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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES	Judicial Council Coordination Proceeding No. 4408 (Santa Clara Case No. 1-05-CV-049053, Honorable Jack Komar) Case No.: BC 391869 **RICHARD WOOD'S OPPOSITION TO MOTION TO CONOLIDATE** Date: August 17, 2009 Time: 10:00 a.m. Dept.: 1
RICHARD A. WOOD, an individual, on behalf of himself and all others similarly situated, Plaintiff, v. LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; et al. Defendants.	

RICHARD WOOD'S OPPOSITION TO MOTION TO CONOLIDATE

MEMORANDUM OF POINTS AND AUTHORITIES

The public water suppliers ("PWS") have filed a procedurally defective motion to consolidate that must be denied.

A. The Motion Should be Denied Because It Fails to Comply With the Procedural Requirements for a Motion to Consolidate

As argued in more detail in the Objection to Hearing on Motion to Transfer and to Consolidate for All Purposes, filed Diamond Farming *et al.*, the Motion fails meet the mandatory procedural prerequisites of Rule of Court 3.350. By failing to meet the requirements to identify the various actions and parties, the moving parties have forced the Court and the Opposing parties to try to sort through the staggering mess of pleadings in this coordinated proceeding. On this basis alone, the Motion must be denied.

The Motion fails to address the specific pleadings, or the parties involved, leaving the Court with little indication as to what would result from complete consolidation. Complete consolidation results in a merger of the pleadings and actions. (*Weil & Brown, California Civ. Proc. Before Trial* (Rutter 2009), ¶ 12:341.1; *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147.) What parties would be plaintiffs in the consolidated actions, who would be defendants and who would be cross-defendants, if anyone? What claims would be asserted, and how would they be pleaded? If the PWS' first-amended cross-complaint is to remain the center of the action, what is its case number? At present, this cross-complaint does not even have a case number.[1] The Court must have answers to all of these questions before considering such a motion.

If the Court was inclined for some reason to entertain this Motion, it should make the moving parties re-file the Motion so that all of the procedural prerequisites are met. However, as set forth below, as well as in the brief submitted cross-defendants U.S.

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[1] The PWS have been serving the recently added 1500-plus Roe Defendants (the *Willis* opt outs) with a summons with no case number at all. They are using a summons that the LASC clerk apparently issued with just "JCCP 4408" listed on it. This is a coordination number, not a case number.

Borax *et al.*, there is no point in a further motion to consolidate because such a motion would be futile in any event.

B. Complete Consolidation Cannot be Granted as to the Classes

The classes cannot be completely consolidated with the other cases because they are complex cases, and because they do not share the same parties or claims as the plethora of actions flowing from the "main action."

By their very nature, the class actions are complex, and cannot be consolidated under the applicable procedural law. (*Weil & Brown, California Civ. Proc. Before Trial* (Rutter 2009), ¶¶ 12:345, 12:405; C.C.P. §§ 403 and 404.) There is no precedent for merging a class action into a non-class case, and the Motion makes no suggestion as to how that would work mechanically, even assuming it was permitted under the applicable procedural statutes, which it is not.

"Complete consolidation may be ordered where the parties are identical and the causes of action could have been joined." (*Weil & Brown,* ¶ 341.1.) Richard Wood is not a party to the PWS's cross-complaint, nor any other complaint or cross-complaint in this case. The same is true of the 5,000 to 10,000 absent class members. The only parties common to the various actions are the water purveyors, which are plaintiffs in the main proceeding – or at least all but some represented by the Lemieux firm – and defendants in each of the class cases.

Furthermore, the claims asserted by the Classes are greatly divergent from those asserted in the other cases. Richard Wood asserts essentially two groups of claims, one aimed at defeating the prescriptive rights of the PWS and quieting title, and another set for monetary damages for the taking of his water, and that of the class members. Wood asserts no claims for a basin-wide adjudication, nor has he brought suit against any federal defendants. The Small Pumper class seeks limited relief against a narrow set of defendants.

The Class complaints of course also contain unique class allegations that must

remain intact. The suggestion that the classes can simply added to the first amended cross-complaint as a Roe defendant is wrong. A plaintiff class cannot be sued as though it were a distinct legal entity, and the various class members could not be sued as a defense class without sufficient notice to the class satisfying the procedural due process requirements. The PWSs did obtain an order certifying a defense class in 2007, but elected not to pursue that. They cannot remedy that decision through consolidation.

C. Conclusion

The question of consolidation is not one of regarding the exercise of judicial discretion. The law simply does not allow complete consolidation under the facts presented.

This outcome, however, does not necessarily mandate dismissal of the PWS action. While it would appear to foreclose jurisdiction over the federal cross-defendants under the McCarran Amendment, this action can proceed without the United States. The Court should consider dismissing the United States, so that the rest of this coordinated proceeding can move forward to trial.

DATED: August 3, 2009

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

By: //s//
Michael D. McLachlan
Attorneys for Plaintiff

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 523 West Sixth Street, Suite 215, Los Angeles, California 90014.

On August 3, 2009, I caused the foregoing document(s) described as **RICHARD WOOD'S OPPOSITION TO MOTION TO CONOLIDATE**

to be served on the parties in this action, as follows:

(X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: www.scefiling.org regarding the Antelope Valley Groundwater matter.

( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Los Angeles, California, addressed to:

( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

( ) (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.

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

( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

//s//
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES	RELATED CASE TO JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408
This Pleading Relates to Included Action: REBECCA LEE WILLIS, on behalf of herself and all others similarly situated, Plaintiff, vs. LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; CITY OF LANCASTER; CITY OF LOS ANGELES; CITY OF PALMDALE; PALMDALE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; QUARTZ HILL WATER DISTRICT; ANTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; MOJAVE PUBLIC UTILITY DISTRICT; and DOES 1 through 1,000; Defendants.	The Honorable Jack Komar Coordination Trial Judge **REBECCA WILLIS' AND THE CLASS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE** DATE: August 17, 2009 TIME: 9:00 a.m. PLACE: Dept. 17C JUDGE: Hon. Jack Komar

Class Plaintiff Rebecca Lee Willis (Willis) respectfully submits this memorandum in opposition to the pending Motion to Consolidate these coordinated cases for all purposes. For

the reasons stated below, that Motion should be denied and any Order of Consolidation should be expressly limited to the upcoming trial of yield and overdraft issues.

PROCEDURAL STATUS

Willis will not attempt to unravel the complex procedural status of the various cases in this coordinated Proceeding. For present purposes, the critical fact is that Willis has only asserted causes of action to interrupt and counter the claims of prescription asserted by 10 of the Suppliers. Those claims are at issue and ready to proceed to trial. Conversely, with the exception of one small PWS, no PWS or landowner has asserted any claims against the Willis class. Further, while Phelan did name Willis in its complaint, that Complaint has not been served on her and is devoid of any class allegations. In short, no one has perfected claims against the Willis class, and the Class' claims only involve issues of prescription.

ARGUMENT

In an effort to solve a variety of problems, in particular, to achieve a comprehensive adjudication that satisfies the McCarran Act, the Public Water Suppliers have moved to consolidate these coordinated cases for all purposes. Consolidation however, can not solve the problems that the Suppliers need to address; moreover, consolidation for all purposes would impose significant and unwarranted burdens on the Willis Class. The Willis Class does not oppose consolidation for purposes of the upcoming trial on safe yield and overdraft, issues that are common to all pending cases. But it does oppose consolidation for all purposes.

A. These Cases Should Not Be Completely Consolidated

Consolidation is a procedural device for uniting *separate* lawsuits for trial, where they involve *common questions of law or fact* and are pending in the same court. See CCP § 1048. The purpose is to enhance trial court efficiency (i.e., to avoid unnecessary duplication of evidence and procedures); and to avoid the substantial danger of inconsistent adjudications (i.e., different results because tried before different juries, or a judge and jury, etc.). *Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 CA4th 976, 978–979, 56 CR2d 16, 17–18]

Courts have made clear that there are two types of consolidation: Complete consolidation is appropriate where the parties are identical and the causes of action could have been joined. The pleadings are regarded as merged, one set of findings is made, and one judgment is rendered. *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 C4th 1127, 1147–1148, 95 CR2d 701, 714]. Alternatively, cases may be consolidated for trial, where the pleadings, verdicts, findings and judgments are kept separate; the actions are simply tried together for the sake of convenience and judicial economy. Because there is no merger of the separate actions, a party's appearance in one is *not* an appearance in the other. [*Sanchez v. Sup.Ct. (Martinez)* (1988) 203 CA3d 1391, 1395–1399, 250 CR 787, 789–791]

Here, the parties and claims vary across all the complaints. For this reason alone, complete consolidation would be inappropriate. Consolidation does not create new claims for or against a party where none are alleged in the underlying pleadings. For example, if A sued B for claims 1, 2 and 3; and, C sued B for claims 3, 4, and 5; consolidation would not give A the benefit of claims 4 and 5 against B. It may merge common claim 3 to both A and C but cannot constitutionally impute claims to either A or C. In this case, the class has no adverse claims against the landowners or the United States. Moreover, the classes do not seek to allocate the native yield among the landowners by way of a physical solution. Those claims are a part of the PWS first amended complaint but not the classes.

Similarly, consolidation would not join parties that were not originally part of plaintiff's case. For example, if A sued P, W, and S; and, D sued X, Y, and Z; consolidation would not cause A to have sued X, Y, and Z. Nor would it cause D to have sued P, W, and S. Here, the defendants are different across the cases. The Willis class sued only the ten PWS that alleged prescription while the PWS sued the United States and all landowners except the two classes. If the cases were consolidated, the Willis class would still not have any claims against the United

States or any landowner and the PWS would still not have any claims for a physical solution again the classes.

Complete consolidation is merely a procedural device designed to create efficiency and judicial management for resolution of cases. The obvious virtue of consolidation is that it increases the productivity of the judicial system by arranging for simultaneous resolution of issues or entire actions. It is not however a substantive rule of law. Claims that do not exist against a party will not instantly appear once the cases are consolidated. To do so would be a fundamental denial of due process. Furthermore, complete consolidation would not make a party adverse to another party if they were not so named in their lawsuit. Once again, to do so would deprive a party of fundamental due process. Although there will be one judgment and a merger of claims after consolidation, the claims and parties are not aggregated and ascribed to all in derogation of due process rights.

B. The Motion to Consolidate is Vague

A motion to consolidate must: (1) list all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record;(2) contain the *captions of all the cases* sought to be consolidated, with the lowest numbered case listed first; and (3) be served on all attorneys of record and all nonrepresented parties in all of the cases sought to be consolidated, and a proof of service must be filed as part of the motion. [CRC 3.350(a); see *In re Sutter Health Uninsured Pricing Cases* (2009) 171 CA4th 495, 514, 89 CR3d 615, 631.

Here, there are numerous complaints and cross-complaints that have been filed in these coordinated proceedings. The motion seeks to consolidate without specifically identifying each pleading. Without specificity it is difficult to discern what is being consolidated. The court should deny the motion for its lack of specificity.

If the United States or the PWS believe that the McCarran Amendment would not be satisfied "unless all the parties owning or in the process of acquiring water rights" in the Basin

are joined as parties defendant and that "any subsequent decree would be of little value." they have remedies. The United States or the PWS could file one master pleading raising all the relevant claims and naming all the necessary parties. Alternatively, the United States should waive its sovereign immunity or the PWS should dismiss the United States from the action. But the Court should not consolidate these actions in an effort to achieve ends that consolidation cannot properly serve.

CONCLUSION

For the reasons stated above, the Court should deny the pending motion to consolidate, except with respect to the upcoming trial of overdraft and yield issues.

Dated: August 3, 2009

KRAUSE KALFAYAN BENINK & SLAVENS LLP

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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 325 201

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California, County of Kern, 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 Dist.
Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668 (Consolidated Actions)

Judicial Council Coordination Proceeding No. 4408

Assigned to
The Honorable Jack Komar

CROSS-DEFENDANTS' OPPOSITION TO MOTION TO CONSOLIDATE FOR ALL PURPOSES

Date: August 17, 2009
Time: 9:00 a.m.
Dept: 17C

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 28, 2009, more than 60 landowners[1] moved to dismiss the Public Water Suppliers' First Amended Cross-Complaint for a failure to join indispensable parties. (*See* Defendants' Motion to Dismiss Public Water Suppliers' Cross-Complaint ("Motion to Dismiss"). At hearing, this Court deferred ruling on that motion, providing an opportunity for the Public Water Suppliers to bring a separate Motion to Transfer and to Consolidate for All Purposes ("Motion to Consolidate") every action and cross-action in the Antelope Valley Groundwater Cases. Following the Public Water Suppliers' filing of their present Motion to Consolidate, however, it is only more clear that the procedural flaws in these proceedings require the Court to dismiss the Public Water Suppliers' Cross-Complaint for failure to join indispensable parties under California Civil Procedure Code section 389.

The Public Water Suppliers' motion depends on an improper contortion of the Rules of Court and Code of Civil Procedure, in an unjustifiable attempt to allow this case to go forward. As demonstrated below, complete consolidation is not appropriate where, as in this case, there are several complex actions filed before different courts in different counties that involve different parties. The Public Water Suppliers' reading of the law would, in essence, allow virtually any combination of cases in this state to be consolidated. Needless to say, that is not the law. Thus, the Cross-Defendants respectfully renew their request for the Court to dismiss the Public Water Suppliers' action or, at the very least, to order that all indispensable parties be named and served before the case is allowed to proceed any further.

II. ARGUMENT

As set forth in the initial Motion to Dismiss, California Civil Procedure Code section 389 requires that all overlying landowners and any other water rights holders within the Antelope Valley Groundwater Basin (the "Basin"), including members of both the Willis and Wood classes, be joined as defendants to the Public Water Suppliers' comprehensive groundwater adjudication. (*See* Motion

[1] A complete list of these landowners is contained on page three of the cross-defendants' Motion to Dismiss.

to Dismiss at 7:16-14:5.) To date, the Public Water Suppliers have failed to name and serve members of the Willis and Wood classes as parties' defendant to their comprehensive adjudication. Further, the Public Water Suppliers' latest attempt to avoid the indispensable parties' requirement by moving for complete consolidation is unavailing, and must be rejected. Therefore, because the Public Water Suppliers have failed to join indispensable parties, their action must be dismissed.

A. Transfer and *Complete* Consolidation of *Complex* Actions Filed in *Different* Courts in *Different* Counties that Involve *Different* Parties, Is Procedurally Improper.

The Public Water Suppliers' suggestion that all of the procedural deficiencies outlined in the Cross-Defendants' previous briefing can simply be resolved by the Court ordering all actions and cross-actions to be transferred and then consolidated for all purposes is incorrect. Indeed, to follow the Public Water Suppliers' logic would allow any and all actions filed in California, regardless of the location of their filing or their complex or non-complex designation, to be consolidated for all purposes. (*See* Motion to Consolidate at 3:12-16.) The Code of Civil Procedure and the Rules of Court do not allow for such a result. As demonstrated below, the procedural rules require that the Court either dismiss the Public Water Suppliers' action for failure to join indispensable parties or, at a minimum, order that all indispensable parties be named and served as defendants pursuant to California Civil Procedure Code section 389.

1. Complex Actions Filed in Different Counties Cannot Be Transferred and Completely Consolidated Under Either the Code of Civil Procedure or the Rules of Court.

The basic procedural rules relating to the coordination of complex actions filed in different counties in California are well settled. Under California Civil Procedure Code section 404 et seq., such cases will be coordinated, i.e., assigned to a single judge, if they share a common question of law or fact and the coordination judge determines that the factors set forth in California Civil Procedure Code section 404.1 have been satisfied. Put differently, "[c]oordination is a procedure for securing centralized case management of [complex] actions pending in different courts that share a common question of fact or law." Cal. Judges Benchbook, Civil Proceedings Before Trial, § 2.89 (2d ed. 2008). Not surprisingly, the cases in this proceeding were properly coordinated under section 404 because Judge Velasquez determined that the requirements of sections 404 and 404.1 were

satisfied. (*See* Motion to Consolidate, Ex. 1.) However, contrary to the Public Water Suppliers' assertions, coordination – and *not* consolidation – is all that the law permits with respect to streamlining the adjudication process for complex actions filed in different counties.

Under California law, it is well established that "[c]oordination by transfer and consolidation is available ***only*** for actions which are 'not complex.'" 2-32 Mathew Bender Practice Guide: California Pretrial Civil Procedure 32.15 (2009) (emphasis added). Indeed, in setting forth the requirements for requesting that cases from different counties be transferred and consolidated, as the Public Water Suppliers are requesting here, California Civil Procedure Code section 403 provides, "[t]he motion shall be supported by a declaration stating facts showing that the actions meet the standards specified in Section 404.1, ***are not complex*** as defined by the Judicial Council and that the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action." Cal. Civ. Proc. Code § 403 (emphasis added). Under California law, all "'complex' cases must be 'coordinated' with each other" and may not be consolidated under Code of Civil Procedure section 1048(a). *See* Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial ("Weil & Brown"), § 12:345 (Rutter Group 2009). Thus, the law is clear that consolidation is not proper for complex actions.

Here, it is undisputed that every action that has been coordinated as part of the Antelope Valley Groundwater Cases is "complex," as defined by California Rules of Court 3.400 et seq. Indeed, the Public Water Suppliers' Motion to Consolidate repeatedly concedes that these actions are "coordinated and complex." (*See* Motion to Consolidate at 4:20-21, 7:22, 8:11, 9:6.) Because the actions sought to be consolidated by the Public Water Suppliers are complex, consolidation is improper.

Additionally, it is equally well established that consolidation is appropriate only where the cases are pending in the same county and before the same court. *See* 2-32 Mathew Bender, *supra*, §32.08 ("Consolidation is the power of the court to order several actions or issues involving common questions of law or fact ***filed in the same county*** to be tried together . . .")(emphasis added); *see also* Weil & Brown, *supra*, § 12:345. "Consolidation . . . cannot combine actions pending in different counties." 3 CEB, California Civil Procedure Before Trial, § 43.3 (June 2008). The text of

California Civil Procedure Code section 1048(a) is also instructive because it only allows consolidation of actions "involving a common question of law or fact" pending before "the [same] court." Cal. Civ. Proc. Code § 1048(a). Here, because the actions were filed in different counties, before different courts (i.e., the Los Angeles County Superior Court, Kern County Superior Court, and Riverside County Superior Court), consolidation is improper.

Further, none of the authorities cited by the Public Water Suppliers compels a different conclusion. First, all of the cases cited in the Motion to Consolidate to support the position that these cases may be properly consolidated involved *non-complex* actions filed in the *same county* – precisely the prerequisites to consolidation that are absent here. Second, to accept the Public Water Suppliers' argument that complex cases filed in different counties can somehow be transferred (and later consolidated) under provisions of the Rules of Court, (Motion to Consolidate at 8:26-9:4), would result in the complete negation of any meaningful distinction between the procedures of consolidation and coordination contemplated by California Civil Procedure Code sections 403 and 404. Such an interpretation is not persuasive and should not be followed by the Court. Rule of Court 3.543(a), which gives coordination judges the power to transfer actions that have been coordinated, has never been used in the manner suggested by the Public Water Suppliers, and this Court should not do so here.

As set forth above, the only proper procedural method to bring these cases together before the same court is through coordination, not through transfer and consolidation. *See* Cal. Civ. Proc. Code § 404. However, as set forth in the Cross-Defendants' Reply Brief, coordination is insufficient to satisfy the requirements of section 389 of the California Civil Procedure Code, as well as the comprehensive adjudication requirement of the McCarran Amendment (43 U.S.C. § 666). (Reply Brief at 4:23-6:12.) Therefore, unless and until the Public Water Suppliers properly name and serve all of the indispensable parties to their comprehensive adjudication, this Court must dismiss their action.

2. Complete Consolidation Is Also Improper Where, As Here, the Parties to the Cases to be Consolidated are not Identical.

As recognized by the Motion to Consolidate, "[t]here are two types of consolidation: a complete consolidation resulting in a single action, and a consolidation of separate actions for trial." *Sanchez v. Super. Ct.*, 203 Cal. App. 3d 1391, 1396 (1988). Complete consolidation or consolidation for all purposes, as requested by the Public Water Suppliers here, is only appropriate "where the parties are identical and the causes could have been joined." *Id.*; *see also* Weil & Brown, *supra*, § 12:341.1. Here, as evidenced by the previous briefing filed regarding the Motion to Dismiss, the parties to the cases that comprise the Antelope Valley Groundwater Cases are not identical, or even substantially the same. The authorities cited by the Public Water Suppliers to the contrary are distinguishable. While the court in *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App. 2d 861, 867 (1952) did allow complete consolidation of two cases where the plaintiff parties were not technically identical, they were substantially the same. The first action was filed by Whitehead as an individual for misappropriations up until the time that his business was incorporated, and the second action was filed by the Whitehead Heater Co. for misappropriations occurring after the date of incorporation. *See id.* at 866-67. Unlike *Jud Whitehead Heater Co.*, the parties to the coordinated actions in this case are not substantially the same. Thus, complete consolidation is improper.[2]

3. The Public Water Suppliers' Motion to Consolidate for All Purposes Fails for the Additional Reason that It Does Not Comply with CRC 3.350.

Rule of Court 3.350 governs motions to consolidate and provides that movants *must* "[l]ist all named parties in each case, the names of those who have appeared, and the names of their attorneys of record." Cal. Rule of Court 3.350(a)(1)(A). The Public Water Suppliers' Motion to Consolidate

[2] The other two cases cited by the Public Water Suppliers, *Paduano v. Paduano*, 215 Cal. App. 3d 346 (1989) and *Committee for Responsible Planning v. City of Indian Wells*, 225 Cal. App. 3d 191 (1990) are equally distinguishable because both of these actions involved substantially the same parties as well.

fails to comply with these requirements, further demonstrating their willingness to disregard procedural rules.[3] For this additional reason, the Motion to Consolidate should be denied.

B. Absent Complete Consolidation or Joinder of Indispensable Parties, the McCarran Amendment's Comprehensive Adjudication Requirement Will Also Not be Satisfied.

The Motion to Consolidate suggests that "complete consolidation should resolve the concerns of the United States (and others) that these proceedings satisfy the requirements of the McCarran Amendment by avoiding piecemeal litigation." (Motion to Consolidate at 8:16-18). However, as demonstrated above, because these cases cannot be completely consolidated, the McCarran Amendment concerns cannot be resolved. As the legislative history of the McCarran Amendment provides:

> S. 18 is not intended . . . to be used for any other purpose that to allow the United States to be joined in a suit wherein it is necessary to adjudicate all of the rights of the 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 ***joined as parties defendant***, any subsequent decree would be of little value.

United States v. Dis. Court in and for Eagle County, Colo., 401 U.S. 520, 525 (1971) (quoting S. Rep. No. 82-755, at 9) (emphasis added). Here, in order for the McCarran Amendment concerns to be satisfied, the Public Water Suppliers must name and serve all indispensable parties as "parties defendant" to their lawsuit, as instructed by the legislative history of the McCarran Amendment itself.

C. The Procedural Deficiencies in these Coordinated Proceedings Require the Court to Dismiss the Public Water Suppliers' Cross-Complaint or Order All Indispensable Parties Named and Served as Defendants.

In addition to the procedural infirmities identified above, as well as in the Cross-Defendants' previous briefing, the current procedural posture of the Antelope Valley Groundwater Cases further

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[3] The Motion to Consolidate also fails to comply with Rule 3.350(a)(1)(B) because it does not "[c]ontain the captions of all the cases sought to be consolidated," and also fails to satisfy Rule of Court 3.350(a)(2)(B) because it was not "served on all attorneys of record and all non-represented parties in all of the cases sought to be consolidated . . ." Because the requirements Rule of Court 3.350 are *mandatory*, and not discretionary, the Public Water Suppliers' failure to satisfy the dictates of Rule 3.350 is a sufficient ground alone for the Court to deny the Motion to Consolidate.

demonstrates the need to grant the Cross-Defendants' Motion to Dismiss. First, since the Court's June 19, 2009 hearing on the Motion to Dismiss, some of the Public Water Suppliers have dismissed their claims against certain cross-defendants with prejudice. (*See* Docket Nos. 2971-72 on the Court's e-filing website, http://www.scefiling.org.) This development further demonstrates that the McCarran Amendment's comprehensive adjudication requirement cannot be satisfied as the case currently stands.

Second, as the previous briefs have demonstrated, it is clear that neither the Wood nor Willis class is seeking a comprehensive adjudication of groundwater rights within the Basin, as is expressly sought by the Public Water Suppliers in their First-Amended Cross-Complaint. (*See* First-Amended Cross-Complaint, ¶ 15.)

Lastly, it is undisputed that many, if not all, of the landowners who are not members of the Wood or Willis classes are not parties to the cases that the plaintiff classes have initiated. Therefore, it is clear that in order to satisfy the McCarran Amendment's comprehensive adjudication requirement, the Public Water Suppliers must name and serve all of the members of the Wood and Willis classes, as well as any other groundwater rights holders within the Basin, as parties defendant to their lawsuit.

III. CONCLUSION

All parties – including the Public Water Suppliers and the Willis and Wood classes, agree that *all* overlying landowners within the Basin are necessary parties to this comprehensive groundwater adjudication. However, due to apparent concerns about expense and delay, the Public Water Suppliers still have failed to name and serve all indispensable parties to their lawsuit. Instead, the Public Water Suppliers have attempted to bend and contort the Rules of Court and Code of Civil Procedure to avoid naming and serving all indispensable parties, while at the same time preserving the appearance of a "comprehensive" adjudication to satisfy the McCarran Amendment. As explained above, and in the Cross-Defendants' previous briefing, the Public Water Suppliers' novel arguments must be rejected. Because coordination and consolidation are insufficient to protect the rights of all of the parties to this comprehensive adjudication, the moving Cross-Defendants

respectfully request that the Court dismiss the action or, at the very least, order that the Public Water Suppliers properly name and serve all indispensable parties as defendants in their lawsuit.

Dated: August 3, 2009

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Dated: August 3, 2009

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Michael T. Fife

Attorneys for the ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION ("AGWA")

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years. I further declare that on August 3, 2009, I served a copy of the attached CROSS-DEFENDANTS' OPPOSITION TO MOTION TO CONSOLIDATE FOR ALL PURPOSES by electronically posting a true copy thereof to Santa Clara County Superior Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C — *http://www.scefiling.org*) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope Valley Groundwater matter).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed at San Francisco, California, on August 3, 2009.

Jennifer P. Doctor
(typed)

Jennifer Doctor
(signature)

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ELECTRONIC FILING - WWW.SCEFILING.ORG
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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES (JCCP 4408) Included Actions: Los Angeles County Waterworks District No. 40 Plaintiff, vs. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, 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 Dist. Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668 Defendant. AND RELATED ACTIONS	Antelope Valley Groundwater Cases (JCCP 4408) Lead Case No.1-05-CV-049053 Hon. Jack Komar **PROOF OF SERVICE** **Electronic Proof of Service**

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Mon. August 3, 2009 at 2:19 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, http://www.scefiling.org, on Mon. August 3, 2009 at 2:19 PM PDT

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed on August 3, 2009 at Oakland, California.

Dated: August 3, 2009

For WWW.SCEFILING.ORG

Andy Jamieson

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ELECTRONIC FILING SYSTEM - WWW.SCEFILING.ORG

Electronic Proof of Service
Page 2

Document(s) submitted by William Sloan of Morrison & Foerster LLP on Mon. August 3, 2009 at 2:19 PM PDT

1. Opposition: Cross-Defendants' Opposition to Motion to Consolidate for All Purposes

Superior Court of California
County of Santa Clara

191 North First Street
San Jose, California 95113
(408) 882-2700

DAVID H. YAMASAKI
Chief Executive Officer

CIVIL AND SMALL CLAIMS DIVISION

E-File
Document Cover Sheet

Please send two complete sets of the electronically endorsed documents to the Superior Court within 3 days of receiving a confirmation email.

Please complete the following information and attach this sheet to the two sets of documents.

Case Number	E-File Acceptance Date
1-05-CV-049053 #G-17177	08/03/09

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Santa Clara County Superior Court
Records Division
191 N. First Street
San Jose, CA 95113

Records/Complex Litigation Department

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EXEMPT FROM FILING FEES
GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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**	Judicial Council Coordination Proceeding No. 4408 FEDERAL DEFENDANTS' RESPONSE TO MOTION TO TRANSFER AND CONSOLIDATE

2. Consolidation is warranted because the cases involve a common question of law and fact.

A judge may consolidate actions when they involve a common question of law or fact. Cal. Civ. Proc. Code § 1048(a) (2009). "Common questions" between cases are areas of "overlap"; identical or similar parties and/or claims. *Medlock v. Taco Bell Corp.*, 2009 WL 1444343, at *1 (E.D. Cal. May 19, 2009). Pursuant to § 1048, "[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Cal. Civ. Proc. Code § 1048(a).

Here, it has already been determined that the cases involve common questions of law and fact because the cases have been coordinated. *See* Cal. Civ. Proc. Code § 404. Moreover, one of the factors considered prior to coordination is if common questions of law or fact are predominating or significant to the litigation. *Id.* at § 404.1.

The predominating common question in this case is the determination of rights to groundwater in the Antelope Valley groundwater basin. All the parties share this commonality including the dormant landowners, the small and large pumpers, the municipal water providers, the purveyors, and the federal government. The Willis class of non-pumping landowners, for example, recognize that the Antelope Valley groundwater adjudication "has been combined with other cases to determine all the groundwater rights in the Basin." (Willis) Notice of Class Action, at 1 (attached as Exh. A to Plaintiff Willis' Order Modifying Class Definition and Allowing Parties to Opt in the Plaintiff Class, filed May 22, 2008); *see also* Second Order Modifying Definition of Plaintiff [Willis] Class, dated September 2, 2008, at 2 ("The claims asserted on behalf of the Class raise common issues of fact and law, which predominate over any individual issues.") Moreover, this class was certified "in light of the need to obtain a comprehensive allocation of water rights that is binding on all landowners within the Basin." Order Certifying Plaintiff Class, dated September 9, 2007, at 2, ¶ 7.

Similarly, the Wood class of small pumpers claims that "[t]here are common question [sic] of law and fact as to all members of the Class, which predominate over any questions affecting solely individual members of the Class. Specifically, the Class members are united in establishing (1) their priority to the use of the Basin's groundwater given their capacity as overlying landowners . . . ." First Amended Class Action Complaint (Wood Class), dated June 20, 2008, pp. 7-8, ¶ 21. Because the coordinated cases involve the common question of rights to groundwater these cases are appropriate for complete consolidation.

3. Consolidation for all purposes is proper.

Section 1048 of the California Code has been interpreted by courts to permit complete consolidation, or consolidation of particular issues for trial only. *See Sanchez v. Superior Court of Santa Clara County*, 203 Cal. App. 3d 1391, 1396 (Cal. Ct. App. 1988). Both complete consolidation and consolidation for trial require a common question of law or fact. *Hamilton v. Asbestos Corp., Ltd.*, 22 Cal. 4th 1127, 1148 n.12 (Cal. 2000). In a complete consolidation, however, "the pleadings are regarded as merged, one set of findings is made, and one judgment is rendered." Judge Robert I. Weil & Judge Ira A. Brown, Jr., Cal. Prac. Guide: Civ. Pro. Before Trial § 12:341.1 (The Rutter Group 2007); *see also Sanchez*, 203 Cal. App. 3d at 1396. Otherwise stated, complete consolidation is proper when "the causes of action might have been united." *Smith v. Smith*, 80 Cal. 323, 324 (Cal. 1889). In these coordinated cases, all the causes, including determination of safe yield, overdraft, prescription, rights priority, reserved rights, and a physical solution unite to produce a determination of the parties' relative rights to groundwater. Therefore, complete consolidation is proper.

4. The cases have already been transferred.

In their Consolidation Motion, the Public Water Suppliers request that, "to the extent not already transferred, the Court is authorized to order whatever transfers are deemed necessary to allow complete consolidation." PWS Consolidation Mtn. at 9. In this case, however, the Judicial Council has already effected a transfer of the coordinated

actions by assigning the actions to Judge Komar and the Superior Court of Santa Clara County. *See* Exhibit 2 attached to PWS Consolidation Mtn. Accordingly, no further transfer of the respective cases is necessary prior to consolidation.

The California Rules define "transfer" as the "means to remove a coordinated action or severable claim in [an] action from the court in which it is pending to any other court under rule 3.543, without removing the action or claim from the coordination proceeding." Cal. Civ. Code § 3.501 (19) (2009). Here, the Judicial Council's August 31, 2005 order effected a transfer by assigning Judge Komar as the coordination trial judge, and vested him with the authority to "hear and determine the coordinated actions listed below, at the site or sites that he finds appropriate." PWS Consolidation Mtn. at Exh. 2. The Judicial Council continues that, pursuant to the coordination, "the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending." *Id.* Because the cases have already been effectively transferred to Judge Komar, it is within his powers to consolidate without further action by way of a transfer. Cal. Civ. Proc. Code § 1048(a) (2009).[1/]

5. Conclusion.

A complete consolidation is necessary in order to achieve a comprehensive adjudication and comport with the requirements set forth in the McCarran Amendment. Because the predominating common question in this case is the determination of water rights within the groundwater basin, complete consolidation is warranted.

1/ A coordination judge is vested with "whatever great breadth of discretion that may be necessary and appropriate to ease the transition through the judicial system and the logjam of cases which gives rise to coordination." *Ableson v. Nat'l Union Fire Ins. Co.*, 28 Cal. App. 4th 776, 786 (Cal Ct. App. 1994)(quoting *McGhan Medical Corp. v. Superior Court*, 11 Cal. App. 4th 804 (Cal. Ct. App. 1992); *see also Fellner v. Steinbaum*, 132 Cal. App. 2d 509, 511 (Cal. Ct. App. 1955) (concluding that the consolidation of two cases for trial was "committed to the sound discretion of the trial judge"). Therefore, the United States agrees with the Public Water Suppliers that the Court has authority to transfer cases to the extent transfer has not already occurred, but believes this action is unnecessary in the instant case.

Respectfully submitted this 3rd day of August, 2009.

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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 August 3, 2009, I caused the foregoing documents described as; FEDERAL DEFENDANTS' RESPONSE TO MOTION TO TRANSFER AND CONSOLIDATE, to be served on the parties via the following service:

[X] 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.

[ ] 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 August 3, 2009, at Denver, Colorado.

/s/ Linda Shumard
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ANTELOPE VALLEY GROUNDWATER CASES	Judicial Council Coordination Proceeding No. 4408 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES** Date: August 17, 2009 Time: 10:00 a.m. Dept.: 17C (Hon. Jack Komar)

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MEMORANDUM OF POINTS AND AUTHORITIES

The Public Water Suppliers respectfully submit this reply memorandum of points and authorities in support of their motion for transfer and complete consolidation.

I. ALL PARTIES RECEIVED APPROPRIATE NOTICE OF THIS MOTION FOR TRANSFER AND COMPLETE CONSOLIDATION

Any alleged failure to comply with the technical requirements of Rule of Court 3.350 is inconsequential. There are no due process concerns regarding notice of the cases proposed to be consolidated, which the notice provisions of Rule 3.350 are apparently intended to ensure. Due process was provided here where the Public Water Suppliers posted their motion pursuant to the Court's Electronic Service Order, as well as the Court's June 19, 2009 Minute Order specifically requiring such a motion to be posted by July 15, 2009. Given that this litigation has been pending since 1999, that two phases of trial have already occurred, that the issue of consolidation has been raised in open court on multiple occasions, and that the Court ordered that such a motion be brought by July 15, 2009, no party to this litigation can fairly claim ignorance as to what is occurring here and which cases are proposed to be consolidated.

The notice of motion and motion clearly seek an order consolidating *all actions* presently coordinated under Judicial Council Coordination Proceeding No. 4408 so as to enable a single judgment to be entered constituting a comprehensive adjudication of groundwater rights in the Antelope Valley Groundwater Basin ("Basin"). (Notice, pp. 3:14-17, 4:1-5, 4:27-5:4; Motion, pp. 8:19-22, 15:1-3.) No complaints or cross-complaints are exempted from the proposed consolidation, even including the Sheldon Blum Trust's lease dispute with its tenant, Bolthouse Farms. All causes of action, by whomever asserted, have previously been coordinated under a Judicial Council

Coordination Proceeding number and the identity of those actions is readily ascertainable and accessible on the Court's website.

Similarly, the specific information opponents to this motion request, pursuant to Rule 3.350, has been equally available to all parties as of the moment the motion was posted. The list of the names of all parties and attorneys of record to all actions sought to be consolidated and the captions of all such actions appear on the Court's website. Requiring the Public Water Suppliers to compile this information at the time the motion was filed would have served no purpose other than to increase the cost and time required to bring the motion. Given that the Court has recently suggested that the parties split the cost of hiring a paralegal to compile this same information into a matrix, and new cross-complaints are being filed as parties appear, it is highly unlikely that the Public Water Suppliers could have undertaken this task in time to bring this motion in compliance with the Court's June 16, 2009 Minute Order. The attempts of the opposing parties to delay the hearing on this motion and the setting of a safe yield trial by raising this procedural obstacle should be disregarded, as notice has been given and numerous arguments have been made in opposition.

Alternately, if the Court is inclined to believe that it lacks the authority to waive application of the specifics of Rule 3.350(a), the Public Water Suppliers respectfully request the Court to continue the hearing on this matter so as to allow the Public Water Suppliers to re-notice the motion, keeping in mind the amount of time it will take to compile the information requested.

II. THE COURT HAS STATUTORY AND INHERENT AUTHORITY TO ORDER CONSOLIDATION OF THESE COMPLEX COORDINATED ACTIONS

Under the view espoused by the Wood class and U.S. Borax, *et al.*, complex cases may never be consolidated. This view reads limitations into the Code of Civil Procedure and Rules of Court that simply do not exist. Code of Civil Procedure section 403, to

which the Wood class and U.S. Borax, *et al.* cite applies to motions to transfer and coordinate *non-complex* actions. This is not what the instant motion seeks. Here, coordination of these complex actions has already occurred and, out of an abundance of caution, the Public Water Suppliers seek to transfer any cases not already transferred to Los Angeles County so that they may be consolidated pursuant to Code of Civil Procedure section 1048.

As stated in the Public Water Suppliers' moving papers, the Court has authority to consolidate these already-coordinated actions pursuant to Code of Civil Procedure sections 1048 and 128(a)(3) and Rule of Court 3.541(b). *See also* ***McGhan Med. Corp. v. Superior Court*** (1992) 11 Cal.App.4th 804, 812 ("... it is the intent of the Judicial Council to vest in the coordinating judge whatever great breadth of discretion may be necessary and appropriate to ease the transition through the judicial system of the logjam of cases which gives rise to coordination.") Code of Civil Procedure section 403 does nothing to alter this authority. The Court has already determined that these actions share common questions of law and fact under Code of Civil Procedure section 404.1. Section 1048 allows consolidation under the exact same circumstances. (C.C.P. § 1048(a) (court may order consolidation "[w]hen actions involving a common question of law or fact...") Not only is consolidation allowed here, but it would serve multiple laudable purposes, namely the ability to enter a single judgment, satisfaction of the McCarran Amendment, and avoiding the unnecessary costs and delay involved with further fussing over pleading issues.

It is not important that the parties to each individual complaint and cross-complaint are not entirely identical. The Public Water Suppliers' First Amended Cross-complaint has been asserted against all parties but the two classes, who have alternately sued the Public Water Suppliers. All together, the operative complaints and cross-complaints in these coordinated actions involve the same parties and the same fundamental issue, namely the adjudication of rights to water in the basin. Consolidation

is, therefore, entirely appropriate. *See* ***Paduano v. Paduano*** (1989) 215 Cal.App.3d 346, 351 (consolidation appropriate "because the primary subject matter, and the object of both proceedings, was the same").

III. THESE COORDINATED ACTIONS WILL RESULT IN A COMPREHENSIVE ADJUDICATION OF THE BASIN AND WILL REQUIRE IMPOSITION OF A PHYSICAL SOLUTION AGAINST ALL PARTIES, REGARDLESS OF HOW EACH PARTY'S CLAIMS ARE PLEADED

Some parties in opposition argue that consolidation is not possible because the parties' individual complaints or cross-complaints do not assert certain causes of action against certain defendants or cross-defendants. These arguments miss the mark for several reasons.

First, because these coordinated cases seek an *inter se* adjudication of all rights to groundwater within the Basin, it is frankly irrelevant who has asserted which causes of action against whom. Any party's attempt to establish its water rights, and the priority of those rights, necessarily requires the Court to determine the rights and priorities of other parties within the Basin. Any fashioning of a remedy to secure those rights, including an injunction, must include consideration of a physical solution.

As the California Supreme Court has stated repeatedly, under Article XIV, section 3, of the California Constitution (now Article X, section 2), "it is not only within the power, but it is the duty of the trial court, to work out, if possible, a physical solution, and if none is suggested by the parties to work out one independently of the parties." ***Rancho Santa Margarita v. Vail*** (1938) 11 Cal.2d 501, 559; *see also* ***City of Lodi v. East Bay Muni. Utility Dist.*** (1936) 7 Cal.2d 316, 341 ("Since the adoption of the 1928 constitutional amendment, it is not only within the power, but it is also the duty, of the trial court to admit evidence relating to possible physical solutions, and if none is satisfactory to it, to suggest on its own motion such physical solution.")

Moreover, the Court may force parties to abide by a physical solution that takes into account each party's priority of rights. *See* ***Lodi***, 7 Cal.2d at 341 ("The court possesses the power to enforce such [a physical] solution regardless of whether the parties agree."); *see* ***City of Barstow v. Mojave Water Agency*** (2000) 23 Cal.4th 1224, 1250 ("In ordering a physical solution, therefore, a court may neither change priorities among the water rights holders nor eliminate vested rights in applying the solution without first considering them in relation to the reasonable use doctrine.")

Therefore, the mere fact that a party has been named in any action within these coordinated proceedings subjects that party to the Court's determination of its water rights, priority of those rights, and any physical solution designed to implement those rights.

Second, both the Wood and Willis class complaints actually identically request the relief that they so desperately try to avoid. Their opposition briefs assert that they do not seek a comprehensive adjudication of the basin or a physical solution and that they therefore cannot be subject to either by way of consolidation. However, both Wood and Willis class operative complaints identically pray as follows:

> "2. Declaring that Plaintiff's and the Class' overlying rights to use water from the Basin are superior and have priority vis-à-vis all non-overlying users and Appropriators;
>
> 3. Apportioning water rights from the Basin in a fair and equitable manner and enjoining any and all uses inconsistent with such apportionment;"

(Wood First Amended Complaint, Prayer for Relief, p. 15; Willis Second Amended Complaint, Prayer for Relief, p. 18.)

It is difficult to understand how the Wood and Willis classes can now argue that they should not be subject to a physical solution or a comprehensive adjudication when they themselves have sought this relief.

Moreover, the declaratory relief that the Wood and Willis classes seek in their complaints subjects them to this *inter se* adjudication and any final relief the Court fashions. Civil Code section 1060 states that, in response to a complaint for declaratory relief, "[t]he declaration may be either affirmative or negative in form and effect . . ." In addition, "[a] proceeding in declaratory relief is one in equity, and it is a settled rule that when a court of equity assumes jurisdiction it will seek to administer *complete relief* and make a final disposition of the litigation." ***Sills v. Siller*** (1963) 218 Cal.App.2d 735, 742. As a result, the Court is required, in direct response to the Wood and Willis declaratory relief claims among others, to administer complete relief by determining *inter se* rights within the Basin. If that complete relief takes the form of a physical solution, the classes must abide by that solution as a result of their own pleadings.

IV. CONCLUSION

For these reasons, the Court should accordingly order a transfer to the Los Angeles County Superior Court and a complete consolidation of all cases previously coordinated.

Dated: August 7, 2009

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By: _____
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CITY OF PALMDALE

PROOF OF SERVICE

I, Maurine Lopes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On August 7, 2009, I served the within documents:

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES

☐ by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.

■ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

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

Executed on August 7, 2009.

Maurine Lopes

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Attorneys for Cross-Defendants, SERVICE ROCK PRODUCTS CORPORATION, as successor-in-interest to Owl Properties, Inc. and SHEEP CREEK WATER COMPANY, INC., and Cross-Defendants and Cross-Complainants, A.V. UNITED MUTUAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550(b)) **ANTELOPE VALLEY GROUNDWATER CASES** Including Actions: Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, 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 Dist. Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668 AND RELATED ACTIONS.	Judicial Council Coordination Proceeding No. 4408 Santa Clara Case No. 1-05-CV-049053 Assigned to the Honorable Jack Komar Department 17C **CROSS-DEFENDANTS, SERVICE ROCK PRODUCTS CORPORATION'S AND SHEEP CREEK WATER COMPANY'S AND CROSS-DEFENDANTS AND CROSS-COMPLAINANTS, A. V. UNITED MUTUAL GROUP'S:** **1. LIMITED JOINDER IN ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION'S (AGWA) CASE MANAGEMENT STATEMENT;** **2. JOINDER IN CROSS-DEFENDANTS' (U. S. BORAX'S, BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S) OPPOSITION TO MOTION TO CONSOLIDATE FOR ALL PURPOSES;** **3. JOINDER IN DIAMOND FARMING COMPANY'S OBJECTION TO HEARING ON MOTION TO TRANSFER AND CONSOLIDATE FOR ALL PURPOSES; AND**

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4. JOINDER IN AGWA'S JOINDER IN DIAMOND FARMING COMPANY'S OBJECTION TO HEARING ON MOTION TO TRANSFER AND TO CONSOLIDATE; LIMITED JOINDER IN FEDERAL DEFENDANTS' RESPONSE; RESPONSE TO MOTION TO CONSOLIDATE

Date: August 17, 2009
Time: 10:00 A.M.
Dept.: Santa Clara Sup. Ct., Dept. 17C
Judge: Hon. Jack Komar

Cross-Defendants, Service Rock Products Corporation ("Service Rock") and Sheep Creek Water Company ("Sheep Creek"), and Cross-Defendants and Cross-Complainants, A. V. United Mutual Group ("A. V. United") submit the following *Limited Joinder in Antelope Valley Groundwater Agreement Association ("AGWA")'s Case Management Statement; Joinder in Cross-Defendants' Opposition to Motion to Consolidate for All Purposes; Joinder In Diamond Farming Company's Objection to Hearing on Motion to Transfer and Consolidate for all Purposes; and Joinder in AGWA's Joinder in Diamond Farming Company's Objection to Hearing on Motion to Transfer and to Consolidate; Limited Joinder in Federal Defendants' Response; Response to Motion to Consolidate.*

LIMITED JOINDER IN

AGWA'S CASE MANAGEMENT STATEMENT

Service Rock, Sheep Creek and A. V. United join in the Case Management Statement ("CMS") filed by the AGWA, except to the extent that the CMS requests that the Court limit the discussion to the pending *Motion by Plaintiff Richard Wood for Order Allocating Costs of Court-appointed Expert Witness* (the "*Wood Class Motion*"), *Motion by Plaintiff Rebecca Willis for Appointment of Expert Witness* (the "*Willis Class Motion*"), *Motion by City of Lancaster, et al. to Stay Proceedings for Six Months, or alternatively, Continue Trial Setting Conference* (the "*Motion for Stay*"), and *Motion by California Water Service Company for Limited Relief from Notice Requirements* (the "*CWSC Motion*").

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Service Rock, Sheep Creek and A. V. United do not join in the CMS to the extent that AGWA does not request that the Court also address the *Motion to Consolidate for All Purposes* ("*Motion for Consolidation*"), *Motion to Disqualify the Law Firm of Lemieux & O'Neil* ("*Motion to Disqualify*"), *Motion to Dismiss the Public Water Suppliers' First Amended Cross-Complaint filed on January 10, 2007* ("*Motion to Dismiss*"), and *Request to Amend the Exhibits to its Amended Cross-Complaint* ("*Motion to Amend Exhibits*"), which are calendared for hearing on August 17th, along with the *Wood Class Motion*, the *Willis Class Motion*, the *Motion for Stay* and the *CWSC Motion.*

JOINDER IN CROSS-DEFENDANTS' OPPOSITION TO MOTION TO CONSOLIDATE FOR ALL PURPOSES

Service Rock, Sheep Creek and A. V. United join in Cross-Defendants' U. S. Borax, Inc.'s, Bolthouse Properties, LLC's, and Wm. Bolthouse Farms, Inc.'s *Opposition* to *Motion to Consolidate.*

Service Rock, Sheep Creek and A. V. United also submit that the Matrix of actions and parties that the Court directed be prepared in connection with the *Motion to Disqualify* is equally applicable to the *Motion to Consolidate*. Without an accurate picture of which parties have been sued by which other parties, as to which causes of action, a clear and concise determination of the effects of the requested *Motion to Consolidate* will not be possible.

JOINDER IN DIAMOND FARMING COMPANY'S OBJECTION TO HEARING ON MOTION TO TRANSFER AND CONSOLIDATE FOR ALL PURPOSES

Service Rock, Sheep Creek and A. V. United also join in *Diamond Farming Company's Objection to Hearing on Motion to Transfer and Consolidate for All Purposes.*

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JOINDER IN AGWA'S JOINDER IN DIAMOND FARMING COMPANY'S OBJECTION TO HEARING ON MOTION TO TRANSFER AND TO CONSOLIDATE; LIMITED JOINDER IN FEDERAL DEFENDANTS' RESPONSE; RESPONSE TO MOTION TO CONSOLIDATE

Service Rock, Sheep Creek and A. V. United also join in *AGWA's Joinder in Diamond Farming Company's Objection to Hearing on Motion to Transfer and to Consolidate; Limited Joinder in Federal Defendants' Response; Response to Motion to Consolidate.*

Dated: August 13, 2009.

Respectfully Submitted,

GRESHAM SAVAGE NOLAN & TILDEN,
a Professional Corporation

By: _____

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

Re: *ANTELOPE VALLEY GROUNDWATER CASES*
Los Angeles County Superior Court Judicial Council Coordinated Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 3750 University Avenue, Suite 250, Riverside, CA 92501-3335.

On August 13, 2009, I served the foregoing document(s) described as **CROSS-DEFENDANTS, SERVICE ROCK PRODUCTS CORPORATION'S AND SHEEP CREEK WATER COMPANY'S AND CROSS-DEFENDANTS AND CROSS-COMPLAINANTS, A.V. UNITED MUTUAL GROUP'S: 1. LIMITED JOINDER IN ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION'S (AGWA) CASE MANAGEMENT STATEMENT; 2. JOINDER IN CROSS-DEFENDANTS' (U. S. BORAX'S, BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S) OPPOSITION TO MOTION TO CONSOLIDATE FOR ALL PURPOSES; 3. JOINDER IN DIAMOND FARMING COMPANY'S OBJECTION TO HEARING ON MOTION TO TRANSFER AND CONSOLIDATE FOR ALL PURPOSES; AND 4. JOINDER IN AGWA'S JOINDER IN DIAMOND FARMING COMPANY'S OBJECTION TO HEARING ON MOTION TO TRANSFER AND TO CONSOLIDATE; LIMITED JOINDER IN FEDERAL DEFENDANTS' RESPONSE; RESPONSE TO MOTION TO CONSOLIDATE** on the interested parties in this action in the following manner:

(X) **BY ELECTRONIC SERVICE** – I posted the document(s) listed above to the Santa Clara County Superior Court website, http://www.scefiling.org, in the action of the Antelope Valley Groundwater Cases,

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

Executed on August 13, 2009, at Riverside, California.

Teri Gallagher
TERI D. GALLAGHER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

ANTELOPE VALLEY GROUNDWATER CASES	Judicial Council Coordination Proceeding No. 4408 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES; DECLARATION OF WHITNEY G. McDONALD IN SUPPORT THEREOF** [Request for Judicial Notice Filed Concurrently Herewith] Date: October 13, 2009 Time: 10:00 a.m. Dept.: 17C (Hon. Jack Komar)

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MEMORANDUM OF POINTS AND AUTHORITIES

The Public Water Suppliers respectfully submit this supplemental memorandum of points and authorities in support of their motion to transfer and to consolidate for all purposes.

I. OVERVIEW

At the hearing on the Public Water Suppliers' motion to transfer and to consolidate for all purposes held on August 17, 2009, the Court expressed its desire to consider additional briefing and evidence before ruling on the motion. The Public Water Suppliers hereby submit that additional material by way of this supplemental memorandum of points and authorities, the attached declaration of Whitney G. McDonald, with exhibits, and the concurrently filed request for judicial notice.

Exhibit "A" is a matrix listing all complaints and cross-complaints filed in these coordinated actions, as well as the parties to those complaints and cross-complaints. All of the actions listed in Exhibit "A" are proposed for consolidation by way of this motion. Exhibit "B" is a chart depicting the causes of action asserted by and against the parties. As Exhibit "B" provides, these coordinated actions involve common issues of law and fact, namely the inter-se determination of correlative rights within a single aquifer, and are therefore appropriate for consolidation. As also briefed in the Public Water Suppliers' moving papers, complete consolidation is warranted pursuant to Code of Civil Procedure section 1048 and ***Committee for Responsible Planning v. City of Indian Wells*** (1990) 225 Cal.App.3d 191 ("***Indian Wells***"), despite the lack of identical parties to each respective complaint and cross-complaint.

Exhibit "C" is a chart depicting the Public Water Suppliers' suggested alignment of parties if consolidation is granted. The chart is largely self-explanatory and is intended to aid the Court and the parties on a going-forward basis in managing this complex litigation. Some will suggest different alignments, but it remains important to keep in

mind that an inter-se adjudication of groundwater rights necessarily means opposing parties will make similar claims for declaratory relief, prescription, and imposition of some form of physical solution.

II. ALL COMPLAINTS AND CROSS-COMPLAINTS LISTED IN EXHIBIT "A" SHOULD BE TRANSFERRED AND CONSOLIDATED FOR ALL PURPOSES DESPITE ANY DIFFERENCE IN THE PARTIES TO EACH INDIVIDUAL PLEADING

Exhibit "A" is a matrix depicting all complaints and cross-complaints included in these coordinated proceedings. Declaration of Whitney G. McDonald ("McDonald Decl."), ¶3. Interlineations represent dismissal of those parties. McDonald Decl., ¶4. All of the listed complaints and cross-complaints are also attached to the concurrently filed request for judicial notice. Through this motion, the Public Water Suppliers request that all of the complaints and cross-complaints listed in Exhibit "A" be transferred to the Los Angeles County Superior Court, to the extent not previously done, and consolidated for all purposes under Santa Clara Case No. 1-05-CV-049053, the case number assigned to the Public Water Suppliers' cross-complaint.

Complete consolidation, such that one judgment may be entered for all actions, is appropriate here even though the parties to each individual complaint and cross-complaint are not identical. The Court of Appeal for the Fourth District found complete consolidation appropriate under similar circumstances. In ***Indian Wells***, *supra*, 225 Cal.App.3d 191, five actions were brought under Code of Civil Procedure sections 860, *et seq.*, to invalidate two redevelopment projects approved by the City of Indian Wells. The parties and the causes of action to each complaint were different. The City of Palm Desert, the City of Palm Springs, Coachella Valley Recreation and Park District, Coachella Valley Mosquito Abatement District, and the Committee for Responsible Planning each filed their own actions and only certain of those parties answered certain actions. ***Id.*** at p. 193. Additional parties, including the County of Riverside, several

individual owners of property within one project area, and a real estate developer, answered the action filed by the City of Palm Springs. ***Id.*** at p. 194. Despite the variation in parties to each action, the Court of Appeal held that complete consolidation was appropriate in order to allow one judgment to be entered, because the invalidating proceedings were in rem pursuant to Code of Civil Procedure section 860, and because "the various parties' contentions are not independent, but all relate to the same fundamental issue: the validity of Indian Wells' actions." ***Id.*** at pp. 197, 198.

The same reasoning applies here. As discussed more fully in the Public Water Suppliers' moving papers, all of the actions to these coordinated proceedings involve the same fundamental issue, namely the determination of correlative rights to groundwater in a single aquifer. That the parties to each individual complaint or cross-complaint are not totally identical does not undermine the importance of entering a single judgment to address this fundamental issue. All of the complaints and cross-complaints listed in Exhibit "A" should be consolidated for all purposes.

III. AS DEMONSTRATED BY THE CHART ATTACHED HERETO AS EXHIBIT "B," THE CAUSES OF ACTION ASSERTED IN THESE COORDINATED COMPLAINTS AND CROSS-COMPLAINTS SHARE COMMON ISSUES OF LAW AND FACT AND ARE APPROPRIATE FOR COMPLETE CONSOLIDATION

Exhibit "B" to the Declaration of Whitney G. McDonald represents a chart listing all causes of action asserted in the complaints and cross-complaints listed in Exhibit "A" and the parties to those causes of action. McDonald Decl., ¶5. As Exhibit "B" depicts, this is an inter-se adjudication of rights to groundwater in the Basin. The parties nearly universally seek a determination of priority of water rights and a physical solution within, what the Court has determined to be, a single aquifer. Consolidation for all purposes is therefore appropriate as the complaints and cross-complaints share these common issues of law and fact.

Indian Wells is also instructive here. In addition to involving different parties, each complaint deemed consolidated for all purposes asserted differing causes of action and involved two different redevelopment projects. ***Indian Wells***, *supra*, 225 Cal.App.3d at pp. 193-194. For instance, the action filed by the City of Palm Desert challenged one project on the grounds that it violated CEQA, that it violated state redevelopment laws, and that Indian Wells failed to follow required procedures. ***Id.*** at p. 193. The Committee for Responsible Planning, on the other hand, challenged a different project on the grounds of inconsistency with Indian Wells' general plan, inadequate notice, CEQA violations, and violations of state redevelopment laws. ***Id.*** at p. 194. The Coachella Valley Recreation and Park District and Coachella Valley Mosquito Abatement District actions alleged that the land within both projects was not a blighted urban area and the projects would result in illegal diversion of tax revenues. ***Id.*** Again, because these complaints involved the same fundamental issue, namely the validity of Indian Wells' actions, the Court of Appeal found consolidation for all purposes appropriate regardless of the difference in the causes of action. ***Id.*** at p. 198. Complete consolidation is likewise appropriate here.

IV. THE PROPOSED ALIGNMENT OF PARTIES CHART ATTACHED HERETO AS EXHIBIT "C" REPRESENTS THE PUBLIC WATER SUPPLIERS' BEST EFFORT TO CHARACTERIZE THE VARIOUS PARTIES' ROLES ON A GOING FORWARD BASIS, POST-CONSOLIDATION

Pursuant to the Court's request, the Public Water Suppliers have attached, as Exhibit "C," a chart depicting a proposed alignment of parties if consolidation were to occur. McDonald Decl., ¶6. Arrows represent claims asserted by and against members of each respective group. This chart assumes that certain complaints are superceded (e.g. the original complaints filed by Los Angeles County Waterworks District No. 40, the City of Palmdale's cross-complaint filed in the Los Angeles County and Kern County Superior Courts, etc.). It also is not intended to be an exact or detailed depiction of each

claim against each party. Instead, Exhibit "C" is intended to aid the Court and the parties in determining what these actions would look like on a going-forward basis if consolidation were granted.

V. CONCLUSION

For these reasons and for those presented in the moving papers, the Court should accordingly order a transfer to the Los Angeles County Superior Court and a complete consolidation of all cases previously coordinated.

Dated: September 8, 2009

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By: _____
WHITNEY G. MCDONALD
Attorneys for Defendant, Cross-Complainant, and Cross-Defendant
CITY OF PALMDALE

DECLARATION OF WHITNEY G. MCDONALD

I, Whitney G. McDonald, hereby declare:

1. I am an attorney at law duly licensed to practice law before all of the courts of the State of California, and am associated with Richards, Watson & Gershon, a Professional Corporation. I am one of the attorneys responsible for representing cross-complainant, defendant, and cross-defendant City of Palmdale in these proceedings, and make this declaration on personal knowledge. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I have personally reviewed all of the complaints and cross-complaints included in these coordinated proceedings known as the Antelope Valley Groundwater Cases, Judicial Council Coordination Proceeding No. 4408.

3. Attached hereto as Exhibit "A," and Attachment 1 thereto, is a matrix listing all of the complaints and cross-complaints, to which I am aware, included in these coordinated proceedings, the parties thereto, their filing dates, and the case numbers under which they were filed.

4. I have also personally reviewed each request for dismissal filed under Judicial Council Coordination Proceeding No. 4408. Parties dismissed pursuant to these requests for dismissal are interlineated in Exhibit "A."

5. Attached hereto as Exhibit "B" is a chart depicting the causes of action asserted by and against the parties to the actions coordinated under Judicial Council Coordination Proceeding No. 4408 and listed in Exhibit "A."

6. Attached hereto as Exhibit "C" is a chart, along with its Exhibits 1-4, depicting a proposed alignment of parties to be used in the continued litigation of these cases if consolidation is granted.

7. I posted Exhibit "A" in the form it now appears on the Court's website on August 25, 2009. I have received no suggested changes or clarifications to Exhibit "A" from any parties or their attorneys of record.

8. Pursuant to the Court's order, I posted a version of Exhibit "C" and its Exhibits 1-4 on the Court's website on August 25, 2009, along with a meet and confer letter to all parties and attorneys of record requesting comments regarding Exhibit "C" and its exhibits.

9. Counsel for AGWA posted two letter in response. The first letter posted on August 27, 2009, stated that landowner parties intended to post a comment to the meet and confer letter. The second letter, posted on September 4, 2009, on behalf of AGWA, Service Rock Products Corporation, Sheep Creek Water Company, the Antelope Valley United Mutual Group, U.S. Borax, Inc., Bolthouse Properties, Inc., Wm. Bolthouse Farms, Inc., Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC, included several objections to the meet and confer materials and to the motion to transfer and consolidate generally. That second letter attached a chart "demonstrating how all parties can be made party to a common pleading" and suggested that the Public Water Suppliers "complete the process of certifying a defendant class," name the classes as cross-defendants, or dismiss our cross-complaint.

10. In response to the posting of Exhibit "C," counsel for the Wood class indicated that neither class had sued other public entities. That observation, however, is incorrect in as much as both classes have sued the Mojave Public Utility District, which is not a Public Water Supplier.

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

Executed this 8th day of September, 2009.

Whitney G. McDonald

Bob H. Joyce, (SBN 84607)
Andrew Sheffield, (SBN 220735)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550 (b))

ANTELOPE VALLEY GROUNDWATER CASES

Included actions:

Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company
Los Angeles Superior Court
Case No. BC 325201

Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company
Kern County Superior Court
Case No. S-1500-CV 254348 NFT

Diamond Farming Company vs. City of Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated w/Case Nos. 344668 & 353840]

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

RENEWED OBJECTION TO HEARING ON MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES

Date: October 13, 2009
Time: 10:00 a.m.
Dept.: 17C

(Hon. Jack Komar)

I.

ARGUMENT

The supplemental filing by the Public Water Suppliers in support of the Motion to Transfer and Consolidate does not address nor cure the defects addressed in our earlier filed "OBJECTION TO HEARING ON MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES." The supplemental filing and "Matrix" does not satisfy the mandatory requirements of California Rules of Court, Rule 3.350(a). The proof of service makes clear that California Rules of Court, Rule 3.350(a)(2)(B) has not been satisfied.

The fact of coordination and/or the fact that these cases have been deemed to be "complex", does not vitiate nor render inapplicable the California Code of Civil Procedure and the legislature's dictates set forth therein, nor the California Rules of Court. See, *Magana Cathcart McCarthy v. CB Richard Ellis, Inc.* (2009) 174 Cal.App.4th 106, p. 122.

Dated: September 18, 2009

LeBEAU • THELEN, LLP

By: _____
BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY, a California corporation, CRYSTAL ORGANIC FARMS, a limited liability company, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On September 18, 2009, I served the within **RENEWED OBJECTION TO HEARING ON MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES**

■ **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

☐ **(OVERNIGHT/EXPRESS MAIL)** By enclosing a true copy thereof in a sealed envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary business practices from Kern County. I am readily familiar with this business' practice of collecting and processing correspondence for overnight/express/UPS mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with delivery fees paid/provided for at the facility regularly maintained by United States Postal Service (Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal Express/United Postal Service to receive documents].

■ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on September 18, 2009, in Bakersfield, California.

Lequetta Hansen

LEQUETTA HANSEN

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[See Next Page For Additional Counsel]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

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 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348Wm. 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 No. RIC 353 840, RIC 344 436, RIC 344 668	Judicial Council Coordination Proceeding No. 4408 **Santa Clara Case No. 1-05-CV-049053** Assigned to The Honorable Jack Komar **CROSS-DEFENDANTS' SUPPLEMENTAL OPPOSITION TO PURVEYORS' MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES** **Date: October 13, 2009** **Time: 10:00 AM** **Dept.: 17C**

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

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

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

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

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

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

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

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

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

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

III. THE CONSOLIDATION PROPOSAL IS INCOMPLETE

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

Furthermore, the matrix listing the pleadings proposed to be consolidated (Exhibit "A" to the Supplemental Memorandum) lacks sufficient information to allow the Court and the parties to

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properly evaluate the outcome of the Purveyors' proposal. First, it is not clear that the matrix lists all of the parties to each complaint or cross-complaint. Second, the matrix does not allow determination of who has been served, who has answered, and who has been dismissed from the actions proposed to be consolidated. Third, where a party has been dismissed from a particular complaint, it cannot be determined why the party was dismissed, whether the party was subsequently made party to these cases through a separate complaint, or whether the party must be brought back into the cases as an indispensable party. Finally, the matrix does not include information regarding which parties are represented by which attorneys, obfuscating potential conflicts in the proposed alignment of the parties that would further make consolidation improper.

IV. THE MCCARRAN AMENDMENT REQUIRES A COMPREHENSIVE ADJUDICATION

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

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

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should be brought back into the action, and whether they are necessary parties.

V. CONCLUSION

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

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

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21 East Carrillo Street
Santa Barbara, CA 93101

Dated: September 18, 2009

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: _____
MICHAEL T. FIFE
BRADLEY J. HERREMA
Attorneys for AGWA

Dated: September 18, 2009

MORRISON & FOERSTER LLP

By: _____
EDGAR B. WASHBURN
WILLIAM M. SLOAN
GEOFFREY R. PITTMAN
Attorneys for U.S. BORAX, INC.

Dated: September 18, 2009

CLIFFORD & BROWN

By: _____
RICHARD G. ZIMMER
T. MARK SMITH
Attorneys for BOLTHOUSE PROPERTIES LLC and WM. BOLTHOUSE FARMS, INC.

Dated: September 18, 2009

LAW OFFICES OF LEBEAU THELEN, LLP

By: _____
BOB H. JOYCE
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Dated: September 18, 2009

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Dated: September 18, 2009

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Dated: September 18, 2009

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Dated: September 18, 2009

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Dated: September 18, 2009

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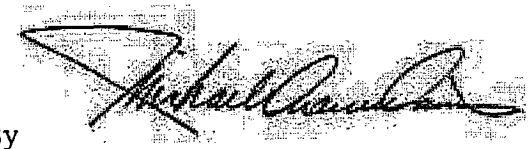
Santa Barbara, CA 93101

Dated: September 18, 2009

GRESHAM SAVAGE NOLAN & TILDEN



By MICHAEL DUANE DAVIS
MARLENE ALLEN-HAMMARLUND
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Attorneys for AV UNITED MUTUAL GROUP, SHEEP CREEK WATER COMPANY, INC., and SERVICE ROCK PRODUCTS CORPORATION

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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