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 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
 OPPOSITION TO PUBLIC WATER
 SUPPLIERS' MOTION TO SIGN ORDER
 RE JURISDICTION OVER
 TRANSFEREES

Date: June 14, 2010
 Dept.: LA County Superior Court,
 Dept. 1
 Time: 9:00 a.m.
 Judge: Honorable Jack Komar

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 memorandum and supporting declaration in opposition to
4 the Public Water Purveyors' Motion For Court to Sign Proposed Order Re Jurisdiction Over
5 Transferees, dated, filed and served on May 26, 2010 ("Motion").

6 I. PROCEDURAL OBJECTIONS

7 The Public Purveyors Motion must be denied for failure to comply with the Code of Civil
8 Procedure, California Rules of Court, and the May 15, 2010 Order After Case Management
9 Conference on May 6, 2010 on grounds that the motion is untimely, in improper form, and that
10 the deficiencies in the Motion are prejudicial to the Van Dam Parties and AVWS, and other
11 parties in the Adjudication.

12 First, according to the Code of Civil Procedure a motion set for hearing on June 14, 2010
13 is required to be filed no later than May 17, 2010. (Code of Civil Procedure §§ 1005(b),
14 1010.5(6), 1013(c) [16 court days, plus 2 days for electronic filing, excluding court holidays].)
15 The Public Purveyors' failed to timely file the motion in accordance with the Code of Civil
16 Procedure.

17 Second, during the May 6, 2010 Case Management Conference, counsel representing the
18 Public Purveyors stated that any motion seeking adoption of an order intended to obtain
19 jurisdiction over transferees would be filed on or before May 24, 2010. Consistent with the
20 Public Purveyors counsel's representation, the Court's May 25, 2010 Order After Case
21 Management Conference on May 6, 2010 directed that "the proponent of this transfer document
22 file by May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines
23 shall be per Code of Civil Procedure; the hear date is set for June 14, 2010 at 9:00 a.m. in
24 Department 1, Los Angeles County Superior Court." (Emphasis added.) The Purveyors'
25 Motion was filed May 26, 2010 by electronic posting at approximately 3:13 p.m. and therefore
26 was untimely. The failure of the Public Purveyors to comply with the Court's directions during
27 the May 6, 2010 Case Management Conference and Court's order was prejudicial to the Van
28

1 Dam Parties and AVWS, and other parties in the Adjudication, in that pursuant to the Court's
 2 Order and the Code of Civil Procedure section 1005 any opposition was required to be filed
 3 May 27, 2010, or upon a nominal 24 hours prior notice. (See, Kuney Declaration, ¶3.)

4 Finally, according to the requirements of the Rule of Court 3.1113 and 3.1114 a party
 5 filing a motion "must serve and file a supporting memorandum." Further, the "court may
 6 construe the absence of a memorandum as an admission that the motion . . . is not meritorious
 7 and cause for its denial." (Rule of Court 3.1113(a).) While the Public Purveyors provided some
 8 procedural history of the prior attempt to adopt the order, the current filing does not contain the
 9 information specified by the Rules of Court directing that the memorandum "must contain a
 10 statement of the facts, a concise statement of the law, evidence and arguments relied on, and a
 11 discussion of the statutes, cases, and textbooks cited in support of the position advanced." (Rule
 12 of Court 3.1113(b))

13 For the forgoing reasons, the Purveyors Motion must be denied as it fails to comply with
 14 the Code of Civil Procedure, Rules of Court, and the Court's May 25, 2010 Order After Case
 15 Management Conference on May 6, 2010.

16 **II. THE NECESSITY FOR THE JOINDER AND JURISDICTION OVER ALL 17 PARTIES CLAIMING WATER RIGHTS**

18 **A. Court's Order Transferring And Consolidating Actions For All Purposes**

19 The Court's February 19, 2010 "Order Transferring and Consolidating Actions for All
 20 Purposes," states as follows:

21 "The Complaints and Cross-Complaints all include, in one form or other, declaratory
 22 relief causes of action seeking determinations of the right to draw ground water from the
 23 Antelope Valley basin. . . . in a single aquifer, all rights are said to be correlative to all
 24 other water rights in the aquifer. A determination of an individual party's water rights
 25 (whether by action to quiet title or one for declaratory relief) cannot be decided in the
 26 abstract but must also take into consideration all other water rights with a single aquifer.
 27 All actions pending, therefore, of necessity involve common issues of law and fact
 28 relating to the determination of the relative rights to water from the [Basin] . . . and all
parties to the litigation claiming water rights are necessary parties to the Court
adjudicating a binding determination of those rights." (Page 2, lines 16-26.) (emphasis
 added.)

...

1 “If the basin is in overdraft (a fact still to be established), the Court in each declaratory
2 relief proceeding would of necessity have to look at the totality of pumping of all parties,
3 evaluate the rights of all parties who are producing water from the aquifer, determine
4 whether injunctive relief was required, and determine what solution equity and statutory
5 law required (including a potential physical solution).” (Page 3, 7-11). (emphasis added.)

6 ...
7 “The McCarran Amendment provides a limited waiver of immunity for joinder in
8 *comprehensive* adjudications of all rights to a given water source. In order for there to be
9 a *comprehensive* adjudication all parties who have a water rights claim must be joined in
10 the action and the judgment must bind all the parties.” (Page 3, lines 24-27).” (Emphasis
11 added, italics original.)

12 Based on the Court’s prior order two (2) foundational points have been decided in this
13 Adjudication. First, all parties to the litigation claiming water rights are necessary parties to the
14 Court’s jurisdiction in order to adjudicate and render a binding determination of the water rights
15 to the Antelope Valley Ground Water Basin (“Basin”). Second, in order for there to be a
16 comprehensive adjudication, all parties who have a water rights claim must be joined in the
17 action in order for the judgment to bind all the parties.

18 B. Public Purveyors Have Failed to Join All Water Right Claimants Within The Basin

19 On March 24, 2010 the Van Dam Parties and AVWS advised the Court of the Public
20 Purveyors failure to join three (3) record owners of real property overlying the ground water
21 existing within the jurisdictional boundaries of the Basin. While the Public Purveyors argued
22 that the service and joinder of these parties is not legally required they nonetheless committed to
23 “serve the additional three property owners.” (See Kuney Declaration, Exhibit “A”, Response to
24 Van Dam Parties And Antelope Valley Water Storage LLC Notice And Objection to Failure to
25 Join Indispensable Party, at page 2, lines 7-12.) Based on the most currently available records
26 of the Court, none of the three record owners have been served and joined in this Adjudication.
27 (See, Kuney Declaration, ¶5.)
28

1 Additionally, this office has become aware of an additional record owner that likewise
 2 appears, based on deeds of record, to own approximately 2,100 acres of land within the Basin
 3 boundaries which also is not a party to this “comprehensive” Adjudication. (See, Kuney
 4 Declaration, Grant Deeds, “B” and “C” and Map, Exhibit “D”, ¶¶6-10.)

5 “If an action seeks to determine conflicting claims to ownership or possession of
 6 property among its owners, all the owners should be joined as parties. If some owner cannot be
 7 made a party to the action, the court may be unable to afford complete relief to the parties before
 8 the court. In such case, the absent party would be regarded as an ‘indispensable,’ and the action
 9 dismissed without prejudice.” Weil & Brown, CAL. PRAC. GUIDE: CIV. PRO. BEFORE
 10 TRIAL (The Rutter Group 2009), 2:169, p. 2-47.) (Emphasis added.) Similarly, “in an action to
 11 quiet title, plaintiff *must* name as defendants all persons having an adverse claim to the property,
 12 either known to plaintiff or disclosed by the record or apparent from an inspection of the
 13 property.” (Id., at 2:184.15, p 2-52.) (Italics original.) In this case, as overlying landowners
 14 within the jurisdictional boundaries of the Basin such persons (individual, corporate, partnership
 15 or otherwise) each have either a water rights claim to groundwater based on historic use or have
 16 the prospect of a future use of such waters. The overlying right is dependent upon land
 17 ownership overlying groundwater. (*California Water*, *supra*, Littleworth & Garner, at p. 50.)
 18 (Emphasis added.) It is an interest in real property. (Id.)

19 Furthermore, absent the joinder of all the currently existing landowners who have a water
 20 rights claim, the necessary “comprehensive” McCarran Amendment jurisdiction is lacking.
 21 Without the joinder of these claimants the Court will not have all the parties participating, or
 22 electing not to participate, in the trial intended to determine the common facts and legal issues
 23 central to this adjudication. This is problematic because these unserved water rights claimants
 24 are indispensable parties under C.C.P. §389(b), particularly in light of the strict standards of the
 25 McCarran Amendment. As acknowledged by the Court in the Order Transferring And
 26 Consolidating Actions For All Purposes, by necessity the nature of this comprehensive
 27 adjudication is one in which “a judgment in favor of one claimant for part of the property . . .
 28

1 would necessarily determine the amount or extent which remains available to the others.” (*Bank*
2 *of California Nat. Ass’n v. Superior Court in and for City and County of San Francisco*) (1940)
3 16 Cal.2d 516, 521.) That makes “the others,” in this case the unserved water rights claimants,
4 indispensable parties without whom the action cannot proceed. (*Id.*)

5 The Van Dam Parties and AVWS object and dispute the Public Purveyors’ claims and
6 representations to this Court that they have completed all the legally necessary service of
7 process of all parties claiming water rights to the Basin; that the comprehensiveness requirement
8 of the McCarran Amendment has been satisfied; and that there is no further necessity for the
9 Public Water Purveyors to serve any additional water right claimants prior to the adjudication of
10 the disputed claims of the parties in this Adjudication.

11 C. The Proposed Order Requires Joinder of All Water Right Claimants

12 The legal issue raised by the proposed order is not notice. Rather, the key issue is
13 jurisdiction of the Court over all the parties who have a water rights claim to the Basin. Even
14 more fundamentally, the critical issue is for the Court to satisfy the McCarran Amendment’s
15 comprehensiveness standard or risk that the entire Adjudication will be deemed an incompetent
16 and nullified proceeding.

17 Regardless of whether a future buyer/transferee is informed of the existence of the
18 Adjudication by the proposed order or otherwise, the necessary legal imperative for the
19 Adjudication is that the Court obtain actual jurisdiction over all the parties claiming water rights
20 in the Basin. Given that the Court has determined that this litigation is not, and shall not, be
21 prosecuted as an *in rem* proceeding, but instead purely on the basis of *in personam* jurisdiction,
22 it is necessary for the Pubic Purveyors to actually serve the currently effective Cross-Complaint
23 on any transferee claiming/having water rights in the Basin.

24 When the prior draft order was first proposed to the Court in May 2007, former counsel
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1 for Tejon Ranch advocated that the proposed order requires the “public water suppliers
2 promptly serve their Cross-Complaint on transferees, substituting the transferees as cross-
3 defendants per CCP §368.5” (See Kuney Declaration, Exhibit “E”, Brief of Tejon Ranchcorp
4 Re Jurisdiction Over Transferees of Land, at page 4.) (Emphasis added.) To similar effect, the
5 last provision of the currently proposed order, as requested by the Public Purveyors, specifies
6 that “[a]fter notice of transfer is posted . . . the ‘Public Water Suppliers’ shall promptly serve
7 their current Cross-Complaint on any transferees that are new parties to the adjudication, except
8 new class members, substituting the transferees as cross-defendants per CCP §368.5”
9 (Proposed Order, at page 3, ¶7.) (Emphasis added.)

11 The Public Purveyors’ acknowledge both in the text of the proposed order and in their
12 prior requests for an order that there is a necessity of obtaining jurisdiction over the transferees
13 by the actual service of the Public Purveyors Cross-Complaint on each transferee. However,
14 that position is directly contrary to the more recent contentions by the Public Purveyors that
15 service is already complete and that the “McCarran Amendment does not require that all water
16 users of water in groundwater basin be included in the adjudication to be comprehensive
17 adjudication.” (See Kuney Declaration , Exhibit “A”, Response to Van Dam Parties And
18 Antelope Valley Water Storage LLC Notice And Objection to Failure to Join Indispensable
19 Party, at page 3, lines 7-9.) Specifically, the Public Purveyors now argue that there is “no
20 statutory or case law [which] imposes the unreasonable requirement to continuously tract each
21 and every change in property ownership interests. . . . the Public Water Suppliers have
22 published legal notices of the adjudication proceedings in several newspapers which, as the
23 Court has commented, provide general notice to the general public of the adjudication
24 proceedings.” (Id., at page 4, lines 20-24.)
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1 Notice does not create jurisdiction. The grant deeds to AV Solar Ranch 1, LLC illustrate
2 the point. (See, Kuney Declaration , Grant Deeds, Exhibits “B” and “C” and Map, Exhibit
3 “D”.) Currently the Court’s records indicate that High Desert Investments, LLC is a party to the
4 action while AV Solar Ranch 1, LLC and AV Solar Ranch 2, LLC are not. (See, Kuney
5 Declaration , ¶¶ 10-11.) Whether AV Solar Ranch 1, LLC has actual notice of the adjudication
6 from legal notices, newspapers, or even a notification by one of its two grantors, e.g., High
7 Desert Investments, LLC, does not subject either the land or AV Solar Ranch 1, LLC to the
8 Court’s jurisdiction. It is only by virtue of the actual service by the Public Water Purveyors’
9 Cross-Complaint and the appearance of the party will the Court have jurisdiction and joinder of
10 the necessary party, which in this instance owns approximately 2,100 acres of land within the
11 Basin adjudication boundaries. (See, Kuney Declaration , ¶¶ 6-9.) That of course is precisely
12 why the proposed order requires the Public Water Suppliers to “promptly serve their current
13 Cross-Complaint on any transferees”. (Proposed Order, at page 3, ¶7.)

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16 The Public Purveyors contention that the joinder of subsequent transferees is not
17 necessary and only represents nominal claimants to the Basin is contradicted by the record.
18 The Van Dam Parties have provided to the Court a mere four (4) examples of the existing record
19 owners and water right claimants in the Basin whose total record ownership exceeds 5,250 acres
20 overlying the Basin. (See Kuney Declaration, ¶¶ 5-9.) Such uncontradicted facts confirm that
21 the actual service of all transferee parties is required in order for the Court to obtain
22 comprehensive adjudication over all parties who have water rights claims. The joinder – by
23 service -- of all transferees must be made by the Public Purveyors in order for the judgment to
24 bind the United States and all the other parties.
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III. CONCLUSION

Adoption of the proposed order does not rectify the significant lack of joinder of the necessary parties to this Adjudication. The proposed order can only attempt to ensure jurisdiction over future transferees of land held by existing parties, presuming the Public Purveyors actually serve and join all such transferees. The order does not attempt to rectify the currently existing circumstance that the Public Purveyors have thus far failed to serve and join all the existing water right claimants of record within the boundaries of the Adjudication. In order for the Court to obtain the necessary jurisdiction of all the water right claimants to the Basin, the Public Purveyors must identify and actually serve both the existing water right claimants and their future transferees.

From a practical vantage point, all the substantial public and private investment of time and funds to retain experts, conduct discovery, prepare and participate in the proposed Phase III trial is being wasted because there currently is such a fundamental procedural defect in the Court's jurisdiction that there will be no enforceable final judgment.

In the end, the proposed order is insufficient to ensure the Court with the jurisdiction it requires to proceed.

Dated: May 27, 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 May 27, 2010, I caused the foregoing document(s) entitled as: VAN DAM PARTIES AND ANTELOPE VALLEY WATER STORAGE LLC OPPOSITION TO PUBLIC WATER SUPPLIERS' MOTION TO SIGN ORDER RE JURISDICTION OVER TRANSFERREES 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 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.

Executed on May 27, 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