting the Bill,  
28 in reply to Senator Magnuson:

S. 18 is not intended . . . to be used for any other purpose than to allow the United  
States to be joined in a suit wherein it is necessary to adjudicate all of the rights of  
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

1 joined as parties defendant, any subsequent decree would be of little value.

2 *United States v. Dist. Court In and For Eagle County, Colo.*, 401 U.S. 520, 525 (1971), quoting  
3 S. Rep. No. 82-755, at 9.

4 The case law is likewise clear that the McCarran Amendment waiver is only available for  
5 the comprehensive adjudication of all water rights in a stream system. As the U.S. Supreme  
6 Court explained, the "clear federal policy" underlying the consent to jurisdiction provided for  
7 under the McCarran Amendment is "the avoidance of piecemeal adjudication" of water rights.  
8 *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976). In  
9 accordance with this policy, the courts have ruled that federal sovereign immunity is waived to  
10 allow determination of water rights of the federal government only in a comprehensive  
11 adjudication. *Id.* at 819-20; *see also Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 569  
12 (1983). A comprehensive or general adjudication must involve all of the claimants to water  
13 rights along a given stream system. *Dugan v. Rank*, 372 U.S. 609, 618-19 (1963); *Miller v.*  
14 *Jennings*, 243 F.2d 157, 159 (5th Cir. 1957); *In re Snake River Basin Water System*, 764 P.2d 78,  
15 83 (1988).

16 The Supreme Court explained that McCarran adjudications must be all inclusive because  
17 "the allocation of water essentially involve the disposition of property and are best conducted in  
18 unified proceedings." *Colorado River Water Conservation Dist.*, 424 U.S. at 819. The  
19 adjudication of rights to the use of water of a river system "has no exceptions and . . . includes  
20 appropriate rights, riparian rights, and reserved rights." *Dist. Court In and For Eagle County,*  
21 *Colo.* 401 U.S. at 524.

22 2. The comprehensiveness mandate requires an adjudication of an entire stream  
23 system or watershed.

24 Since the McCarran Amendment's inception, courts have recognized that a  
25 comprehensive McCarran adjudication is a determination of all rights to water within a  
26 watershed. In 1956, the Ninth Circuit Court of Appeals declared that the type of adjudication  
27 required by the McCarran Amendment included "all owners of lands on the watershed and all  
28 appropriators who use water from the stream." *California v. United States*, 235 F.2d 647, 663

1 (9<sup>th</sup> Cir. 1956). This case involved the adjudication of rights to water for the United States  
2 marine and naval base at Camp Pendleton, located at the base of the Santa Margarita river  
3 watershed in San Diego County, California. The United States had brought a quiet title action  
4 against approximately 3,000 land owners, but then, in a separate action, received a decision  
5 quieting rights to water as against only two entities, the State and a private water company. The  
6 appellate court reversed the partial judgment stating:

7 It is, in fact, somewhat shocking in litigation where a whole stream system with  
8 various types of ownership of land and use of water, appurtenant and in gross,  
9 vested and inchoate, overlying, riparian by appropriation and by permit, that the  
10 court should attempt to adjudicate matters which affect the whole collection of  
rights and all the defendants in a proceeding which directly involves three litigants  
only.

11 *Id.* at 663. The court ruled that the partial judgment against the State and the water company was  
12 “premature,” and concluded:

13 [The] only proper method of adjudicating the rights on a stream, whether riparian  
14 or appropriative or mixed, is to have all owners of lands on the watershed and all  
15 appropriators who use water from the stream involved in another watershed in  
court at the same time.

16  
17 *Id.* at 662 -663. In 1961, the Ninth Circuit again addressed the scope of a McCarran  
18 adjudication:

19 There can be little doubt as to the type of suit congress had in mind. It was not a  
20 private dispute between certain water users as to their conflicting rights to the use  
21 of waters of a stream system; rather, it was the quasi-public proceeding which in  
22 the law of western waters is known as a “general adjudication” of a stream  
system: one in which the rights of all claimants on a stream system, as between  
themselves, are ascertained and officially stated.

23  
24 *California v. Rank*, 293 F.2d 340, 347 (9<sup>th</sup> Cir. 1961) *rev'd on other grounds* sub nom. *Dugan v.*  
25 *Rank*, 372 U.S. 609 (1963). More recently, the Ninth Circuit has stated: “The McCarran  
26 amendment . . . does not authorize private suits to decide priorities between the United States and  
27 particular claimants, only suits to adjudicate the rights of *all* claimants on a stream.”  
28

1 *Metropolitan Water Dist. of S. Cal. v. United States*, 830 F.2d 139, 144 (9<sup>th</sup> Cir. 1987)(emphasis  
2 added; citing *Dugan v. Rank*).

3       The requirement that all rights on a stream be adjudicated is based, in part, on the  
4 interdependent use and reuse of water within a watershed. This relationship was perhaps best  
5 articulated in the recent decision *In re Uintah Basin* 133 P.3d 410, 425-427 (Utah 2006), wherein  
6 the Court stated that, “[i]t is universally understood that the public waters of this state are  
7 appropriated and used high in the various watersheds only to become return flow for  
8 appropriations anew over and over again until the residue finally passes beyond any possible  
9 diversion for beneficial use. It is all the same water.”  
10

11  
12       In the Antelope Valley, the aquifer is the “residue” of surface water, dependent on the  
13 stream system to provide the groundwater. Recognition that it is all the same water leads  
14 inevitably to the conclusion that “all owners of lands on the watershed and all appropriators who  
15 use water from the stream” must be joined and their rights adjudicated. *California v. United*  
16 *States*, 235 F.2d at 663. Adjudication of just groundwater claims thus involves only a piecemeal  
17 resolution of potential watershed water rights, and does not qualify for a waiver of sovereign  
18 immunity under the McCarran Amendment.  
19

20       *United States v. Oregon*, 44 F.3d 758 (9<sup>th</sup> Cir. 1994), is not to the contrary. In *Oregon*,  
21 the Ninth Circuit ruled that, for sovereign immunity waiver purposes, the McCarran Amendment  
22 does not require a comprehensive adjudication of surface water rights to a river system be  
23 enlarged to include an adjudication of the basin’s groundwater rights. The Ninth Circuit court  
24 based this decision primarily on its assessment that a determination of surface water rights did  
25 not, in the case before it, require consideration of the groundwater, because “all existing water  
26 rights claims in the *river system* will have been determined when the adjudication is finished.”  
27  
28

1 *Id.* at 768 (*emphasis added*).

2       The instant adjudication does not purport to determine all existing water rights in the  
3 river system, but more closely resembles the “piecemeal, private water rights litigation” that is  
4 beyond the McCarren Amendment’s limited waiver of sovereign immunity. *Id.* at 768. Indeed,  
5 neither the *Oregon* court, nor any other court of which we are aware, has held that groundwater  
6 can constitute a “river system” or “other source” within the meaning of 43 U.S. C. § 666(a).  
7 Thus, it is not surprising that there is, in fact, no case where a court has ruled that the  
8 adjudication solely of groundwater complies with the McCarran Amendment.  
9

10       *Oregon* is distinct from the instant case in other ways. The court opined that different  
11 legal regimes for the right to use groundwater and surface water allow for their separate  
12 adjudication. *Id.* at 769. Specifically, the court noted that groundwater in Oregon is used under  
13 the reasonable use doctrine while surface rights are exclusively appropriative. *Id.* Such is not the  
14 case in California where the legal concepts of riparian (or landowner), appropriative and  
15 prescriptive rights apply to groundwater and surface water uses.  
16

17       In addition, the argument for the adjudication of “hydrologically-related water” in the  
18 *Oregon* case was substantially different from the case here. Surface water may or may not be  
19 affected by nearby or underlying groundwater. Groundwater, on the other hand, emanates from  
20 surface water. The groundwater in the Antelope Valley groundwater basin is not just  
21 hydrologically related to the surface water, it is totally dependant on the surface water as its  
22 source. Groundwater is not a “river system or other source” unto itself, it is a part of the larger  
23 river system hydrology.  
24  
25  
26  
27  
28

1                   3.     Excluding the surface rights will result in a piecemeal adjudication of  
2                             water rights contrary to the McCarran Amendment's stated purpose.

3             Foremost in the McCarran Amendment's scheme for the comprehensive adjudication of  
4     all rights to water on a stream system is the policy of avoiding piecemeal litigation. "This policy  
5     is akin to that underlying the rule requiring that jurisdiction be yielded to the court first acquiring  
6     control of property, for the concern in such instances is with avoiding the generation of additional  
7     litigation through permitting inconsistent dispositions of property. This concern is heightened  
8     with respect to water rights, the relationships among which are highly interdependent."

9             *Colorado River*, 424 U.S. at 819. In waiving the United States' sovereign immunity, Congress  
10    did not intend that the United States be subject to the possibility of individual injunctive suits to  
11    determine water rights. *See e.g., Turner v. Kings River Conservation Dist.*, 360 F.2d 184, 197  
12    (Cal. Ct. App. 1966)(rejecting a landowners suit to enjoin the Secretary of the Interior from  
13    supplying Reclamation project water to tracts of land larger than 160 acres). Rather, by requiring  
14    a comprehensive adjudication of rights to water, the United States is protected from private suits  
15    to quiet title to water and from having to adjudicate federal rights in multiple suits.

16            Unfortunately, that is exactly what the United States is facing in the Antelope Valley  
17    groundwater adjudication. The United States owns and manages lands outside the Antelope  
18    Valley groundwater basin, but within the watershed. For example, the Forest Service manages  
19    large tracts of land in the San Gabriel mountains in the southeast corner of the watershed. The  
20    Bureau of Land Management controls land in the northern region of the Antelope Valley  
21    watershed. Rights to the use of water in these areas may be subject to piecemeal adjudication in  
22    future separate actions, contrary to the McCarran Amendment's express goals.

23            Furthermore, surface water users in the Antelope Valley watershed may affect the United  
24    U.S. Motion for Judgment on the Pleadings  
25    and Memorandum in Support  
26    Page 8



1 States' rights to water based on federal law. By way of example, diversion of surface water could  
2 impact the recharge of groundwater used by Edwards Air Force Base and reserved to the United  
3 States under the doctrine of implied federal reserved water rights. Protection of the United States'  
4 rights and interests may require separate injunctive suits against such adverse water use. *See In re*  
5 *General Adjudication of All Rights to Use Water in Gila River System and Source*, 989 P.2d 739  
6 (Ariz. 1999) (holding that federal law could be invoked to protect federal reserved water rights to  
7 groundwater from subsequent diversion to the extent such protection was necessary to fulfill the  
8 reserved rights). Once again, such piecemeal litigation to determine and protect the rights of the  
9 United States as against other water users in the watershed would be contrary to the McCarran  
10 Amendment's express goals.  
11

## 12 **II. Conclusion**

13  
14 The currently styled lawsuit for the judicial determination of rights to all water within the  
15 Antelope Valley Groundwater Basin does not comply with the requirements of the McCarran  
16 Amendment. The lawsuit lacks the comprehensive scope of an adjudication of all rights to water  
17 in a stream system. For this Court to retain jurisdiction over the United States and maintain  
18 subject matter jurisdiction under the McCarran Amendment, the adjudication must be expanded to  
19 include all rights – surface and groundwater – in the Antelope Valley watershed. Failing that, the  
20 Cross-Complaint against the United States must be dismissed for lack of a waiver of sovereign  
21 immunity.  
22

23  
24 Respectfully submitted this 18<sup>th</sup> day of August, 2006.

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26   
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28 Trial Attorney  
U. S. Department of Justice