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22 and Connie L. Cardile, Gene T. Bahlman, **collectively known as the Antelope Valley Ground**  
23 **Water Agreement Association ("AGWA")**

24 [See Next Page For Additional Counsel]

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
26 **FOR THE COUNTY OF SANTA CLARA**

27 **ANTELOPE VALLEY** )  
28 **GROUNDWATER CASES** )  
29 Included Actions: )  
30 Los Angeles County Waterworks District No. )  
31 40 v. Diamond Farming Co. Superior Court of )  
32 California County of Los Angeles, Case No. BC )  
33 325 201 Los Angeles County Waterworks )  
34 District No. 40 v. Diamond Farming Co. )  
35 Superior Court of California, County of Kern, )  
36 Case No. S-1500-CV-254-348Wm. Bolthouse )  
37 Farms, Inc. v. City of Lancaster Diamond )  
38 Farming Co. v. City of Lancaster Diamond )  
39 Farming Co. v. Palmdale Water Dist. Superior )  
40 Court of California, County of Riverside, )  
41 consolidated actions, Case No. RIC 353 840, )  
42 RIC 344 436, RIC 344 668 )

43 **Judicial Council Coordination Proceeding**  
44 **No. 4408**

45 **Santa Clara Case No. 1-05-CV-049053**  
46 **Assigned to The Honorable Jack Komar**

47 **CROSS-DEFENDANTS' SUPPLEMENTAL**  
48 **OPPOSITION TO PURVEYORS' MOTION**  
49 **TO TRANSFER AND TO CONSOLIDATE**  
50 **FOR ALL PURPOSES**

51 **Date: October 13, 2009**  
52 **Time: 10:00 AM**  
53 **Dept.: 17C**

54 SUPPLEMENTAL OPPOSITION TO MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES

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1 Cross-Defendants Antelope Valley Groundwater Agreement Association (“AGWA”),  
2 Service Rock Products Corporation, Sheep Creek Water Company, the Antelope Valley United  
3 Mutual Group, U.S. Borax, Inc., Bolthouse Properties, Inc., Wm. Bolthouse Farms, Inc., Diamond  
4 Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company,  
5 LLC (collectively, “Cross-Defendants”) submit this Supplemental Opposition in response to the  
6 Purveyors’ *Supplemental Memorandum of Points and Authorities in Support of Motion to Transfer*  
7 *and to Consolidate for all Purposes*, filed September 8, 2009 (“Supplemental Memorandum”).

8 To begin, consolidation is not within the Court’s powers in this case. Should the Court find  
9 otherwise, the Purveyors’ consolidation plan is so incomplete that the Court cannot grant the  
10 Purveyors’ Motion to Transfer and to Consolidate for All Purposes (the “Motion”). Exhibit “C” to  
11 the Purveyors’ Supplemental Memorandum, depicting the Purveyors’ proposed alignment of the  
12 parties in the event of consolidation, is more of a statement of the problem with the state of the  
13 pleadings than it is a potential solution to that problem. The multiple criss-crossing arrows are  
14 essentially metaphors that stand in the place of an actual explanation of the nature of the claims  
15 made between the identified party groups and more than anything highlight the fact that no one  
16 understands these relationships enough to be able to explain them in words.

17 Finally, and of fundamental importance, there is not commonality of parties or causes of  
18 action among the actions that the Purveyors propose to consolidate. That is, the Purveyors cannot  
19 pursue a comprehensive adjudication under their proposal because none of the claims against all  
20 landowners will, or even can be, adjudicated. Without a plan for comprehensive adjudication, the  
21 Purveyors’ plan will not satisfy the requirements of the McCarran Amendment. There are  
22 alternatives to the Purveyors’ proposal, such that this litigation can be structured to make all  
23 necessary parties party to a common pleading. However, without these alternative approaches to  
24 structuring the litigation, the adjudication should be dismissed.

25 **I. CONSOLIDATION OF COMPLEX CASES FILED IN DIFFERENT COURTS IS**  
26 **NOT PERMITTED**

27 At the outset, Cross-Defendants do not believe consolidation to be within the Court’s power  
28

1 in this case. (See Cross-Defendants’ Opposition to Motion to Transfer and Consolidate for All  
2 Purposes, filed August 3, 2009.) The actions in this matter have been determined to be complex, as  
3 defined by *California Rules of Court*, Rule 3.400. “A judge can order a case pending in another  
4 court and that is ‘*not complex*’ . . . transferred to the judge’s court for purposes of consolidation with  
5 a case before that court having common issues of law or fact.” (WEIL & BROWN, CAL. PRAC. GUIDE  
6 CIV. PRO. BEFORE TRIAL (The Rutter Group 2009), § 12:351) (emphasis added).) Since these actions  
7 have been determined to be complex, consolidation is not appropriate and must be denied. In  
8 addition, “consolidation is authorized *only* where the cases in question are pending in the same  
9 court.” (WEIL & BROWN, CAL. PRAC. GUIDE CIV. PRO. BEFORE TRIAL (The Rutter Group 2009), §  
10 12:350) (emphasis added); Code of Civ. Pro., § 1048.) Since the cases that have been coordinated in  
11 this action are filed in three different counties (Los Angeles, Kern and Riverside Counties),  
12 consolidation is not permitted.

13 **II. CONSOLIDATION IS NOT PERMITTED DUE TO THE LACK OF COMMON**  
14 **PARTIES AND CAUSES OF ACTION**

15 Even if these cases could be consolidated, a “complete” consolidation is not permitted since  
16 the parties are not identical, and all the causes of action in each of the cases cannot be joined against  
17 all the parties. (WEIL & BROWN, CAL. PRAC. GUIDE CIV. PRO. BEFORE TRIAL (The Rutter Group  
18 2009), § 12:341.1.) As shown in Exhibit “A” to this Supplemental Opposition, and evidenced by  
19 Exhibit “B” to the Supplemental Memorandum, the parties and causes of action in each of the  
20 pleadings are different. Where cases involve different parties and causes of action (even in  
21 situations where consolidation may be appropriate), the pleadings, verdicts, findings and judgments  
22 must be kept separate; there is no merger of the separate actions; and a party’s appearance in one  
23 action is not deemed an appearance in any of the other actions. (WEIL & BROWN, CAL. PRAC. GUIDE  
24 CIV. PRO. BEFORE TRIAL (The Rutter Group 2009), § 12:341.2.) Accordingly, even if it were  
25 possible to consolidate the actions solely for trial purposes, it would *not* be a complete consolidation  
26 and would *not* result in a single judgment.

27 The Purveyors only cite the case of *Committee for Responsible Planning v. City of Indian*

1 *Wells* (1990) 225 Cal.App.3d 191 in support of their Supplemental Memorandum of Points and  
2 Authorities. However, the consolidation in that case is distinguishable from what the Purveyors  
3 request here. *Indian Wells* involved the consolidation of five actions, each of which was brought  
4 pursuant to *Health and Safety Code, Section 33501. (Committee for Responsible Planning v. City of*  
5 *Indian Wells* (1990) 225 Cal.App.3d 191, 193.) There, the court only agreed to consolidation  
6 because in validation cases (which involve validating decisions by public agencies), a single  
7 judgment is required in order to be binding on the agency and all other persons. Since the parties  
8 were not identical, the court could consolidate the actions *for trial purposes only. (Committee for*  
9 *Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 194 (emphasis added).)  
10 Accordingly, it was *not* a complete consolidation and could not result in a single judgment. The  
11 order for consolidation in *Indian Wells* stated: “2. That each case is to retain its separate identity,  
12 separate Findings, separate Verdict and separate Judgment; and 3. That each paper to be filed shall  
13 be filed in its own file and in no other . . . .” (*Committee for Responsible Planning v. City of Indian*  
14 *Wells* (1990) 225 Cal.App.3d 191, 194.) Thus, where the parties to each action are not identical,  
15 even when consolidation is permitted (which is not the case in this adjudication), the court must  
16 maintain the separateness of each action and cannot render a single judgment.

17 **III. THE CONSOLIDATION PROPOSAL IS INCOMPLETE**

18 Even assuming that consolidation was permissible, the Purveyors’ suggested Alignment of  
19 Parties (Exhibit “C” to the Supplemental Memorandum) does not propose any situation that is  
20 different from the status quo. The proposal shows the Purveyors as a complainant or cross-  
21 complainant vis-à-vis other parties - omitting what should be shown as a pending defendant class of  
22 overlyers as pleaded in the cross-complaint - but all other parties are not properly defendants or  
23 cross-defendants to a common complaint or cross-complaint that contains the essential causes of  
24 action in this matter. Thus, the proposed Alignment of Parties merely demonstrates again the nature  
25 of the problem itself, rather than posing any sort of practical solution.

26 Furthermore, the matrix listing the pleadings proposed to be consolidated (Exhibit “A” to the  
27 Supplemental Memorandum) lacks sufficient information to allow the Court and the parties to  
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1 properly evaluate the outcome of the Purveyors' proposal. First, it is not clear that the matrix lists all  
2 of the parties to each complaint or cross-complaint. Second, the matrix does not allow determination  
3 of who has been served, who has answered, and who has been dismissed from the actions proposed  
4 to be consolidated. Third, where a party has been dismissed from a particular complaint, it cannot be  
5 determined why the party was dismissed, whether the party was subsequently made party to these  
6 cases through a separate complaint, or whether the party must be brought back into the cases as an  
7 indispensable party. Finally, the matrix does not include information regarding which parties are  
8 represented by which attorneys, obfuscating potential conflicts in the proposed alignment of the  
9 parties that would further make consolidation improper.

10 **IV. THE MCCARRAN AMENDMENT REQUIRES A COMPREHENSIVE**  
11 **ADJUDICATION**

12 The Purveyors' plan for consolidation would not address the serious deficiencies of this  
13 Adjudication under the McCarran Amendment. The McCarran Amendment requires that an  
14 adjudication be comprehensive in order for the federal government to waive its sovereign immunity  
15 and consent to inclusion in this matter. As discussed above, the cases here cannot be merged, and  
16 one judgment cannot be rendered, unless the parties are identical in each action. (WEIL & BROWN,  
17 CAL. PRAC. GUIDE CIV. PRO. BEFORE TRIAL (The Rutter Group 2009), § 12:341.1.) Since the cases  
18 cannot be consolidated, and a single judgment cannot be rendered, the Purveyors' proposal will not  
19 result in a comprehensive adjudication for purposes of the McCarran Amendment. To the contrary,  
20 the Purveyors' proposed alignment merely shows the manner in which all parties are presently  
21 situated—as parties to a hodge-podge of varying actions. Since the federal government is not a party  
22 to all of the actions, the McCarran Amendment will not permit the federal government to waive its  
23 sovereign immunity in this case, even if they are all coordinated or consolidated for trial purposes.

24 Of further concern for purposes of the McCarran Amendment is the fact that many parties  
25 have now been dismissed without explanation. This matter cannot be comprehensive unless all  
26 parties whose water rights are to be adjudicated are included in this action. No reason has been  
27 given for the dismissal of the numerous parties, and it cannot be determined if any of those parties  
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1 should be brought back into the action, and whether they are necessary parties.

2 **V. CONCLUSION**

3 The Purveyors have not cited a single statute or case which permits consolidation under the  
4 circumstances in this case. In fact, the lists and charts provided by moving parties only emphasize  
5 the nature of the cases filed in this coordinated action, which involves numerous parties and various  
6 causes of action filed in three different counties. Further, since these cases have been deemed  
7 “complex,” they cannot be consolidated. Since the parties are not identical, a *complete* consolidation  
8 is not permitted, and a single judgment cannot be rendered. No matter how one characterizes the  
9 many cases that have been coordinated into this action, consolidation is not appropriate, and the  
10 motion to transfer and consolidate all cases in this action must be denied.

11 This litigation can be otherwise structured such that all necessary parties are made party to a  
12 common pleading. Attached to this Opposition as Exhibit “B” is a chart demonstrating how this  
13 may be accomplished. Based on the wide scope of causes of action included in the Purveyors’ First  
14 Amended Cross-Complaint, and the large number of parties already parties to the Cross-Complaint,  
15 the Purveyors need only complete the process of certifying and forming the defendant class that has  
16 been sued, or take whatever steps are necessary to bring the Willis and Wood classes into that  
17 particular action as cross-defendants. All landowners are identified by name or identified as Doe  
18 defendants in the Cross-Complaint. Once landowners are identified, just as the two classes have  
19 been, they must be added as Doe defendants to the Cross-Complaint. Proceeding in this fashion  
20 should address the McCarran Amendment concerns underlying the Purveyors’ Motion. Otherwise,  
21 the Cross-Complaint itself must be dismissed.  
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Dated: September 18, 2009

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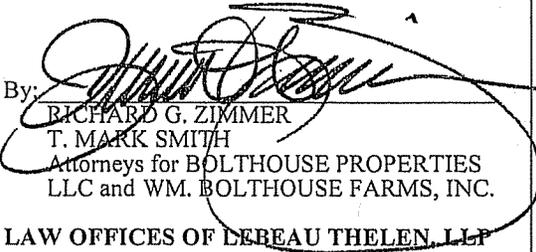
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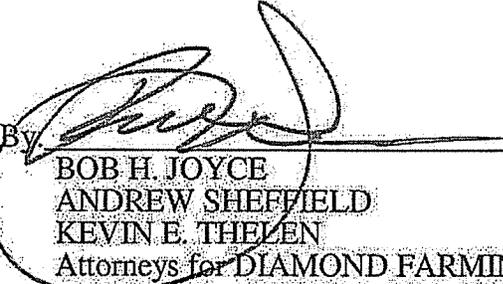
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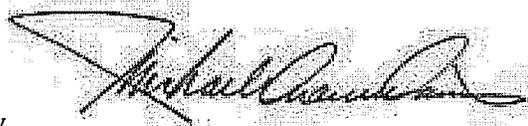
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**GRESHAM SAVAGE NOLAN & TILDEN**



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**PROOF OF SERVICE**

**STATE OF CALIFORNIA,  
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On September 18, 2009, I served the foregoing document described as:

**CROSS-DEFENDANTS' SUPPLEMENTAL OPPOSITION TO PURVEYORS' MOTION  
TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES**

on the interested parties in this action.

By posting it on the website at 4:00 p.m. on September 18, 2009.  
This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on September 18, 2009.

MARIA KLACHKO-BLAIR  
**TYPE OR PRINT NAME**

//S//  
**SIGNATURE**

SB 519224 v1:007966.0001