

SCOTT K. KUNEY, Esq., SB# 111115  
 ERNEST A. CONANT, Esq., SB# 089111  
 THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP  
 1800 30<sup>th</sup> Street, Fourth Floor  
 Bakersfield, CA 93301  
 Telephone: (661) 327-9661  
 Facsimile: (661) 327-0720

Attorneys for GERTRUDE VAN DAM, DELBERT VAN DAM, CRAIG VAN DAM, GARY  
 VAN DAM and ANTELOPE VALLEY WATER STORAGE LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Coordination Proceeding  
 Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER  
 CASES

Included Actions:

Los Angeles County Waterworks District  
 No. 40 v. Diamond Farming Co.  
 Superior Court of California  
 County of Los Angeles, Case No. BC  
 325201

Los Angeles County Waterworks District  
 No. 40 v. Diamond Farming Co.  
 Superior Court of California, County of  
 Kern, Case No. S-1500-CV 254348

Wm. Bolthouse Farms, Inc. v. City of  
 Lancaster Diamond Farming Co. v. City of  
 Lancaster Diamond Farming Co. v. Palmdale  
 Water Dist. Superior Court of California,  
 County of Riverside, consolidated actions,  
 Case Nos. RIC 353840, RIC 344436, RIC  
 344668

Judicial Council Coordination Proceeding  
 No. 4408

SC Case No. 105CV 049053  
 Assigned to the Honorable Jack Komar

VAN DAM PARTIES AND ANTELOPE  
 VALLEY WATER STORAGE LLC JOINT  
 CASE MANAGEMENT CONFERENCE  
 STATEMENT

Date: March 22, 2010  
 Time: 9:00 a.m.  
 Dept: 1

1 Cross-Defendants GERTRUDE VAN DAM, DELBERT VAN DAM, GARY VAN  
2 DAM, and CRAIG VAN DAM ("VAN DAM PARTIES") and ANTELOPE VALLEY WATER  
3 STORAGE LLC ("AVWS") file this Case Management Conference Statement as requested by  
4 the Court in its March 11, Amended Order And Notice to All Counsel Regarding Phase 3 Trial  
5 on Status of Aquifer and Issue of Overdraft.

6 **Background**

7 Despite the Court's very best efforts and incredible patience, the Court must issue an  
8 order to place "The Horse, Before the Cart." In this instance, the joinder of the indispensable  
9 parties – of all the water rights claimants – is the "Horse", and the "Cart" is any order  
10 scheduling trial in this case.

11 During the February 2, 2010 Case Management Conference the Court properly  
12 acknowledged and agreed that prior to this case preceding to a further trial phase the case must  
13 first be at issue. In the course of the March 8, 2010 Case Management Conference the Court  
14 again affirmed that joinder of the indispensable parties was a prerequisite to trial. More  
15 specifically, it is well recognized by the Court and all the parties that it is a legal and practical  
16 imperative that all parties that have a water rights claim to ground water existing in the Basin  
17 must be joined in this action in order for any judgment to bind all the parties.

18 At this stage the Court has determined to proceed with scheduling a further phase of trial  
19 of this comprehensive adjudication notwithstanding the objections that the Plaintiff and Cross-  
20 Complainants have failed to provide evidence of the joinder of all water right claimants to  
21 waters of the Antelope Valley Groundwater Basin (Basin). At the conclusion of the March 8,  
22 2010 Case Management Conference the Court invited parties to provide recommendations to the  
23 Court on how it should address the issue of joinder and service of process in a further Case  
24 Management Conference order.

25 The Van Dam Parties and AVWS respectfully renew their objection to the Court  
26 scheduling of any issue, on the ground that Plaintiffs and Cross-Complaints have failed to prove  
27 to the Court that they have indentified, served and secured the appearance of all the parties  
28

1 presently having water rights claims to ground water existing in the Basin. We request that the  
2 Court adopt and order the procedures stated below to ensure the joinder of all water right  
3 claimants to ground water in the Basin.

#### 4 Consolidation Order

5 The Court's analysis in the recent Order Transferring And Consolidating Actions For All  
6 Purposes makes it abundantly clear that the Court considers and intends that this adjudication  
7 comprehensively determine, and hence affect, the rights of all parties to draw ground water from  
8 the Basin. Specifically, the Court has ordered:

9 "The Complaints and Cross-Complaints all include, in one form or other, declaratory  
10 relief causes of action seeking determinations of the right to draw ground water from the  
11 Antelope Valley basin. . . in a single aquifer, all rights are said to be correlative<sup>1</sup> to all  
12 other water rights in the aquifer. A determination of an individual party's water rights  
13 (whether by action to quiet title or one for declaratory relief) cannot be decided in the  
14 abstract but must also take into consideration all other water rights with a single aquifer.  
15 All actions pending, therefore, of necessity involve common issues of law and fact  
16 relating to the determination of the relative rights to water from the [Basin] . . . and all  
17 parties to the litigation claiming water rights are necessary parties to the Court  
18 adjudicating a binding determination of those rights." (Page 2, lines 16-26.) (Emphasis  
19 added.)

20 . . .

21 ". . . the only cause of action that would affect all parties to the consolidation are the  
22 declaratory relief causes of action which seek a declaration of water rights (by definition,  
23 correlative rights). If the basin is in overdraft (a fact still to be established), the Court in  
24 each declaratory relief proceeding would of necessity have to look at the totality of  
25 pumping of all parties, evaluate the rights of all parties who are producing water from the  
26 aquifer, determine whether injunctive relief was required, and determine what solution  
27 equity and statutory law required (including a potential physical solution)." (Page 3, 7-  
28 11). (Emphasis added.)

. . .

"The McCarran Amendment provides a limited waiver of immunity for joinder in  
comprehensive adjudications of all rights to a given water source. In order for there to be

<sup>1</sup> On several occasions the Court has made similar statements that all water rights in the Basin are "correlative". More precisely, only overlying rights of landowners are correlative. (*California Water* (1995) *Littleworth & Garner*, at p. 50, (citations omitted.) Appropriative rights are limited to the surplus waters of a basin and are junior to the needs and paramount rights of overlying users. (*Id.*, at pages 51-52, (citations omitted).) Established prescriptive rights may secure priority over certain of the rights of some overlying right holders. (*Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 293-294.) We presume the Court actual intends by such statements, consistent with California water law, that competing water rights sharing a common source, like the Basin, are all "related".

1 a *comprehensive* adjudication all parties who have a water rights claim must be joined in  
2 the action and the judgment must bind all the parties. (Page 3, lines 24-27). (Emphasis  
3 added, italics original.)

4 This comprehensive adjudication requires a determination of the conflicting claims of all  
5 water right claimants to the ownership, possession and use of ground water drawn from the  
6 Basin. It is expressly an action affecting the legal and equitable rights to the use of water – an  
7 interest in real property. While not in name, in essence, this comprehensive adjudication is in  
8 the nature of a quiet title action determining the conflicting claims of the parties to ground  
9 water.

### 10 Points & Authorities

#### 11 1. Plaintiff's/Cross-Complainants' Have The Burden of Proving Service-

12 “Proving the existence of jurisdiction is always plaintiff’s burden.” Weil & Brown, CAL.  
13 PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2009), 4:428, p. 4-65. The  
14 plaintiff must show it has completed valid service within the statutory period. (*Dill v. Berquist*  
15 *Const. Co. Inc.* (1994) 24 CA4th 1426, 1439-1440. “When a defendant challenges the court’s  
16 personal jurisdiction on the ground of improper service of process the burden is on the plaintiff  
17 to prove . . . the facts requisite to an effective service.” (*Summers v. McClanahan* (2006) 140  
18 CA4th 403, 413.)

#### 19 2. Joinder of All Water Rights Claimants to The Groundwater of The Basin is Required 20 Before Any Trial of Any Disputed Issue in This Comprehensive Adjudication-

21 “If an action seeks to determine conflicting claims to ownership or possession of property  
22 among its owners, all the owners should be joined as parties. If some owner cannot be made a  
23 party to the action, the court may be unable to afford complete relief to the parties before the  
24 court. In such case, the absent party would be regarded as an ‘indispensable,’ and the action  
25 dismissed without prejudice.” Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE  
26 TRIAL (The Rutter Group 2009), 2:169, p. 2-47.) (Emphasis added.) Similarly, “in an action to  
27 quiet title, plaintiff *must* name as defendants all persons having an adverse claim to the property,  
28

1 either known to plaintiff or disclosed by the record or apparent from an inspection of the  
2 property.” (Id., at 2:184.15, p 2-52.) (Italics original.) In this case, as overlying landowners  
3 within the jurisdictional boundaries of the Basin such persons (individual, corporate, partnership  
4 or otherwise) have either a water rights claim to groundwater based on historic use or have the  
5 prospect of a future use of such waters. The overlying right is dependent upon land ownership  
6 overlying ground water. (*California Water*, supra, Littleworth & Garner, at p. 50.) (Emphasis  
7 added.) It is an interest in real property. (Id.)

8 Furthermore, absent the joinder of all the currently existing landowners who have a water  
9 rights claim, the necessary “comprehensive” McCarren Amendment jurisdiction is lacking.  
10 Without the joinder of these claimants the Court will not have all the parties participating, or  
11 electing not to participate, in the trial intended to determine the common facts and legal issues  
12 central to this adjudication. This is problematic because these unserved water rights claimants  
13 are indispensable parties under C.C.P. §389(b), particularly in light of the strict standards of the  
14 McCarran Amendment. As acknowledged by the Court in the Order Transferring And  
15 Consolidating Actions For All Purposes, by necessity the nature of this comprehensive  
16 adjudication is one in which “a judgment in favor of one claimant for part of the property . . .  
17 would necessarily determine the amount or extent which remains available to the others.” (*Bank*  
18 *of California Nat. Ass’n v. Superior Court in and for City and County of San Francisco*) (1940)  
19 16 Cal.2d 516, 521.) That makes “the others,” in this case the unserved water rights claimants,  
20 indispensable parties without whom the action cannot proceed. (Id.)

21 Lastly, from a practical vantage point, all the substantial public and private investment of  
22 time and funds to retain experts, conduct discovery, prepare and participate in the proposed trial  
23 as proposed in the Court’s “Amended Order And Notice to All Counsel Regarding Phase 3 Trial  
24 on Status of Aquifer And Issue of Overdraft” (e.g., (1) current condition of the Basin; and (2)  
25 the current existence and extent within the Basin, if any, of an overdraft condition) will be  
26 wasted in the proposed September 27, 2010 trial because there currently is such a fundamental  
27  
28

1 procedure defect no enforceable final judgment can ever result.

2 3. Necessary Procedures to Ensure Joinder And a Final Judgment-

3 As explained above, it is the Plaintiffs and Cross-Complainants that have the burden to  
4 prove service of process. Unfortunately, on the eve of a proposed further trial phase the  
5 Plaintiffs and Cross-Complainants have failed to prove that they have joined the ever growing  
6 number of landowners in the Antelope Valley which are constantly buying, selling and  
7 otherwise transferring lands within the Basin. Fundamentally, such water rights claimants have  
8 never been served with any Complaint or Cross-Complaint, never appeared, and have not filed  
9 any responsive pleading subjecting them to the Court's jurisdiction. Most urgently, these water  
10 right claimants have no notice of the Court's March 11, 2010 "Amended Order And Notice to  
11 All Counsel Regarding Phase 3 Trial on Status of Aquifer And Issue of Overdraft" even though  
12 the Court has, and continues, to issue orders which determine their valuable water right claims.  
13

14 In order to ensure that all water rights claimants are provided notice and opportunity to  
15 participate in this comprehensive adjudication, the Van Dam Parties and AVWS respectfully  
16 request that the Court adopt the following order as part of any further Case Management  
17 Conference order:  
18

- 19 1. The Plaintiffs and Cross-Complainants shall name, serve and provide proof of service  
20 no later than June 22, 2010, of all the persons having adverse claims to the title  
21 alleged by Plaintiffs and Cross-Complainants to the ground waters of the Basin which  
22 this comprehensive adjudication seeks to determine;
- 23 2. In addition to persons required to be named as defendants as stated in subsection (1)  
24 above, the Plaintiffs and Cross-Complainants may name "Unknown Persons as  
25 Defendants", provided Plaintiffs and Cross-Complainants comply with the procedures  
26 specified in Code of Civil Procedure §762.060;
- 27 3. The form, content, and manner of service of the summons by Plaintiffs and Cross-  
28 Complainants shall comply with Code of Civil Procedure §§763.010-763.040;

4. The Court upon its own motion may, and upon motion of any party shall, make such orders as appear appropriate:
  - a. For joinder of such additional parties as are necessary or proper;
  - b. Requiring Plaintiffs and Cross-Complainants to procure a title report(s) and designate a place where they shall be kept for inspection, use, and copying by the parties; and
  - c. The appointment of a referee to investigate whether Plaintiffs and Cross-Complainants have used reasonable diligence to ascertain the identity and residence of persons sought to be served by publication, and the Court may rely on the report of the referee instead of the affidavit of Plaintiffs and Cross-Complainants in making any orders necessary or proper.
5. On or after June 22, 2010, on a date to be determined by the Court, the Court shall schedule a further Case Management Conference for the purpose of determining if joinder has been accomplished and therefore whether the scheduling of a further phase of trial in this comprehensive adjudication is proper.
6. The Court's March 11, 2010 "Amended Order And Notice to All Counsel Regarding Phase 3 Trial on Status of Aquifer And Issue of Overdraft" is rescinded.

#### Conclusion

For the foregoing reasons, the Van Dam Parties and AVWS respectfully request that the Court not order the scheduling of any further trial of any issue relevant to this adjudication at this time. Instead, the Court should issue an order directing the Plaintiffs and Cross-Complainants, and each of them, to implement the procedures outlined in this Case Management Conference Statement so that the Court can ensure, with verification, that all the parties having a water rights claim to ground water existing the Basin are joined, and hence will be bound by the final judgment.

Dated: March 15, 2010

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: 

SCOTT K. KUNEY, Esq., Attorneys for Van Dam Parties and Antelope Valley Water Storage, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I, LEANN BANDUCCI, declare: I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is The Law Offices of Young Wooldridge LLP, 1800 30th Street, Fourth Floor, Bakersfield, CA 93301.

On March 15, 2010, I caused the foregoing document(s) entitled as: to be served on the parties via the following service:

X By Posting: I posted the document(s) listed above to the Santa Clara County Superior Court VAN DAM PARTIES AND ANTELOPE VALLEY WATER STORAGE LLC JOINT CASE MANAGEMENT CONFERENCE STATEMENT website in regard to the Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service and electronic posting completed through [www.sccfiling.org](http://www.sccfiling.org).

X (By Mail) On the same date, at Bakersfield, California, pursuant to C.C.P. section 1013(a). By placing / / the original or / x / a true copy thereof enclosed in a sealed envelope. I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of business.

Executed on March 15, 2010, at Bakersfield, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
LEANN BANDUCCI