

4th Civil No.

**IN THE
COURT OF APPEAL
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO**

**RICHARD WOOD, ON BEHALF OF HIMSELF AND OTHERS
SIMILARLY SITUATED**

Petitioner and Plaintiff,

vs.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Respondent,

*City of Palmdale, Rosamond Community Services District, Los Angeles County
Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch
Irrigation District, North Edwards Water District, Desert Lake Community
Services District, California Water Service Company, Quartz Hill Water District,
the City of Lancaster, the Palmdale Water District, and Phelan Pinon Hills
Community Services District,
Real Parties in Interest and Defendants.*

**THE HONORABLE JACK KOMAR (RET.), JUDGE
SUPERIOR COURT OF SANTA CLARA COUNTY
[Sitting by order of the Judicial Council of California]
No. BC391869 (included in JCCP 4408)**

**PETITION FOR WRIT OF MANDATE IN THE FIRST INSTANCE,
PROHIBITION OR OTHER APPROPRIATE RELIEF
EXHIBITS (VOLUME 1 OF 2)**

**LAW OFFICE OF
DANIEL M. O'LEARY**
DANIEL M. O'LEARY, No. 175128
10490 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90025
(310) 481-2020

**LAW OFFICES OF
MICHAEL D. MCLACHLAN**
MICHAEL D. MCLACHLAN, No. 181705
10490 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90025
(310) 954-8270

Attorneys for Petitioner and Plaintiff Richard Wood

Exhibit Tab	Document Title
1.	Order of Coordination dated June 17, 2005
2	Plaintiff Richard Wood's First Amended Class Action Complaint, dated June 20, 2008
3	Order Certifying Small Pumpers' Class Action, dated September 2, 2008
4	First Amended Cross Complaint of Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights, dated March 13, 2007
5	Minute Order from March 12, 2007 [certifying defense class on Public Water Suppliers' Cross-Complaint]
6	Order Approving Revised Class Notice for Small Pumper Class Action, dated March 13, 2009
7	Notice of Motion and Motion to Transfer and to Consolidate for All Purposes; Memorandum of Points and Authorities; Declaration of Whitney G. McDonald, dated July 15, 2009
8	Richard Wood's Opposition to Motion to Consolidate, dated August 3, 2009
9	Rebecca Willis' and the Class' Opposition to Motion to Consolidate, Dated August 3, 2009
10	Cross-Defendants' Opposition to Motion to Consolidate for All Purposes, dated August 3, 2009
11	Federal Defendants' Response to Motion to Transfer and Consolidate, Dated August 3, 2009
12	Reply Memorandum of Points and Authorities in Support of Motion to Transfer and Consolidate for All Purposes, dated August 7, 2009
13	Sheep Creek Water Co., Service Rock Products and AV United Mutual Group's Joinder in AGWA Case Management Statement, Bolthouse Opposition to Motion to Consolidate, etc., dated August 13, 2009

14	Supplemental Memorandum of Points and Authorities in Support of Motion to Transfer and to Consolidate for All Purposes; Declaration of Whitney G. McDonald, dated September 8, 2009
15	Renewed Objection to Hearing on Motion to Transfer and to Consolidate for All Purposes, dated September 18, 2009
16	Cross-Defendants' Supplemental Opposition to Purveyors' Motion to Transfer and To Consolidate For All Purposes, dated September 18, 2009
17	Reply Memorandum in Support of Motion to Transfer and Consolidate for All Purposes, dated September 23, 2009
18	Los Angeles County Waterworks District No. 40 and Rosamond Community Services District's Joinder in the Public Water Suppliers' Reply and Separate Reply in Support of Motion to Consolidate Cases for All Purposes, dated September 23, 2009
19	Order Transferring and Consolidating for All Purposes, dated February 19, 2010
20	Hearing transcript from August 17, 2009
21	Hearing transcript from October 13, 2009
22	Hearing transcript from February 5, 2010

CC-DR2
W-7C

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

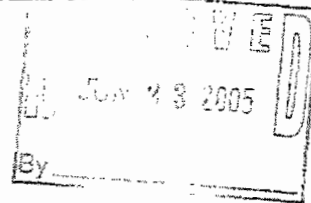
JUN 17 2005

ALAN SLATER, Clerk of the Court

C. Carr
BY C. CARR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE



Coordination Proceeding
Special Title (Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included actions:

Los Angeles County Waterworks
District No. 40 v. Diamond
Farming Co.

Los Angeles County Waterworks
District No. 40 v. Diamond
Farming Co.

Wm. Bolthouse Farms, Inc. v.

City of Lancaster

Diamond Farming Co. v.
City of Lancaster

Diamond Farming Co. v.
Palmdale Water District

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Superior Court of California
County of Los Angeles
BC 325 201

Superior Court of California
County of Kern
S-1500-CV 254-348

Superior Court of California
County of Riverside - Consolidated
Actions
(RIC 353 840

RIC 344 436

RIC 344 668)

ORDER GRANTING PETITION FOR COORDINATION

The actions filed in Los Angeles and Kern County entitled *Los Angeles County Waterworks District No 40 vs Diamond Farming*, case no. BC 325201 and Kern County Superior Court case no. S-1500-CV 254348 are deemed complex pursuant to CRC 1800.

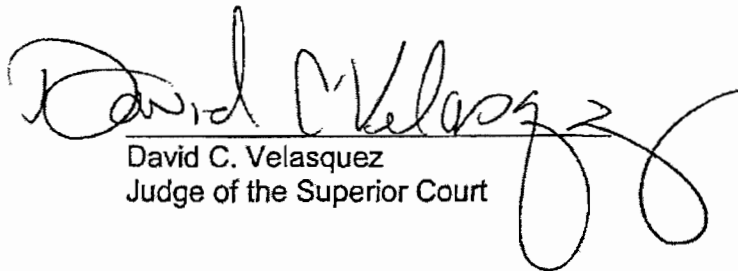
Good cause appearing that the coordination of the included actions is appropriate under the standards specified in CCP §§ 404 and 404.1, it is hereby ordered that the petition of Los Angeles County Waterworks District No. 40 for coordination of the included actions is granted; except, however, that the Riverside Superior Court retain jurisdiction over the consolidated case of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436 (the lead action); *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668; and *Diamond Farming Co. v. Palmdale Water District*, case no RIC 353840, currently in trial, solely for the purpose of granting a motion for mistrial and for hearing and determining issues related to sanctions, costs of suit and fees resulting from that mistrial. In all other respects, that consolidated action is coordinated pursuant to this order.

The court orders coordination of *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, LASC case no. BC 32501; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, KCSC case no. S-1500-CV-25438; and the consolidated action of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436, *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668 and *Diamond Farming Co. v. Palmdale Water District*, case no. RIC 353840. The Court of Appeal, 4th Appellate District, Div. 2 (Riverside) is designated as the reviewing court with appellate jurisdiction for any petition for relief relating to any order in this proceeding.

This court recommends that the coordinated action be assigned to the Superior Court, County of Los Angeles, Complex Litigation. However, this court recommends that the Judicial Counsel appoint a judge from a neutral court (i.e., a sitting judge neither from Los Angeles County Superior Court nor Kern County Superior Court), or in the alternative, a retired judge to sit on assignment, to preside over this coordinated action as the coordination trial judge.

The clerk is directed to serve a copy of this order on the chair of the Judicial Council; the presiding judges of the Superior Courts of Los Angeles County, Kern County, Riverside County, and on counsel for all parties.

June 17, 2005


David C. Velasquez
Judge of the Superior Court

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUN 17 2005

ALAN SLATER, Clerk of the Court

C. Carr
BY C. CARR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ANTELOPE VALLEY GROUNDWATER CASES Plaintiff(s)	CASE NUMBER JCCP 4408
	CERTIFICATE OF SERVICE BY MAIL of ORDER GRANTING PETITION FOR COORDINATION dated 6-17-05

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on, 6-20-05 I served the ORDER GRANTING PETITION FOR COORDINATION, dated 6-17-05, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Judicial Council of California
Administrative Office of the Courts
Attn: Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Los Angeles County Superior Court
Executive Officer/Clerk, John A. Clarke
111 North Hill Street
Los Angeles, CA 90012

Riverside County Superior Court
Executive Officer/Clerk, Jose Octavio
Guillen
4100 Main Street
Riverside, CA 92501

Kern County Superior Court
Court Executive Officer, Terry McNally
1415 Truxton Ave.
Bakersfield, CA 93301-4172

Mr. Erick L. Garner
Best, Best & Krieger, LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

County Counsel
Frederick W. Pfaefle
Senior Deputy County Counsel
Office of County Counsel, County of Los
Angeles, 500 West Temple St.
Los Angeles, CA 90012

Bob H. Joyce
LeBeau Thelen, LLP
P. O. Box 12092
Bakersfield, CA 93389-1127

James Markman, City Attorney, City of Palmdale,
Legal Department, 38300 North Sierra Highway,
Palmdale, Ca 93550

Michael Fife, Law Offices of Hatch &
Parent, 21 E. Carrillo Street, P.O. Drawer
720, Santa Barbara, Ca 93102-0720

Richard Zimmer, Law Offices of Clifford
& Brown, Bank of America Building, 1430
Truxtun Ave., Suite 900, Bakersfield, Ca
93301-5230

Julie A. Conboy, Deputy City Attorney,
Rockard J. Delgadillo City Attorney, 111
North Hope Street, Room 340, P.O. 51111,
Room 340, Los Angeles, Ca 90051

Steven O'Neill, Law Offices of Lemieux,
2393 Townsgate Road, Suite 201,
Westlake Village, ca 91361

Douglas Evertz, Law Offices Stradling
Yocca Carlson & Rauth, 660 Newport
Center Drive, Suite 1600, Newport Beach,
Ca 92660

Thomas Bunn, Law Offices of Lagerlof,
Senecal, Bradley, Gosney & Kruse, 301
North Lake Ave., 10th Floor, Pasadena, Ca
91101-4108

John Tootle, California Water Service Co.,
2625 Del Amo Blvd., Suite 350, Torrance,
Ca 90503

John Slezak, Law Offices of Iverson,
Yoakum, Papiano & Hatch, 624 South
Grand Ave., 27th Floor, Los Angeles, Ca
90017

Henry Weinstock, Nossman, Guthner,
Knox, Elliott, 445 South Figueroa St., 31 st
Floor, Los Angeles, Ca 90071

ALAN SLATER,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 6-20-05

By: Christine Carr
Christine Carr, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

Page 3 of 3

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 523 West Sixth Street, Suite 215
4 Los Angeles, California 90014
5 Telephone: (213) 630-2884
6 Facsimile: (213) 630-2886
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)
9 **LAW OFFICE OF DANIEL M. O'LEARY**
10 523 West Sixth Street, Suite 215
11 Los Angeles, California 90014
12 Telephone: (213) 630-2880
13 Facsimile: (213) 630-2886
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

14 RICHARD A. WOOD, an individual, on behalf
15 of himself and all others similarly situated,

16 Plaintiff,

17 v.

18 LOS ANGELES COUNTY WATERWORKS
19 DISTRICT NO. 40; CITY OF LANCASTER;
20 CITY OF LOS ANGELES; CITY OF
21 PALMDALE; PALMDALE WATER
22 DISTRICT; LITTLEROCK CREEK
23 IRRIGATION DISTRICT; PALM RANCH
24 IRRIGATION DISTRICT; QUARTZ HILL
25 WATER DISTRICT; ANTELOPE VALLEY
26 WATER CO.; ROSAMOND COMMUNITY
27 SERVICE DISTRICT; MOJAVE PUBLIC
28 UTILITY DISTRICT; CALIFORNIA WATER
SERVICE COMPANY and DOES 1 through
100;

Defendants.

Case No.: BC391869

(related to JUDICIAL COUNCIL
COORDINATION PROCEEDING No. 4408;
Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

REQUEST FOR JURY TRIAL

1 Plaintiff, Richard A. Wood, by his counsel, alleges on information and belief as follows:

2 I.

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this action on behalf of himself and the class of certain other
5 private landowners in the Antelope Valley (as defined below) seeking a judicial determination of
6 their rights to use the groundwater within the Antelope Valley Groundwater Basin ("the Basin").
7 In addition, Plaintiff seeks damages and just compensation for himself and the Class arising from
8 the government entity defendants taking and interfering with plaintiff's and the Class' property
9 rights. This action is necessary in that defendants assert a common law prescriptive right to the
10 groundwater in the Basin which right they claim is superior to that of Plaintiff and the Class. By
11 definition, a prescriptive right requires a wrongful taking of non-surplus water from the Basin, in
12 an open, notorious, continuous, uninterrupted, hostile and adverse manner to the original owner
13 for the statutory period of five years. To the extent defendants fail to prove any element of
14 prescription or the evidence shows that defendants have indeed taken non-surplus water in
15 derogation of the rights of overlying landowners, plaintiff's and the Class's property interests
16 have been damaged and/or infringed.

17 2. As overlying landowners, Plaintiff and the Class have a property right in the water
18 within the Basin. Plaintiff and the Class also have a priority to the use of the Basin's
19 groundwater. To the extent the Government entity defendants assert rights to that ground water
20 or have taken non-surplus groundwater in derogation of the rights of the overlying landowners.
21 Plaintiff and the Class are entitled to damages and just compensation under the Fifth and
22 Fourteenth Amendments of the United States Constitution and Article 1, Section 19 of the
23 California Constitution.

24 II.

25 **JURISDICTION AND VENUE**

26 3. This Court has jurisdiction over this action pursuant to the California
27 Constitution, Article XI, § 10 and under California Code of Civil Procedure ("CCP") § 410.10.
28

4. Venue is proper in this jurisdiction pursuant to CCP § 395 in that Plaintiff resides in Los Angeles County, a number of defendants reside in this County, and a substantial part of the unlawful conduct at issue herein has taken place in this County. In addition, this case is related to Judicial Council Coordination Proceeding No. 4408, which is pending in this Court.

5. Plaintiff and the Class have suffered actual damages as a result of defendant's unlawful conduct in a presently undetermined amount.

III.

THE PARTIES

6. Plaintiff RICHARD A. WOOD ("Wood" or "Plaintiff") resides in Lancaster, California. Wood owns approximately 10 acres of property at 45763 North 90th Street East in Lancaster, California, within the Basin. Plaintiff's property overlies percolating groundwater, the precise extent of which is unknown.

7. Defendants (referred to alternatively as “Appropriators”) are persons and entities who claim rights to use groundwater from the Basin, whose interests are in conflict with Plaintiff’s interests. On information and belief, they are as follows:

A. Defendant LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 is a public agency governed by the Los Angeles County Board of supervisors that drills and pumps water in the Basin and sells such water to the public in portions of the Antelope Valley.

B. Defendant PALMDALE WATER DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

C. Defendant LITTLEROCK CREEK IRRIGATION DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

D. Defendant PALM RANCH IRRIGATION DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

E. Defendant QUARTZ HILL WATER DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

1 F. Defendant ANTELOPE VALLEY WATER CO. is an entity that pumps
2 and/or provides groundwater from the Basin.

3 G. Defendant ROSAMOND COMMUNITY SERVICE DISTRICT is an
4 entity that pumps and/or provides groundwater from the Basin.

5 H. Defendant MOJAVE PUBLIC UTILITY DISTRICT is a public agency
6 that pumps and/or provides groundwater from the Basin.

7 I. Defendant CALIFORNIA WATER SERVICE COMPANY is a California
8 Corporation that pumps and/or provides groundwater from the Basin and is added herein
9 as Doe 1. Defendants A-I shall collectively be referred to as "Appropriators."

10 J. Defendant CITY OF LANCASTER is a municipal corporation located
11 within the County of Los Angeles.

12 K. Defendant CITY OF PALMDALE is a municipal corporation located
13 within the County of Los Angeles.

14 L. DOE DEFENDANTS 1 through 100. Plaintiff alleges on information and
15 belief that at all relevant times DOE DEFENDANTS 1 through 100, inclusive, are
16 persons or entities who either are currently taking or providing water from the Basin or
17 claim rights to take groundwater from the Basin. Plaintiff is presently unaware of the
18 true names and identities of those persons sued herein as DOE Defendants 1 through 100
19 and therefore sues these Defendants by these fictitious names. Plaintiff will amend this
20 Complaint to allege the Doe Defendants' legal names and capacities when that
21 information is ascertained.

22 IV.

23 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

24 8. The Antelope Valley Groundwater Basin is part of the South Lahontan
25 Hydrologic Region. The Basin underlies an extensive alluvial valley in the western Mojave
26 Desert. The Basin is bounded on the northwest by the Garlock fault zone at the base of the
27 Tehachapi Mountains and on the southwest by the San Andreas fault at the base of the San
28 Gabriel Mountains. The Basin is bounded on the east by ridges and low hills that form a

1 groundwater divide and on the north by various geographic features that separate it from the
2 Fremont Valley Basin.

3 9. Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the
4 Basin's recharge comes from runoff from the surrounding mountains and hills -- in particular,
5 from the San Gabriel and Tehachapi Mountains and from hills and ridges surrounding other
6 portions of the Valley.

7 10. The Basin has two main aquifers -- an upper aquifer, which is the primary source
8 of groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin
9 have been productive and have met the needs of users in conjunction with other sources of water,
10 including the State Water Project.

11 11. In recent years, however, population growth and urban demands have led to
12 increased pumping and declining groundwater levels. Plaintiff and the Class are informed and
13 believe that at some yet unidentified point in the past, the Appropriators began to extract
14 groundwater from the Antelope Valley to a point above and beyond an average annual safe yield.
15 Plaintiff and the Class are further informed and believe that future population growth and
16 demands will place increased burdens on the Basin. If the trend continues, demand may exceed
17 supply which will cause damage to private rights and ownership in real property. Presently, the
18 rights to the Basin's groundwater have not been adjudicated and there are no legal restrictions on
19 pumping. Each of the Defendants is pumping water from the Basin and /or claims an interest in
20 the Basin's groundwater. Despite the actual and potential future damage to the water supply and
21 the rights of owners of real property within the Valley, the Appropriators have knowingly
22 continued to extract groundwater from the Basin, and increased and continue to increase their
23 extractions of groundwater over time. The Appropriators continued the act of pumping with the
24 knowledge that the continued extractions were damaging, long term, the Antelope Valley and in
25 the short term, impairing the rights of the property owners.

26 12. Plaintiff and the Class are informed and believe that the Appropriators may have
27 pumped water in excess of the safe yield with the knowing intent and belief that they could take
28 by claim of prescription, without compensation, the water rights of all landowners overlying the

1 Antelope Valley. Additionally, all Appropriators continued to pump ever increasing quantities
2 of groundwater, knowing that even if their prescriptive claims failed, they could preserve the
3 right to continue their pumping under a claim of an intervening public use. Despite the knowing
4 intent to take the overlying property landowners' rights, no Appropriator took any steps to
5 inform or otherwise notify Plaintiff or the Class of their adverse and hostile claim or that their
6 pumping of groundwater was an invasion of and a taking of the landowners' property rights.

7 13. None of the Appropriators have invoked the power of eminent domain nor paid
8 any compensation to overlying owners of land located within Antelope Valley for the property
9 rights they have knowingly taken.

10 14. Various water users have instituted suit to assert rights to pump water from the
11 Basin. In particular, Defendant L.A. Waterworks District 40 and other municipal Appropriators
12 have brought suit asserting that they have prescriptive rights to pump water from the Basin,
13 which they claim are paramount and superior to the overlying rights of Plaintiff and the Class.
14 Those claims threaten Plaintiff's right to pump water on his property.

15 15. In 1983, Plaintiff purchased his ten (10) acre property in the Antelope Valley to
16 serve as his sole residence, which has continued to be the case to date. The most important and
17 fundamental aspect of his purchase was the property right to use water below his land. At all
18 relevant times, Plaintiff has extracted and used groundwater from beneath his property for
19 standard residential purposes. Plaintiff's right to use water below the surface of the land is a
20 valuable property right. Without the right to use the water below his property, the value of
21 Plaintiff's land is substantially reduced.

22 16. Plaintiff is informed and believes that defendant Appropriators have extracted so
23 much water from the Basin, by extracting non-surplus water that exceeds a safe yield for a period
24 as yet undetermined, that his ability to pump water is threatened. Plaintiff is further informed
25 and believes that the water level has fallen to such an unreasonable level that his property right in
26 the use of the water has been infringed or extinguished and his interest in the real property has
27 been impaired by the diminution of its fair market value. The Appropriators have made it
28 economically difficult, if not impossible, for his to exercise his future right to use the water

1 because they have extracted too much water from the supply in the Basin. His water rights and
2 the value in the real property have been damaged and will continue to be damaged unless this
3 court intervenes on his behalf and on behalf of all class members.

4 17. Plaintiff brings this action on behalf of the following class:

5 All private (i.e., non-governmental) persons and entities that own real property
6 within the Basin, as adjudicated, and that have been pumping on their property within the five
7 year period preceding the filing of this action. The Class excludes the defendants herein, any
8 person, firm, trust, corporation, or other entity in which any defendant has a controlling interest
9 or which is related to or affiliated with any of the defendants, and the representatives, heirs,
10 affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes
11 all persons and entities to the extent their properties are connected to a municipal water system,
12 public utility, or mutual water company from which they receive water service, as well as all
13 property pumping 25 acre-feet per year or more on an average annual basis during the class
14 period.

15 18. The Class is so numerous that joinder of all members is impracticable. Plaintiff's
16 claims are typical of the claims of the members of the Class. Plaintiff and members of the class
17 have sustained damages arising out of the conduct complained of herein.

18 19. Plaintiff will fairly and adequately protect the interests of the members of the
19 Class and Plaintiff has no interests which are contrary to or in conflict with those of the Class
20 members he seeks to represent. Plaintiff has retained competent counsel experienced in class
21 action litigation to ensure such protection.

22 20. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy since joinder of all members is impracticable. Plaintiff knows of
24 no difficulty that will be encountered in the management of this litigation that would preclude its
25 maintenance as a class action.

26 21. There are common question of law and fact as to all members of the Class, which
27 predominate over any questions affecting solely individual members of the Class. Specifically,
28 the Class members are united in establishing (1) their priority to the use of the Basin's

1 groundwater given their capacity as overlying landowners; (2) the determination of the Basin's
2 characteristics including yield; (3) adjudication of the Public Water Suppliers' groundwater
3 rights including prescriptive rights; (4) determination of a physical solution to water shortage
4 conditions including all parties' rights to store and recover non-native water in the Basin; (5) a
5 taking, if any, under the U.S. and California Constitution; (6) damages for trespass, interference,
6 nuisance and conversion; (7) due process violations; and (8) availability of injunctive relief.

8 FIRST CAUSE OF ACTION

9 (For Declaratory Relief Against All Defendants)

10 22. Plaintiff realleges and incorporates herein by reference each of the allegations
11 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
12 as follows:

13 23. By virtue of their property ownership, Plaintiff and the Class hold overlying rights
14 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and
15 beneficial uses on their respective properties.

16 24. Plaintiff is informed and believes, and on the basis of that information and belief
17 alleges, that each of the defendants presently extracts and/or purveys groundwater from the Basin
18 and/or asserts rights to that groundwater which conflict with the overlying rights of Plaintiff and
19 the Class.

20 25. Plaintiff is informed and believes and, on the basis of that information and belief,
21 alleges that each of the Defendants extracts groundwater primarily for non-overlying use – i.e.,
22 for use on properties other than the property on which the water is extracted. In addition, certain
23 of those defendants have asserted that they hold prescriptive rights to such water which they
24 claim are superior to the rights of Plaintiff and the Class.

25 26. Plaintiff's and the Class' present overlying uses of the Basin's
26 groundwater are superior in right to any non-overlying rights held by the Appropriator
27 Defendants.

28 27. Plaintiff's and the Class' overlying rights need to be apportioned in a fair and

1 equitable manner among all persons holding rights to the Basin's water.

2 28. Plaintiff and the Class seek a judicial determination that their rights as overlying
3 users are superior to the rights of all non-overlying users and that they have correlative rights vis-
4 a-vis other overlying landowners.

5 29. Plaintiff and the Class further seek a judicial determination as to the priority and
6 amount of water that all parties in interest are entitled to pump from the Basin.

7 30. By virtue of their property ownership, Plaintiff and the Class hold rights to utilize
8 or derive benefit from the storage capacity of the Basin. Plaintiff and the Class seek a judicial
9 determination as to priority and ownership of those rights. In addition, Plaintiff and the Class
10 contend that California Water Code Sections 55370, 22456, and 31040 limit the method, manner
11 and mode by which Appropriators may acquire private property and requires payment of
12 compensation through eminent domain proceedings. Plaintiff and the Class seek a declaration of
13 rights with respect to the constitutionality and applications of these Statutes.

14 **SECOND CAUSE OF ACTION**

15 **(Against All Defendants to Quiet Title)**

16 31. Plaintiff realleges and incorporates herein by reference each of the allegations
17 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
18 as follows:

19 32. Plaintiff and the Class own land overlying the Antelope Valley alluvial
20 groundwater basin. Accordingly, Plaintiff and the Class have appurtenant rights to pump and
21 reasonably use groundwater on their land.

22 33. Plaintiff and the Class herein request a declaration from the Court quieting title to
23 their appurtenant rights to pump and reasonably use groundwater on their land in the future.

24 **THIRD CAUSE OF ACTION**

25 **(Against All Defendant Appropriators For Damages Pursuant to**
26 **The California Constitution Takings Clause)**

27 34. Plaintiff realleges and incorporates herein by reference each of the allegations
28

1 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
2 as follows:

3 35. Article 1 Section 19 of the California Constitution provides as follows:

4 Private Property may be *taken or damaged* for public use only when just
5 compensation, ascertained by a jury unless waived, has first been paid to, or
6 into court for, the owner.

7 The scope of compensable injury to property is broader in California than other States or
8 under the U.S. Constitution. It includes a "taking" or "damage" to property. Here, Plaintiff's
9 and the Class' interests have been infringed by the defendants. On information and belief,
10 defendant Appropriators have extracted and will continue to extract non-surplus groundwater
11 from the Basin in excess of a safe yield. Defendants allege that the production forms the basis of
12 their claim for prescriptive rights. Defendants' extraction of water above a safe yield has made it
13 more difficult and expensive for Plaintiff and the Class to use the water under their properties
14 and constitutes an invasion of Plaintiff's property interests and therefore a taking in violation of
15 the California Constitution. On information and belief, Plaintiff's and the Class' properties have
16 been injured in the form of degradation of the water level and degradation of the quality of the
17 water, in addition to the actual taking of non-surplus water.

18 36. The public entity Defendants claim priority rights to take and use the Basin's
19 groundwater by "prescription" and as a matter of public interest and need.

20 37. If and to the extent the public entities are granted rights to use the Basin's
21 groundwater with priority to the rights held by Plaintiff and other overlying landowners, Plaintiff
22 and the Class are entitled to just and fair compensation pursuant to Article 1, Section 19 of the
23 California Constitution for the diminution in fair market value of the real property. If and to the
24 extent the public entities are not granted rights to use the Basin's groundwater with priority to the
25 rights held by Plaintiff and other overlying landowners, Plaintiff and the Class are entitled to just
26 and fair compensation pursuant Article 1, Section 19 of the California Constitution for wrongful
27 taking of water rights.
28

1 **FOURTH CAUSE OF ACTION**

2 **(Against All Defendant Appropriators For Damages Pursuant to**
3 **The United States Constitution Takings Clause)**

4 38. Plaintiff realleges and incorporates herein by reference each of the allegations
5 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
6 as follows:

7 39. This cause of action is brought to recover damages against the Appropriators for
8 violation of Plaintiff's and the Class's right under the 5th and 14th Amendments of the U.S.
9 Constitution through the Appropriator's taking of private property for public use without paying
10 just compensation and depriving them of both substantive and procedural due process of law.

11 40. The Appropriators, and each of them are, and at all times mentioned in this
12 second amended complaint were, governmental entities with the capacity to sue and be sued.
13 The Appropriators, and each of them, were, at all times mentioned in this second amended
14 complaint, acting under color of state law.

15 41. At a yet unidentified historical point in time, the Appropriators began pumping
16 water from the Antelope Valley as permissive appropriators. Over the course of time, it is
17 believed that the aggregate amount of water being extracted from the Valley began to exceed the
18 safe yield. Each Appropriator continued to pump and increased its pumping of groundwater
19 believing that given the intervention of the committed public use, no injunction would issue to
20 restrain and/or compel the Appropriator to reduce its dependence upon such groundwater. Each
21 Appropriator contends that despite its status as a governmental entity, it can nonetheless take
22 private property for a public use under a theory of prescription and without compensation. Each
23 Appropriator did not undertake any affirmative action reasonably calculated and intended to
24 provide notice and inform any affected landowner of its adverse and hostile claim.

25 42. Plaintiff is informed and believes and thereon alleges that he was denied due
26 process of law prior to the taking of his property. This violation was a direct result of the
27
28

1 knowing customs, practices, and policies of the Appropriators to continue to pump in excess of
2 the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever
3 increasing intervening public use and dependence, without acceding to Constitutional limits.

4 43. The customs, practices, and policies of the Appropriators to prescript or adversely
5 possess the property rights of property owners and/or to establish a nonenjoinable intervening
6 use amounted to deliberate indifference to the rights of persons who stand to lose their rights to
7 extract water from the Antelope Valley for use on their property through the actions of each
8 Appropriator and all of them.

9 44. As a direct and proximate result of the acts of the Appropriators, Plaintiff and the
10 Class have suffered injury, loss, and damage, including a cloud upon the title to their real
11 property, a reduction in value, and the loss of rights in the future to extract and use groundwater
12 from the Valley.

13 **FIFTH CAUSE OF ACTION**

14 **(Public and Private Nuisance Against All Defendant Appropriators)**

15 45. Plaintiff realleges and incorporates herein by reference each of the allegations
16 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
17 as follows:

18 46. The Appropriators' extractions of groundwater from the supply constitute a
19 continuing progressive nuisance within the meaning of Section 3479 of the Civil Code, in that
20 the Appropriators have interfered with the future supply of available water that is injurious to
21 Plaintiff's and the Class' rights to freely use and exercise their overlying property rights to
22 extract groundwater from the Basin. The Appropriators are attempting, through the combined
23 efforts of their pumping groundwater to take, and or alter, overlying property rights to use and
24 access the Antelope Valley supply.

25 47. The Appropriators, and each of them, have continued to and have increased their
26 pumping, despite the knowledge of the damage caused by pumping. The Appropriators have
27 refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply
28 of water. This nuisance affects a substantial number of persons in that the Appropriators claim

1 that the continued pumping in excess of the supply's safe yield is, and will, eventually cause a
2 chronic decline in water levels and the available natural water supply will be chronically
3 depleted. If the present trend continues, demand will continue to exceed supply which will
4 continue to cause a reduction in the long term supply. Additionally, the continued pumping by
5 the Appropriators under these conditions will result in the unlawful obstruction of the overlying
6 landowner's rights to use the water supply in the customary manner.

7 48. The Appropriators, and each of them, have threatened to and will, unless
8 restrained by this court, continue to pump groundwater in increasing amounts, and each and
9 every act has been, and will be, without the consent, against the will, and in violation of the
10 rights of plaintiff and the Class.

11 49. As a proximate result of the nuisance created by the Appropriators, and each of
12 them, plaintiff and the Class have been, and will be, damaged in a sum to be proven at trial.

13 50. In maintaining this nuisance, the Appropriators, and each of them are, and have
14 been, acting with full knowledge of the consequences and damage being caused and their
15 conduct is willful, oppressive, malicious and designed to interfere with and take plaintiff's right
16 to freely access the water supply in its customary manner.

17 SIXTH CAUSE OF ACTION

18 (Trespass Against All Defendant Appropriators)

19 51. Plaintiff realleges and incorporates herein by reference each of the allegations
20 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
21 as follows:

22 52. On information and belief, each Defendant alleges that it has produced more
23 water from the Basin than it has a right to produce as an Appropriator. Defendants allege that
24 this production forms the basis for their claims of prescriptive rights. To the extent that the
25 alleged production in excess of rights actually occurred, this alleged production of water
26 constitutes a trespass against plaintiff and the Class.

27 53. Defendants' use of the Basin's water has interfered with and made it more
28 difficult for plaintiff and the Class to exercise their rights.

1 54. Plaintiff requests that the Court award monetary damages to compensate for any
2 past injury that may have occurred to plaintiff and the Class by Defendants' trespass in an
3 amount to be determined at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **(Conversion Against All Defendant Appropriators)**

6 55. Plaintiff realleges and incorporates herein by reference each of the allegations
7 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
8 as follows:

9 56. Plaintiff and the Class are, and at all times relevant herein were, the owners of or
10 entitled to water rights in the Basin as overlying landowners.

11 57. Defendants wrongfully interfered with Plaintiff's interests in the above-described
12 property by extracting non-surplus water that exceed a safe yield and by claiming priority over
13 overlying landowners to water rights. Defendants conduct was without notice to plaintiff or the
14 Class.

15 **EIGHTH CAUSE OF ACTION**

16 **(Against All Defendants For Violation of 42 U.S.C. § 1983)**

17 58. Plaintiff realleges and incorporates herein by reference each of the allegations
18 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
19 as follows:

20 59. In committing the acts alleged above, Defendants violated plaintiff's rights
21 guaranteed under the Constitution of the United States, including the due process clauses of the
22 5th and 14th Amendments and the Takings Clause. These rights include the right not to be
23 deprived of property with out due process by persons and entities acting under color of law.
24 These rights include the right to be free from the use of excessive force by the police.

25 60. As a direct and proximate result of defendants' conduct, and each of them,
26 including Does 1 through 100, and their agents, supervisors, managers and employees, plaintiff
27 has suffered damages as alleged in this complaint above.
28

1
2
3 **NINTH CAUSE OF ACTION**

4 **(Against All Defendants For Injunctive Relief)**

5 61. Plaintiff and the Class reallege and incorporate herein by reference each of the
6 allegations contained in the preceding paragraphs of this Complaint, and further allege against
7 Defendants as follows:

8 62. As overlying landowners, Plaintiff and the Class have superior rights to take and
9 make reasonable and beneficial use of the Basin's groundwater.

10 63. By pumping and selling water from the Basin, Defendants have interfered with
11 and made it more difficult for Plaintiff and the Class to exercise their rights to use that
12 groundwater. If allowed to continue, Defendants' pumping from and depletion of the Basin's
13 groundwater will further interfere with Plaintiff's and the Class's ability to exercise their lawful
14 and superior rights as overlying landowners to make reasonable use of the Basin's groundwater.

15 64. Plaintiff and the Class have no adequate remedy at law.

16 65. Unless the Court enjoins or limits Defendants production of water from the Basin,
17 Plaintiff and the Class will suffer irreparable injury in that they will be deprived of their rights to
18 use and enjoy their properties.

19 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
20 follows:

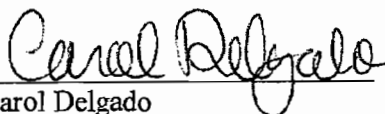
- 21 1. For economic and compensatory damages according to proof at trial;
- 22 2. Declaring that Plaintiff's and the Class' overlying rights to use water from the
23 Basin are superior and have priority vis-a-vis all non-overlying users and Appropriators;
- 24 3. Apportioning water rights from the Basin in a fair and equitable manner and
25 enjoining any and all uses inconsistent with such apportionment;
- 26 4. Awarding Plaintiff and members of the Class damages from the public entity
27 defendants in the full amount that will compensate Plaintiff and the Class for past and future
28 takings by those Defendants and damages for past and future property infringement;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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 523 West Sixth Street, Suite 215, Los Angeles, CA, 90014. On the date set forth below, I served the within document(s) by posting the document(s) listed below to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter: **FIRST AMENDED CLASS ACTION COMPLAINT**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 20, 2008, at Los Angeles, California.


Carol Delgado

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination Proceeding
No. 4408
(Hon. Jack Komar)

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

Case No.: BC391869

~~[proposed]~~ **ORDER CERTIFYING
SMALL PUMPERS CLASS ACTION**

Plaintiff,

v.

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.**

Defendants.

Upon hearing on Plaintiff's motion for certification, and finding good cause
therefore, the Court certifies a class of small pumpers defined as follows:

All private (i.e., non-governmental) persons and entities that own real property
within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet

[proposed] ORDER CERTIFYING SMALL PUMPERS CLASS ACTION

1 per year on their property during any year from 1946 to the present. The Class
2 excludes the defendants herein, any person, firm, trust, corporation, or other entity
3 in which any defendant has a controlling interest or which is related to or affiliated
4 with any of the defendants, and the representatives, heirs, affiliates, successors-in-
5 interest or assigns of any such excluded party. The Class also excludes all persons
6 and entities that are shareholders in a mutual water company.

7 The Court further orders that Richard A. Wood is appointed class representative
8 and the Law Offices of Michael D. McLachlan APC and the Law Office of Daniel M.
9 O'Leary are appointed as counsel for the class.

10
11 IT IS SO ORDERED.

12
13 Dated: SEP 02 2008

14 
Honorable Jack Komar

1 BEST BEST & KRIEGER LLP

ERIC L. GARNER, Bar No. 130665

2 JEFFREY V. DUNN, Bar No. 131926

3 STEFANIE D. HEDLUND, Bar No. 239787

5 PARK PLAZA, SUITE 1500

IRVINE, CALIFORNIA 92614

4 TELEPHONE: (949) 263-2600

TELECOPIER: (949) 260-0972

5 Attorneys for Cross-Complainants

ROSAMOND COMMUNITY SERVICES

6 DISTRICT and LOS ANGELES COUNTY

WATERWORKS DISTRICT NO. 40

7 OFFICE OF COUNTY COUNSEL

8 COUNTY OF LOS ANGELES

RAYMOND G. FORTNER, JR., Bar No. 42230

9 COUNTY COUNSEL

FREDERICK W. PFAEFFLE, Bar No. 145742

10 PRINCIPAL DEPUTY COUNTY COUNSEL

500 WEST TEMPLE STREET

11 LOS ANGELES, CALIFORNIA 90012

TELEPHONE: (213) 974-1901

12 TELECOPIER: (213) 458-4020

Attorneys for Cross-Complainant LOS ANGELES

13 COUNTY WATERWORKS DISTRICT NO. 40

14 [See Next Page For Additional Counsel]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

18 **ANTELOPE VALLEY**
19 **GROUNDWATER CASES**

Included Actions:

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

24 Los Angeles County Waterworks District
25 No. 40 v. Diamond Farming Co., Superior
26 Court of California, County of Kern, Case
27 No. S-1500-CV-254-348;

28 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

Judicial Council Coordination No. 4408

CLASS ACTION

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

[Code Civ. Proc., § 382]

~~[PROPOSED]~~ FIRST-AMENDED CROSS-
COMPLAINT OF PUBLIC WATER
SUPPLIERS FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
ADJUDICATION OF WATER RIGHTS

[PROPOSED] FIRST-AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND
INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS

1 STRADLING YOCCA CARLSON & RAUTH

Douglas J. Evertz, Bar No. 123066
2 660 Newport Center Drive, Ste. 1600
Newport Beach, CA 92660
3 (949) 737-4720 (916) 823-6720 fax
Attorneys for City of Lancaster

4 RICHARDS WATSON & GERSHON

5 James L. Markman, Bar No. 43536
Steven Orr, Bar No. 136615
6 355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
7 (213) 626-8484 (213) 626-0078 fax
Attorneys for City of Palmdale

8 LEMIEUX & O'NEILL

9 Wayne Lemieux, Bar No. 43501
2393 Townsgate Road, Ste. 201
10 Westlake Village, CA 91361
(805) 495-4770 (805) 495-2787 fax
11 Attorneys for Littlerock Creek Irrigation District and
Palm Ranch Irrigation District

12 LAGERLOF SENEAL BRADLEY GOSNEY &
13 KRUSE

14 Thomas Bunn III, Bar No. 89502
301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
15 (626) 793-9400 (626) 793-5900 fax
Attorneys for Palmdale Water District and Quartz
16 Hill Water District

17 CALIFORNIA WATER SERVICE COMPANY

John Tootle, Bar No. 181822
18 2632 West 237th Street
Torrance, CA 90505
19 (310) 257-1488; (310) 325-4605-fax

1 Cross-Complainants California Water Service Company, City of Lancaster, City of
2 Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water Works District No. 40,
3 Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District
4 and Quartz Hill Water District (collectively, the "Public Water Suppliers") allege:

5
6 **INTRODUCTION**

7 1. This cross-complaint seeks a judicial determination of rights to all water within the
8 adjudication area of the Antelope Valley Groundwater Basin as determined by the Court's Orders
9 in this case (the "Basin"). An adjudication is necessary to protect and conserve the limited water
10 supply that is vital to the public health, safety and welfare of all persons and entities that depend
11 upon water from the Public Water Suppliers. For these reasons, the Public Water Suppliers file
12 this cross-complaint to promote the general public welfare in the Antelope Valley; protect the
13 Public Water Suppliers' rights to pump groundwater and provide water to the public; protect the
14 Antelope Valley from a loss of the public's water supply; prevent degradation of the quality of
15 the public groundwater supply; stop land subsidence; and avoid higher water costs to the public.

16
17 **CROSS-COMPLAINANTS**

18 2. California Water Service Company is a California corporation which extracts
19 groundwater from the Basin to serve customers within the Basin.

20
21 3. The City of Lancaster is a municipal corporation located in the County of Los
22 Angeles, and which produces and receives water for reasonable and beneficial uses, including
23 overlying uses. The City of Lancaster further provides ministerial services to mutual water
24 companies that produce groundwater from the Basin.

25
26 4. The City of Palmdale is a municipal corporation in the County of Los Angeles.
27 The City of Palmdale receives water from the Basin.

1 5. Littlerock Creek Irrigation District is a public agency which extracts groundwater
2 from the Basin to serve customers within the Basin.

3
4 6. Los Angeles County Waterworks District No. 40 is a public agency governed by
5 the Los Angeles County Board of Supervisors. District 40 has been lawfully organized to
6 perform numerous functions, including providing Basin groundwater to the public in a large
7 portion of the Antelope Valley. To this end, District 40 has constructed, maintained and operated
8 a public waterworks system to supply water to the public.

9
10 7. Palmdale Water District is an irrigation district organized and operating under
11 Division 11 of the California Water Code. Palmdale Water District extracts groundwater from
12 the Basin for delivery to customers.

13
14 8. Palm Ranch Irrigation District Palm Ranch Irrigation District is a public agency
15 which extracts groundwater from the Basin to serve customers within the Basin.

16
17 9. Rosamond Community Services District provides water to more than 3,500
18 residents of Kern County for domestic uses, fire protection, and irrigation. Rosamond has drilled
19 and equipped wells to pump groundwater from the Basin. Rosamond has constructed, maintained
20 and operated a public waterworks system to supply water to the public.

21
22 10. Quartz Hill Water District is a county water district organized and operating under
23 Division 12 of the California Water Code. Quartz Hill extracts groundwater from the Lancaster
24 Sub-basin of the Antelope Valley Groundwater Basin for delivery to customers.

25
26 **CROSS-DEFENDANTS**

27 11. The following persons and/or entities are the owners of, and/or are beneficial
28 interest holders in real property within the geographic boundaries of the Basin. These persons

1 and/or entitles claim overlying rights to extract water from the Basin, whether or not they have
2 heretofore exercised such overlying rights: ABC Williams Enterprises LP, ACEH Capital, LLC,
3 Jacqueline Ackermann, Cenon Advincula, Oliva M. Advincula, Mashallah Afshar, Antonio U.
4 Agustines, Airtrust Singapore Private Limited, Marwan M. Aldais, Allen Alevy, Allen Alevy and
5 Alevy Family Trust, Georgine J. Archer, Georgine J. Archer as Trustee for the Georgine J. Archer
6 Trust, A V Materials, Inc., Guss A. Barks, Jr., Peter G. Barks, Ildefonso S. Bayani, Nilda V.
7 Bayani, Big West Corp, Randall Y. Blayney, Melody S. Bloom, Bolthouse Properties, Inc., David
8 L. Bowers, Ronald E. Bowers, Leroy Daniel Bronston, Marilyn Burgess, Laverne C. Burroughs,
9 Laverne C. Burroughs, Trustee of the Burroughs Family Irrevocable Trust Dated August 1, 1995,
10 Bruce Burrows, John and B. Calandri 2001 Trust, California Portland Cement Company, Calmat
11 Land Co., Melinda E. Cameron, Castle Butte Dev Corp, Catellus Development Corporation,
12 Bong S. Chang, Jeanna Y. Chang, Moon S. Chang, Jacob Chetrit, Frank S. Chiodo, Lee S. Chiou,
13 M S Chung, City of Los Angeles, Carol K. Claypool, Clifford N. Claypool, W. F. Clunen, Jr., W.
14 F. Clunen, Jr. as Trustee for the P C Rev Inter Vivos Trust, Consolidated Rock Products Co.,
15 County Sanitation District No. 14 of Los Angeles County, County Sanitation District No. 20 of
16 Los Angeles County, Ruth A. Cumming, Ruth A. Cumming as Trustee of the Cumming Family
17 Trust, Catharine M. Davis, Milton S. Davis, Del Sur Ranch LLC, Diamond Farming Company,
18 Sarkis Djanibekyan, Hong Dong, Ying X Dong, Dorothy Dreier, George E. Dreier, Morteza M.
19 Foroughi, Morteza M. Foroughi as Trustee of the Foroughi Family Trust, Lewis Fredrichsen,
20 Lewis Fredrichsen as Trustee of the Friedrichsen Family Trust, Joan A. Funk, Eugene Gabrych,
21 Marian Gabrych, Aurora P. Gabuya, Rodrigo L. Gabuya, GGF LLC, Genus LP, Betty Gluckstein,
22 Joseph H. Gluckstein, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde
23 Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Maria B. Gorrindo, Maria B.
24 Gorrindo as Trustee for the M. Gorrindo Trust, Wendell G. Hanks, Andreas Hauke, Marilyn
25 Hauke, Healy Enterprises, Inc., Walter E. Helmick, Donna L. Higelmire, Michael N. Higelmire,
26 Davis L. and Diana D. Hines Family Trust, Hooshpack Dev Inc., Chi S. Huang, Suchu T. Huang,
27 John Hui, Hypericum Interests LLC, Daryush Iraninezhad, Minoo Iraninezhad, Esfandiar
28 Kadivar, Esfandiar Kadivar as Trustee of the Kadivar Family Trust, A. David Kagon, A. David

1 Kagon as Trustee for the Kagon Trust, Jack D. Kahlo, Cheng Lin Kang, Herbert Katz, Herbert
2 Katz as Trustee for the Katz Family Trust, Marianne Katz, Lilian S. Kauffman, Lilian S.
3 Kaufman as Trustee for the Kaufman Family Trust, Kazuko Yoshimatsu, Barbara L. Keys,
4 Barbara L. Keys as Trustee of the Barbara L. Keys Family Trust, Billy H. Kim, Illy King, Illy
5 King as Trustee of the Illy King Family Trust, Kootenai Properties, Inc., Kutu Investment Co.,
6 Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee
7 of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Fares A. Lahoud, Eva Lai, Paul Lai, Ying
8 Wah Lam, Land Business Corporation, Richard E. Landfield, Richard E. Landfield as Trustee of
9 the Richard E. Landfield Trust, Lawrence Charles Trust, William Lewis, Mary Lewis, Pei Chi
10 Lin, Man C. Lo, Shiung Ru Lo, Lyman C. Miles, Lyman C. Miles as Trustee for the Miles Family
11 Trust, Malloy Family Partners LP, Mission Bell Ranch Development, Barry S. Munz, Kathleen
12 M. Munz, Terry A. Munz, M.R. Nasir, Souad R. Nasir, Eugene B. Nebeker, Simin C. Neman,
13 Henry Ngo, Frank T. Nguyen, Juanita R. Nichols, Oliver Nichols, Oliver Nichols as Trustee of
14 the Nichols Family Trust, Owl Properties, Inc., Palmdale Hills Property LLC, Norman L.
15 Poulsen, Marilyn J. Prewoznik, Marilyn J. Prewoznik as Trustee of the Marilyn J. Prewoznik
16 Trust, Elias Qarmout, Victoria Rahimi, R and M Ranch, Inc., Patricia A. Recht, Veronika Reinelt,
17 Reinelt Rosenloecher Corp. PSP, Patricia J. Riggins, Patricia J. Riggins as Trustee of the Riggins
18 Family Trust, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family
19 Trust, Roman Catholic Archbishop of Los Angeles, Romo Lake Los Angeles Partnership,
20 Rosemount Equities LLC Series, Royal Investors Group, Royal Western Properties LLC, Oscar
21 Rudnick, Rebecca Rudnick, Santa Monica Mountains Conservancy, Marygrace H. Santoro,
22 Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, San Yu Enterprises,
23 Inc., Daniel Saparzadeh, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the
24 Stathatos Family Trust, Seven Star United LLC, Mark H. Shafron, Robert L. Shafron, Kamram S.
25 Shakib, Donna L. Simpson, Gareth L. Simpson, Gareth L. Simpson as Trustee of the Simpson
26 Family Trust, Soaring Vista Properties, Inc., State of California, George C. Stevens, Jr., George
27 C. Stevens, Jr. as Trustee of the George C. Stevens, Jr. Trust, George L. Stimson, Jr., George L.
28 Stimson, Jr. as Trustee of the George L. Stimson, Jr. Trust, Tejon Ranch, Mark E. Thompson A P

1 C Profit Sharing Plan, Tierra Bonita Ranch Company, Tiong D. Tiu, Beverly J. Tobias, Beverly J.
2 Tobias as Trustee of the Tobias Family Trust, Jung N. Tom, Wilma D. Trueblood, Wilma D.
3 Trueblood as Trustee of the Trueblood Family Trust, Unison Investment Co., LLC, Delmar D.
4 Van Dam, Gertrude J. Van Dam, Keith E. Wales, E C Wheeler LLC, William Bolthouse Farms,
5 Inc., Alex Wodchis, Elizabeth Wong, Mary Wong, Mike M. Wu, Mike M. Wu as Trustee of the
6 Wu Family Trust, State of California 50th District and Agricultural Association, and U.S. Borax,
7 Inc.

8
9 12. The Public Water Suppliers are informed and believe, and thereon allege, that
10 cross-defendant Roes 1 through 100,000 are the owners, lessees or other persons or entities
11 holding or claiming to hold ownership or possessory interests in real property within the
12 boundaries of the Basin; extract water from the Basin; claim some right, title or interest to water
13 located within the Basin; or that they have or assert claims adverse to the Public Water Suppliers'
14 rights and claims. The Public Water Suppliers are presently unaware of the true names and
15 capacities of the Roe cross-defendants, and therefore sue those cross-defendants by fictitious
16 names. The Public Water Suppliers will seek leave to amend this cross-complaint to add names
17 and capacities when they are ascertained.

18
19 **CLASS ACTION ALLEGATIONS**

20 13. The Public Water Suppliers bring this action against all persons similarly situated.
21 The class will be composed of all owners of land within the adjudication area that is not within
22 the service area of a public entity, public utility, or mutual water company. The persons in this
23 class are so numerous, consisting of approximately 65,000 parcels, that the joinder of all such
24 persons is impracticable and that the disposition of their claims in a class action rather than in
25 individual actions will benefit the parties and the court.

26
27 14. There is a well-defined community of interests in the questions of law and fact
28 affecting the defendant class members in that they each allege an identical overlying right to take

1 native groundwater from a common supply for their reasonable and beneficial use. As they each
2 seek a common right, they have predominantly common issues of fact and law. Additionally,
3 each class member will have common defenses against competing water rights including a claim
4 by the United States that it has a Federal Reserved right. These questions of law and fact
5 predominate over questions that affect only the individual class members. The claims and
6 defenses of the class members and the class representative are typical of those of the class and the
7 class representative will fairly and adequately represent the interests of the class.

8
9 **THE UNITED STATES IS A NECESSARY PARTY TO THIS ACTION**

10 15. This is an action to comprehensively adjudicate the rights of all claimants to the
11 use of a source of water located entirely within California, *i.e.*, the Basin, and for the ongoing
12 administration of all such claimants' rights.

13
14 16. The Public Water Suppliers are informed and believe, and on that basis allege, that
15 the United States claims rights to the Basin water subject to adjudication in this action by virtue
16 of owning real property overlying the Basin, including Edwards Air Force Base.

17
18 17. For the reasons expressed in this cross-complaint, the United States is a necessary
19 party to this action pursuant to the McCarran Amendment, 43 U.S.C. § 666.

20
21 18. Under the McCarran Amendment, the United States, as a necessary party to this
22 action, is deemed to have waived any right to plead that the laws of California are not applicable,
23 or that the United States is not subject to such laws by virtue of its sovereignty.

24
25 19. Under the McCarran Amendment, the United States, as a necessary party to this
26 action, is subject to the judgments, orders and decrees of this Court.

HISTORY OF THE ANTELOPE VALLEY GROUNDWATER BASIN

20. For over a century, California courts have used the concept of a groundwater basin to resolve groundwater disputes. A groundwater basin is an alluvial aquifer with reasonably well-defined lateral and vertical boundaries.

21. The Antelope Valley Groundwater Basin is located in an arid valley in the Mojave Desert, about 50 miles northeast of the City of Los Angeles. The Basin encompasses about 1,000 square miles in both Los Angeles and Kern Counties, and is separated from the northern part of the Antelope Valley by faults and low-lying hills. The Basin is bounded on the south by the San Gabriel Mountains and on the northwest by the Tehachapi Mountains. The Basin generally includes the communities of Lancaster, Palmdale and Rosamond as well as Edwards Air Force Base.

22. Various investigators have studied the Antelope Valley and some have divided the Basin into "sub-basins." According to the Public Water Suppliers' information and belief, to the extent the Antelope Valley is composed of such "sub-basins," they are sufficiently hydrologically connected to justify treating them as a single source of water for purposes of adjudicating the parties' water rights.

23. Before public and private entities began pumping water from the Basin, its natural water recharge balanced with water discharged from the Basin. Its water levels generally remained in a state of long-term equilibrium. In approximately 1915, however, agricultural uses began to pump groundwater and since then, greatly increased agricultural pumping has upset the Basin's groundwater equilibrium causing a continuous decline in the Basin's groundwater storage.

24. Although private agricultural entities temporarily curtailed their pumping activities when groundwater levels were extremely low, agricultural pumping has increased overall during

1 the past decade. During the same time, urbanization of the Antelope Valley has resulted in
2 increased public demand for water.

3
4 25. Groundwater pumping in the Basin has never been subject to any limits. This lack
5 of groundwater management caused the Basin to lose an estimated eight million acre feet of water
6 over the past eighty years.

7
8 26. Uncontrolled pumping caused repeated instances of land subsidence. It is the
9 sinking of the Earth's surface due to subsurface movement of earth materials and is primarily
10 caused by groundwater pumping. The Public Water Suppliers are informed and believe, and
11 thereupon allege, that portions of the Basin have subsided as much as six feet because of
12 chronically low groundwater levels caused by unlimited pumping. The harmful effects of land
13 subsidence observed in the Basin include loss of groundwater storage space, cracks and fissures
14 on the ground's surface, and damage to real property. Land subsidence problems continue and
15 will continue because of unlimited pumping.

16
17 27. The declining groundwater levels, diminished groundwater storage, and land
18 subsidence damage the Basin, injure the public welfare, and threaten communities that depend
19 upon the Basin as a reliable source of water. These damaging effects will continue, and likely
20 worsen until the court establishes a safe yield for the Basin and limits pumping to the safe yield.

21
22 **PUBLIC WATER SUPPLIERS SUPPLEMENT AND COMMINGLE THEIR**
23 **SUPPLEMENTAL SUPPLY OF WATER WITH BASIN WATER**

24 28. Due to the shortage of water in the Basin, certain Public Water Suppliers purchase
25 State Water Project water from the Antelope Valley-East Kern Water Agency. State Project
26 water originates in northern California and would not reach the Basin absent the Public Water
27 Suppliers purchases.

1 29. Public Water Suppliers purchase State Project water each year. They deliver the
2 State Project water to their customers through waterworks systems. The Public Water Suppliers'
3 customers use the State Project water for irrigation, domestic, municipal and industrial uses.
4 After the Public Water Suppliers' customers use the water, some of the imported State Project
5 water commingles with other percolating groundwater in the Basin. In this way, State Project
6 water augments the natural supply of Basin water.

7
8 30. Public Water Suppliers depend on the Basin as their source of water. But for the
9 Public Water Suppliers' substantial investment in State Project water, they would need to pump
10 additional groundwater each year. By storing State Project water or other imported water in the
11 Basin, Public Water Suppliers can recover the stored water during times of drought, water supply
12 emergencies, or other water shortages to ensure a safe and reliable supply of water to the public.

13
14 **THE BASIN HAS BEEN IN A STATE OF OVER-DRAFT FOR OVER FIVE YEARS**

15 31. The Public Water Suppliers are informed and believe, and upon that basis allege,
16 that the Basin is and has been in an overdraft condition for more than five (5) consecutive years
17 before the filing of this cross-complaint. During these time periods, the total annual demand on
18 the Basin has exceeded the supply of water from natural sources. Consequently, there is and has
19 been a progressive and chronic decline in Basin water levels and the available natural supply is
20 being and has been chronically depleted. Based on the present trends, demand on the Basin will
21 continue to exceed supply. Until limited by order and judgment of the court, potable Basin water
22 will be exhausted and land subsidence will continue.

23
24 32. Upon information and belief, the cross-defendants have, and continue to pump,
25 appropriate and divert water from the natural supply of the Basin, and/or claim some interest in
26 the Basin water. The Public Water Suppliers are informed and believe, and upon that basis
27 allege, that cross-defendants' combined extraction of water exceeds the Basin's safe yield.

1 33. Upon information and belief, each cross-defendant claims a right to take water and
2 threatens to increase its taking of water without regard to the Public Water Suppliers' rights.
3 Cross-defendants' pumping reduces Basin water tables and contributes to the deficiency of the
4 Basin water supply as a whole. The deficiency creates a public water shortage.

5
6 34. Cross-defendants' continued and increasing extraction of Basin water has resulted
7 in, and will result in a diminution, reduction and impairment of the Basin's water supply, and land
8 subsidence.

9
10 35. Cross-defendants' continued and increasing extraction of Basin water has and will
11 deprive the Public Water Suppliers of their rights to provide water for the public health, welfare
12 and benefit.

13
14 **THERE IS A DISPUTE AMONG THE PARTIES REGARDING THE EXTENT AND**
15 **PRIORITY OF THEIR RESPECTIVE WATER RIGHTS**

16 36. The Public Water Suppliers are informed and believe, and thereon allege, there are
17 conflicting claims of rights to the Basin and/or its water.

18
19 37. The Public Water Suppliers are informed and believe, and thereon allege, that
20 cross-defendants who own real property in the Basin claim an overlying right to pump Basin
21 water. The overlying right is limited to the native safe yield of the Basin. The Public Water
22 Suppliers allege that, because subsidence is occurring in the Basin, cross-defendants have been
23 pumping, and continue to pump water in amounts greater than the Basin's safe yield.

24
25 38. The Public Water Suppliers are informed and believe, and thereon allege, they
26 have appropriative and prescriptive rights to groundwater in the Antelope Valley Basin. The
27 Public Water Suppliers are informed and believe, and thereon allege, they and/or their
28 predecessors-in-interest, have pumped water from the Antelope Valley Basin for more than five

1 years prior to the filing of this cross-complaint.

2
3 39. The Public Water Suppliers have pumped water from, and/or stored water in the
4 Antelope Valley Basin, by reasonable extraction means. They have used the Basin and/or its
5 water for reasonable and beneficial purposes; and they have done so under a claim of right in an
6 actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse use and/or manner
7 for a period of time of at least five years and before filing this cross-complaint.

8
9 40. To provide water to the public, the Public Water Suppliers have and claim the
10 following rights:

11
12 (A) The right to pump groundwater from the Antelope Valley Groundwater
13 Basin in an annual amount equal to the highest volume of groundwater extracted by each of the
14 Public Water Suppliers in any year preceding entry of judgment in this action;

15 (B) The right to pump or authorize others to extract from the Antelope Valley
16 Groundwater Basin an amount of water equal in quantity to that amount of water previously
17 purchased by each of the Public Water Suppliers from the Antelope Valley-East Kern Water
18 Agency; and which has augmented the supply of water in the Basin in any year preceding entry of
19 judgment in this action.

20 (C) The right to pump or authorize others to extract from the Antelope Valley
21 Groundwater Basin an amount of water equal in quantity to that amount of water purchased in the
22 future by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency
23 which augments the supply of water in the Basin; and

24 (D) The right to pump or authorize others to extract from the Antelope Valley
25 Basin an amount of water equal in quantity to that volume of water injected into the Basin or
26 placed within the Basin by each of the Public Water Suppliers or on behalf of any of them.

FIRST CAUSE OF ACTION

(Declaratory Relief – Prescriptive Rights – Against All Cross-Defendants Except the United States And Other Public Entity Cross-Defendants)

41. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

42. For over fifty years, the California Supreme Court has recognized prescriptive water rights. The Public Water Suppliers allege that, for more than five years and before the date of this cross-complaint, they have pumped water from the Basin for reasonable and beneficial purposes, and done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The Public Water Suppliers further allege that each cross-defendant had actual and/or constructive notice of these activities, either of which is sufficient to establish the Public Water Suppliers' prescriptive rights.

43. Public Water Suppliers contend that each cross-defendant's rights to pump water from the Basin are subordinate to the Public Water Suppliers' prescriptive rights and to the general welfare of the citizens, inhabitants and customers within the Public Water Suppliers' respective service areas and/or jurisdictions.

44. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. Public Water Suppliers allege, on information and belief, that each cross-defendant disputes the Public Water Suppliers' contentions, as described in the immediately preceding paragraph.

45. Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the priority and amount of water they and each cross-defendant are entitled to pump from the Basin.

SECOND CAUSE OF ACTION

(Declaratory Relief – Appropriative Rights – Against All Cross-Defendants)

46. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

47. Public Water Suppliers allege that, in addition or alternatively to their prescriptive rights, they have appropriative rights to pump water from the Basin.

48. Appropriative rights attach to surplus water from the Basin.

49. Surplus water exists when the pumping from the Basin is less than the safe yield. It is the maximum quantity of water which can be withdrawn annually from a groundwater Basin under a given set of conditions without causing an undesirable result. “Undesirable results” generally refer to gradual lowering of the groundwater levels in the Basin, but also includes subsidence.

50. Persons and/or entities with overlying rights to water in the Basin are only entitled to make reasonable and beneficial use of the Basin’s native safe yield.

51. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. The Public Water Suppliers allege, on information and belief, that all cross-defendants, and each of them, seek to prevent the Public Water Suppliers from pumping surplus water.

52. The Public Water Suppliers seek a judicial determination as to the Basin’s safe yield, the quantity of surplus water available, if any, the correlative overlying rights of each cross-defendant to the safe yield and a determination of the rights of persons an/or entities with

1 overlying, appropriative and prescriptive rights to pump water from the Basin.

2
3 **THIRD CAUSE OF ACTION**

4 **(Declaratory Relief – Physical Solution – Against All Cross-defendants)**

5 53. The Public Water Suppliers re-allege and incorporate by reference each and all of
6 the preceding paragraphs as though fully set forth herein.
7

8 54. Upon information and belief, the Public Water Suppliers allege that cross-
9 defendants, and each of them, claim an interest or right to Basin water; and further claim they can
10 increase their pumping without regard to the rights of the Public Water Suppliers. Unless
11 restrained by order of the court, cross-defendants will continue to take increasing amounts of
12 water from the Basin, causing great and irreparable damage and injury to the Public Water
13 Suppliers and to the Basin. Money damages cannot compensate for the damage and injury to the
14 Basin.
15

16 55. The amount of Basin water available to the Public Water Suppliers has been
17 reduced because cross-defendants have extracted, and continue to extract increasingly large
18 amounts of water from the Basin. Unless the court enjoins and restrains cross-defendants, and
19 each of them, the aforementioned conditions will worsen. Consequently, the Basin's groundwater
20 supply will be further depleted, thus reducing the amount of Basin water available to the public.
21

22 56. California law makes it the duty of the trial court to consider a "physical solution"
23 to water rights disputes. A physical solution is a common-sense approach to resolving water
24 rights litigation that seeks to satisfy the reasonable and beneficial needs of all parties through
25 augmenting the water supply or other practical measures. The physical solution is a practical way
26 of fulfilling the mandate of the California Constitution (Article X, section 2) that the water
27 resources of the State be put to use to the fullest extent of which they are capable.
28

1 57. This court must determine, impose and retain continuing jurisdiction in order to
2 enforce a physical solution upon the parties who pump water from the Basin, and thereby prevent
3 irreparable injury to the Basin. Available solutions to the Basin problems may include, but are
4 not limited to, the court appointment of a watermaster, and monetary and metering and
5 assessments upon water extraction from the Basin. Such assessments would pay for the purchase,
6 delivery of supplemental supply of water to the Basin.

7
8 **FOURTH CAUSE OF ACTION**

9 **(For Declaratory Relief – Municipal Priority – Against All Cross-Defendants)**

10 58. The Public Water Suppliers re-allege and incorporate by reference each and all of
11 the preceding paragraphs as though fully set forth herein.

12
13 59. The Public Water Suppliers have rights to pump water from the Basin to meet
14 existing public water needs, and also to take increased amounts of Basin water as necessary to
15 meet future public needs. The Public Water Suppliers' rights to Basin water exist both as a result
16 of the priority and extent of their appropriative and prescriptive rights, and as a matter of law and
17 public policy of the State of California: "It is hereby declared to be the established policy of this
18 State that the use of water for domestic purposes is the highest use of water and that the next
19 highest use is for irrigation." (*Water Code* §106.)
20

21 60. *Water Code* Section 106.5 provides: "It is hereby declared to be the established
22 policy of this State that the right of a municipality to acquire and hold rights to the use of water
23 should be protected to the fullest extent necessary for existing and future uses. . . ."
24

25 61. Under *Water Code* sections 106 and 106.5, the Public Water Suppliers have a prior
26 and paramount right to Basin water as against all non-municipal uses.
27
28

63. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions and to the amount of water the parties may pump from the Basin. The Public Water Suppliers also seek a declaration of their right to pump water from the Basin to meet their reasonable present and future needs, and that such rights are prior and paramount to the rights, if any, of cross-defendants to use Basin water for irrigation purposes.

(Declaratory Relief – Storage Of Imported Water – Against All Cross-defendants)

64. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

65. The Public Water Suppliers purchase and use water from the State Water Project. State Project water is not native to the Basin. Importing State Project water decreases the Public Water Suppliers' need to pump water from the Basin. The Public Water Suppliers' purchase and delivery of State Project water is the reason it has been brought to the Basin. The Public Water Suppliers pay a substantial annual cost to import State Project water; this amount is subject to periodic increases.

26 66. The Public Water Suppliers allege there is underground space available in the Basin for storing imported State Project water.

1 73. The Public Water Suppliers have the sole right to recapture return flows
2 attributable to their State Project water, or such water imported on their behalf. The rights of
3 cross-defendants, if any, are limited to the Basin's native supply and/or to their imported water,
4 and do not extend to groundwater attributable to the Public Water Suppliers' return flows.
5

6 74. An actual controversy has arisen between the Public Water Suppliers and cross-
7 defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants
8 dispute their contentions in Paragraphs 1 through 43 of this cross-complaint.
9

10 75. The Public Water Suppliers seek a judicial determination as to the correctness of
11 their contentions, and that they have the sole right to recapture return flows in the Basin, both at
12 present and in the future.
13

14 **SEVENTH CAUSE OF ACTION**

15 **(Unreasonable Use Of Water - Against All Cross-Defendants Except Public Entity Cross-**
16 **Defendants)**

17 76. The Public Water Suppliers re-allege and incorporate by reference each and all of
18 the preceding paragraphs as though fully set forth herein.
19

20 77. The California Constitution (Article X, Section 2) provides the cardinal principle
21 of California water law, superior to any water rights priorities and requires that water use not be
22 unreasonable or wasteful. The reasonable use of water depends on the facts and circumstances of
23 each case; what may be reasonable in areas of abundant water may be unreasonable in an area of
24 scarcity; and, what is a beneficial use at one time may become a waste of water at a later time.
25

26 78. The Public Water Suppliers are informed and believe, and on that basis allege, that
27 some cross-defendants' use of water is unreasonable in the arid Antelope Valley and therefore
28

1 constitutes waste, unreasonable use or an unreasonable method of diversion or use within the
2 meaning of the California Constitution (Article X, section 2). Such uses are thereby unlawful.
3

4 79. An actual controversy has arisen between the Public Water Suppliers and cross-
5 defendants. The Public Water Suppliers allege, on information and belief, that the cross-
6 defendants dispute their contentions in Paragraphs 1 through 43 of this Cross-Complaint.
7

8 80. The Public Water Suppliers seek a judicial declaration that cross-defendants have
9 no right to any unreasonable use, unreasonable methods of use, or waste of water. Cross-
10 defendants' rights, if any, must be determined based on the reasonable use of water in the
11 Antelope Valley rather than upon the amount of water actually used.
12

13 EIGHTH CAUSE OF ACTION

14 (Declaratory Relief Re Boundaries Of Basin)

15 91. The Public Water Suppliers re-allege and incorporate by reference each and all of
16 the preceding paragraphs as though fully set forth herein.
17

18 92. An actual controversy has arisen between the Public Water Suppliers and cross-
19 defendants, and each of them, regarding the actual physical dimensions and description of the
20 Basin for purposes of determining the parties rights to water located therein. The Public Water
21 Suppliers allege, on information and belief, that cross-defendants dispute the Public Water
22 Suppliers' contentions, as set forth in Paragraphs 1 through 38, inclusive, of this cross-complaint.
23

24 93. The Public Water Suppliers seek a judicial determination as to the correctness of
25 their contentions and a finding as to the actual physical dimensions and description of the Basin.
26

27 PRAYER FOR RELIEF

28 WHEREFORE, the Public Water Suppliers pray for judgment as follows:

1. Judicial declarations consistent with the Public Water Suppliers' contentions in the

1 First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action in this cross-
2 complaint;

3
4 2. For preliminary and permanent injunctions which prohibit cross-defendants, and
5 each of them, from taking, wasting or failing to conserve water from the Basin in any manner
6 which interferes with the rights of the Public Water Suppliers to take water from or store water in
7 the Basin to meet their reasonable present and future needs;

8
9 3. For prejudgment interest as permitted by law;

10
11 4. For attorney, appraisal and expert witness fees and costs incurred in this action;
12 and

13
14 5. Such other relief as the court deems just and proper.

15 Dated: January 10, 2007

BEST BEST & KRIEGER LLP

16
17
18 By


ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Cross-Complainants
ROSAMOND COMMUNITY SERVICES
DISTRICT and LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40

19
20
21
22
23
24 ORANGE\32819.1

PROOF OF SERVICE

I, Kerry V. Keefe, 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 Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On March 13, 2007, I served the within document(s):

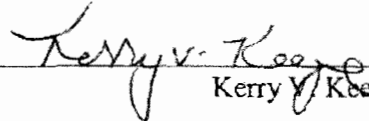
FIRST-AMENDED CROSS COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS

- ☒ 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 with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above 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.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

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 in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on March 13, 2007, at Irvine, California.


Kerry V. Keefe

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/12/07

DEPT. 1

HONORABLE Jack Komar

JUDGE M. GODDERZ

DEPUTY CLERK

HONORABLE
1.

JUDGE PRO TEM

ELECTRONIC RECORDING

J. HERNAND, CT. ASST.

Deputy Sheriff

C. MOHAMED, CT. RPT.

Reporter

1:30 pm

JCCP4408

Plaintiff	JEFFREY V. DUNN	(x)
Counsel	ERIC L. GARNER	(x)

Coordination Proceeding Special
Title Rule (1550(b))

Defendant	MICHAEL T. FIFE	(x)
Counsel	FREDERIC A. FUDACZ	(x)

ANTELOPE VALLEY GROUNDWATER CAS
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05)

VIRGINIA A. CAHILL	(x)
JANET K. GOLDSMITH	(x)
JAMES L. MARKMAN	(x)

NATURE OF PROCEEDINGS:

HEARING RE: CREATION OF A DEFENDANT CLASS OF PROPERTY;
AND OTHER ISSUES

Other counsel appearing in court this date;

RICHARD G. ZIMMER	(x)	R. LEE LEININGER	(x)
THOMAS S. BUNN III	(x)	WILLIAM A. HAUCK	(x)
CHRISTOPHER M. SANDERS	(x)	ROBERT E. DOUGHERTY	(x)
FREDERICK W. PFAEFFLE	(x)	DAVID B. ZLOTNICK	(x)
WILLIAM J. BRUNICK	(x)	WILLIAM M. SLOAN	(x)
DOUGLAS J. EVERTZ	(x)	JOHN S. TOOTLE	(x)
BOB JOYCE	(x)	W. KEITH LEMIEUX	(x)

Counsel appearing via telephone conference call;
Michael J. Holmes

The hearing is held, on the record, and Court and
counsel confer Re scheduled issues.

The Court makes the following orders;

- The request to add-on the Willis matter is granted.

- Rosamond and Waterworks Distribution Class
Certification Motion is granted as modified. The
Court's comments Re modification are fully reflected
in the notes of the Court Reporter made this date.

- Counsel are to provide the Court with a name of
Defendant class representative.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/12/07

DEPT. 1

HONORABLE Jack Komar

JUDGE

M. GODDERZ

DEPUTY CLERK

HONORABLE
1.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. HERNAND, CT. ASST.

Deputy Sheriff

C. MOHAMED, CT. RPTR.

Reporter

1:30 pm JCCP4408

Coordination Proceeding Special
Title Rule (1550(b))ANTELOPE VALLEY GROUNDWATER CAS
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05)

Plaintiff

JEFFREY V. DUNN

(x)

Counsel

ERIC L. GARNER

(x)

Defendant

MICHAEL T. FIFE

(x)

Counsel

FREDERIC A. FUDACZ

(x)

VIRGINIA A. CAHILL

(x)

JANET K. GOLDSMITH

(x)

JAMES L. MARKMAN

(x)

NATURE OF PROCEEDINGS:

- Counsel to prepare proposed language for
Certification of classes/sub-classes and form of
notice to parties. The Court sets a hearing schedule
Re Certification language as follows;

- Proposal is due by March 16, 2007.
- Responses due by April 6, 2007.
- the Hearing Re Certification language is set for
April 16, 2007 at 9:00 a.m., in Department One,
Los Angeles Superior Court.

Notice is waived.

1
2
3
4
5
6
7
8
9
10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

Judicial Council Coordination Proceeding
No. 4408
(Hon. Jack Komar)

14
15 RICHARD A. WOOD, an individual, on
16 behalf of himself and all others similarly
situated,

Case No.: BC391869

~~Proposed~~ ORDER APPROVING
REVISED CLASS NOTICE FOR
SMALL PUMPER CLASS ACTION

17 Plaintiff,

18 v.

19 LOS ANGELES COUNTY
20 WATERWORKS DISTRICT NO. 40; et al.

21 Defendants.
22
23
24

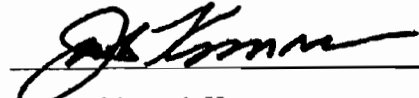
25 Having received no objections to the revised class notice filed by counsel for the
26 Small Pumper Class, the Court hereby approves the form of notice electronically filed on
27 February 18, 2009.
28

1
ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION

1 Furthermore, except as indicated in that notice, the publication of notice shall
2 otherwise be the same as that for the Willis class, including newspaper publication and
3 website content to be determined by counsel for the class with approval from the public
4 water suppliers.

5
6 IT IS SO ORDERED.

7
8 Dated: **MAR 13 2009**

9 
Honorable Jack Komar

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2
ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION

ORIGINAL FILED

JUN 23 2009

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER
CASES

JCCP Case No. 4408
(Hon. Jack Komar)

Case No.: BC391869

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

~~proposed~~ ORDER APPROVING
REVISED CLASS NOTICE FOR
SMALL PUMPER CLASS ACTION

Plaintiff,

v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.

Defendants.

The Court hereby approves the revised form of Small Pumper Class Notice
electronically filed on May 27, 2009.

Furthermore, the Court's order of May 6, 2009, at paragraph 2, is hereby modified

ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION

1
2
3
4
5
6
7
8
9
10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

JCCP Case No. 4408
(Hon. Jack Komar)

14
15 RICHARD A. WOOD, an individual, on
16 behalf of himself and all others similarly
situated,

Case No.: BC391869

~~proposed~~ ORDER APPROVING
REVISED CLASS NOTICE FOR
SMALL PUMPER CLASS ACTION

17 Plaintiff,

18 v.

19 LOS ANGELES COUNTY
20 WATERWORKS DISTRICT NO. 40; et al.

21 Defendants.
22
23
24

25 The Court hereby approves the revised form of Small Pumper Class Notice
26 electronically filed on May 27, 2009.

27 Furthermore, the Court's order of May 6, 2009, at paragraph 2, is hereby modified
28

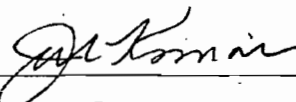
ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION

1 time for printing the revised notice after the June 12, 2009 hearing on the form of the
2 notice.

3 Furthermore, the Court's order of May 6, 2009, is hereby modified such that the
4 mailing of class notice for any potential class members inside the water supply service
5 areas shall be deferred pending identification of such members through reliable means.
6 Any such potential class members shall receive notice by publication consistent with the
7 prior order of this Court. The published notice will commence on or about June 26,
8 2009.

9
10 IT IS SO ORDERED.

11
12 Dated: JUN 19 2009

13 
14 Honorable Jack Komar
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2
ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION

ORIGINAL FILED

JUN 23 2009

LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER
CASES

JCCP Case No. 4408
(Hon. Jack Komar)

Case No.: BC391869

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

~~proposed~~ ORDER APPROVING
REVISED CLASS NOTICE FOR
SMALL PUMPER CLASS ACTION

Plaintiff,

v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.

Defendants.

The Court hereby approves the revised form of Small Pumper Class Notice
electronically filed on June 2, 2009. The date for mailing the class notice to those outside
the public water service areas is extended from June 15, 2009 to June 26, 2009, to allow

ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

**ANTELOPE VALLEY GROUNDWATER
CASES**

JCCP Case No. 4408
(Hon. Jack Komar)

Case No.: BC391869

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

~~proposed~~ **ORDER APPROVING
REVISED CLASS NOTICE FOR
SMALL PUMPER CLASS ACTION**

Plaintiff,

v.

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.**

Defendants.

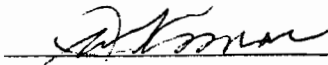
The Court hereby approves the revised form of Small Pumper Class Notice electronically filed on June 2, 2009. The date for mailing the class notice to those outside the public water service areas is extended from June 15, 2009 to June 26, 2009, to allow

1
**ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION**

1 such that the class notice for class members inside the water supply service areas shall be
2 an opt-out notice, identical in form to that approved by this order.

3
4 IT IS SO ORDERED.

5
6 Dated: JUN 12 2009


7 Honorable Jack Komar

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2
ORDER APPROVING REVISED CLASS NOTICE FOR SMALL PUMPER CLASS
ACTION

WM. MATTHEW DITZHAZY
City Attorney
City of Palmdale

RICHARDS, WATSON & GERSHON
A Professional Corporation
JAMES L. MARKMAN (43536) (jmarkman@rwglaw.com)
STEVEN R. ORR (136615) (sorr@rwglaw.com)
WHITNEY G. MCDONALD (245587) (wmcdonald@rwglaw.com)
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Telephone: (213) 626-8484
Facsimile: (213) 626-0078

Attorneys for Defendant, Cross-Complainant,
and Cross-Defendant CITY OF PALMDALE

[See Next Page For Additional Counsel]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

**NOTICE OF MOTION AND
MOTION TO TRANSFER AND TO
CONSOLIDATE FOR ALL
PURPOSES; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF WHITNEY G.
MCDONALD**

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

(Hon. Jack Komar)

- 1 BEST, BEST & KRIEGER LLP
Eric L. Garner, Bar No. 130665
2 Jeffrey V. Dunn, Bar No. 131926
Stefanie D. Hedlund, Bar No. 239787
3 5 Park Plaza, Suite 1500
Irvine, California 92614
4 Telephone: (949) 263-2600; (949) 260-0972 fax
Attorneys for ROSAMOND COMMUNITY SERVICES DISTRICT and
5 LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40
- 6 OFFICE OF COUNTY COUNSEL
County of Los Angeles
7 John Krattli, Bar No. 82149
Senior Assistant County Counsel
8 Michael L. Moore, Bar No. 175599
Senior Deputy County Counsel
9 500 West Temple Street
Los Angeles, California 90012
10 Telephone: 9213) 974-8407; (213) 687-7337 fax
Attorneys for LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40
- 11 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
12 Douglas J. Evertz, Bar No. 123066
250 Main Street, Suite 500
13 Irvine, California 92614
(949) 747-3700 (916) 251-5830 fax
14 Attorneys for CITY OF LANCASTER
- 15 LEMIEUX & O'NEILL
Wayne Lemieux, Bar No. 43501
16 2393 Townsgate Road, Suite 201
Westlake Village, California 91361
17 (805) 495-4770 (805) 495-2787 fax
Attorneys for LITTLEROCK CREEK IRRIGATION DISTRICT
18 AND PALM RANCH IRRIGATION DISTRICT, *et al.*
- 19 CALIFORNIA WATER SERVICE COMPANY
John Tootle, Bar No. 181822
20 2632 West 237th Street
Torrance, California 90505
21 (310) 257-1488; (310) 325-4605 fax
- 22 CHARLTON WEEKS, LLP
Bradley T. Weeks, Bar No. 173745
23 1007 West Avenue M-14, Suite A
Palmdale, CA 93551
24 (661) 265-0969; (661) 265-1650 fax
Attorneys for QUARTZ HILL WATER DISTRICT
25
- 26 LAGERLOF SENEAL GOSNEY & KRUSE
Thomas Bunn III, Bar No. 89502
27 301 North Lake Avenue, 10th Floor
Pasadena, California 91101-4108
28 (626) 265-0969; (661) 265-1650 fax
Attorneys for PALMDALE WATER DISTRICT

TO ALL PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 17, 2009, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 17C of the above-entitled court located at 191 North First Street, San Jose, California, the City of Palmdale, Rosamond Community Services District, Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Water Service Company, Quartz Hill Water District, City of Lancaster, and Palmdale Water District (collectively "Public Water Suppliers") will and do hereby move pursuant to Rules of Court 3.504, 3.541(b) and 3.543(a), to the extent *not* previously transferred as a result of the Judicial Council's order of coordination, for an order transferring all matters presently pending under Judicial Council Coordination Proceeding No. 4408 from the Riverside County Superior Court and Kern County Superior Court to the Los Angeles County Superior Court, the Honorable Jack Komar, judge presiding by special assignment. The Public Water Suppliers will and do hereby further move pursuant to CCP section 1048 for an order consolidating the previously or presently transferred actions and cross-actions, as well as any as subsequent complaints or cross-complaints filed in this Judicial Council Coordination Proceeding.

This motion is made on the following grounds:

1. These proceedings began as quiet title actions pending in the Riverside County Superior Court, followed by two additional declaratory and injunctive relief actions filed in the Los Angeles and Kern County Superior Courts. The differing venues of those actions resulted in a petition to the Judicial Council for an order of coordination. That petition was granted on June 17, 2005 (Exh. 1).

2. On July 11, 2005, the Judicial Council, acting through the Chief Justice, ordered those coordinated proceedings to be venued in the Los Angeles County Superior Court, where, by special assignment, they came to be pending before the Honorable Jack Komar (Exh. 2).

1 3. Following coordination and assignment, numerous other complaints and
2 cross-complaints were filed, including two class actions. As of the filing of this motion,
3 the actions and cross-actions identified in Exhibit 3 are pending in these coordinated
4 complex proceedings commonly known as the Antelope Valley Groundwater
5 Adjudication.

6 4. Rules of Court 3.504, 3.541(b), and 3.543 authorize the Court, on its own
7 motion, or on the motion of a party, to order coordinated cases to be transferred for all
8 purposes.

9 5. Because the United States of America ("United States") has been named as
10 a cross-defendant by the Public Water Suppliers, a special jurisdictional requirement
11 attaches, viz. compliance with 43 U.S.C. § 666, commonly known as the McCarran
12 Amendment. Through 43 U.S.C. § 666, the United States consents to jurisdiction by a
13 state court over the comprehensive adjudication of water rights.

14 6. To the extent not already accomplished, the Public Water Suppliers believe
15 that an order transferring and consolidating for all purposes is appropriate herein. First,
16 the complaints and cross-complaints concern common issues of law and fact. Second,
17 consolidation will allow for the entry of single statements of decision in subsequent
18 phases and a single judgment, which has numerous positive procedural implications both
19 in the trial court and in subsequent appeals, if any are taken. Third, complete
20 consolidation will further permit the Court to handle these already coordinated and
21 complex proceedings as a single action.

22 7. Pursuant to Code of Civil Procedure section 1048(a), "[w]hen actions
23 involving a common question of law or fact are pending before the court, it may order a
24 joint hearing or trial of any or all the matters in issue in the actions; it may order all the
25 actions consolidated and it may make such orders concerning proceedings therein as may
26 tend to avoid unnecessary costs or delay."

27 8. For these reasons, and those set forth in the accompanying memorandum of
28 points and authorities and declaration of Whitney G. McDonald, the Court should order

1 all complaints and cross-complaints presently pending in Judicial Council Coordination
2 Proceeding No. 4408, as well as any subsequently filed complaints or cross-complaints,
3 transferred and consolidated for all purposes, with the service and filing procedures
4 created through prior Court orders to remain the same.

5 ///

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 This motion is based upon this notice, the accompanying memorandum of points
2 and authorities and declaration of Whitney G. McDonald, the pleadings and other
3 documents on file in this action, and upon such other oral and written evidence as the
4 Court may accept at the time of hearing this motion.

5
6 Dated: July 15, 2009

BEST, BEST & KRIEGER LLP
ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND

7
8
9 OFFICE OF COUNTY COUNSEL
County of Los Angeles
JOHN KRATTLI
Senior Assistant County Counsel
MICHAEL L. MOORE
Senior Deputy County Counsel

10
11
12 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
DOUGLAS J. EVERTZ

13
14 LEMIEUX & O'NEILL
WAYNE K. LEMIEUX
W. KEITH LEMIEUX

15
16 CALIFORNIA WATER SERVICE COMPANY
JOHN TOOTLE

17
18 CHARLTON WEEKS, LLP
BRADLEY T. WEEKS

19
20 LAGERLOF SENEAL GOSNEY & KRUSE
THOMAS BUNN III

21
22 WM. MATTHEW DITZHAZY
City Attorney
City of Palmdale

23
24 RICHARDS, WATSON & GERSHON
A Professional Corporation
JAMES L. MARKMAN
STEVEN R. ORR
WHITNEY G. MCDONALD

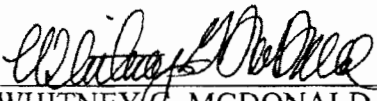
25
26 By: 
27 WHITNEY G. MCDONALD
28 Attorneys for Defendant, Cross-
Complainant, and Cross-Defendant
CITY OF PALMDALE

TABLE OF CONTENTS

	<u>PAGE</u>
I. OVERVIEW	7
II. TO THE EXTENT NOT PREVIOUSLY ACCOMPLISHED, THE COURT SHOULD ORDER ALL ACTIONS TRANSFERRED.....	8
III. THE COURT SHOULD ORDER COMPLETE CONSOLIDATION OF THE CASES	9
IV. COMPLETE CONSOLIDATION WILL SATISFY THE REQUIREMENTS OF THE MCCARRAN AMENDMENT THAT THESE PROCEEDINGS RESULT IN A COMPREHENSIVE ADJUDICATION OF GROUNDWATER RIGHTS	12
V. CONCLUSION	15
DECLARATION OF WHITNEY G. MCDONALD	16

TABLE OF AUTHORITIES

	<u>PAGE(S)</u>
Cases	
<i>Arizona v. San Carlos Apache Tribe</i> (1983) 463 U.S. 545	13
<i>City of Barstow v. Mojave Water Agency</i> (2000) 23 Cal.4th 1224	10
<i>City of Los Angeles v. City of San Fernando</i> (1975) 14 Cal.3d 199	10
<i>City of Los Angeles v. Klinker</i> (1933) 219 Cal. 198	12
<i>City of Pasadena v. City of Alhambra</i> (1949) 33 Cal.2d 908	10
<i>Colorado River Water Conservation Dist. v. United States</i> (1976) 424 U.S. 800	13, 14
<i>Committee for Responsible Planning v. City of Indian Wells</i> (1990) 225 Cal.App.3d 191	11
<i>Dugan v. Rank</i> (1963) 372 U.S. 609	13
<i>Hamilton v. Asbestos Corp. Ltd.</i> (2000) 22 Cal.4th 1127	10
<i>In re Snake River Basin Water System</i> (Idaho 1988) 764 P.2d 78 (1988)	13
<i>Jud Whitehead Heater Co. v. Obler</i> (1952) 111 Cal.App.2d 861	11
<i>McGhan Med. Corp. v. Superior Court</i> (1992) 11 Cal.App.4th 804	9, 11
<i>Miller v. Jennings</i> (5th Cir. 1957) 243 F.2d 157	13
<i>Mueller v. J. C. Penny Co.</i> (1985) 173 Cal.App.3d 713	10
<i>Pacific Livestock Co. v. Oregon Water Board</i> (1916) 241 U.S. 441	13
<i>Paduano v. Paduano</i> (1989) 215 Cal.App.3d 346	11
<i>Sanchez v. Superior Court</i> (1988) 203 Cal.App.3d 1391	10
<i>Todd-Stenberg v. Dalkon Shield Claimants Trust</i> (1996) 48 Cal.App.4th 976	12
<i>United States v. Dist. Court in and for Eagle County, Colo.</i> (1971) 401 U.S. 520	13, 14
<i>Wouldridge v. Burns</i> (1968) 265 Cal.App.2d 82	10

Table of Authorities
(Continued)
Pages

Statutes

43 U.S.C. § 666	7
CCP § 403	9
CCP § 404.1	11
Code of Civil Procedure Section 404	9
Code of Civil Procedure Section 404.7	9
Code of Civil Procedure Section 1048(a)	7, 9
Rule of Court 3.504	7, 9
Rule of Court 3.541(b)	7, 12
Rule of Court 3.541(b)(1)	8
Rule of Court 3.543	7, 8
Rule of Court 3.543(a)	9

MEMORANDUM OF POINTS AND AUTHORITIES

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

I. OVERVIEW

In response to U. S. Borax, *et al.*'s recent motion to dismiss the Public Water Suppliers' first amended cross-complaint for failing to name allegedly indispensable parties, the Public Water Suppliers agreed to bring the instant motion to transfer and consolidate.

Orders of transfer and consolidation would cure the perceived ills complained of by many parties herein, including the United States' concerns that the procedural posture of these proceedings result in the comprehensive adjudication of groundwater rights in the Antelope Valley Groundwater Basin ("Basin") so as to satisfy the requirements of the McCarran Amendment (43 U.S.C. § 666).

Questions have been raised as to whether the Judicial Council's prior orders in these proceedings operate to transfer all coordinated actions to the Los Angeles County Superior Court. To the extent that such transfer has not already taken place, the Court is specifically authorized by Rules of Court 3.504, 3.541(b), and 3.543 to order such transfers, and should do so herein.

Code of Civil Procedure ("CCP") § 1048(a) vests broad discretion in the Court to order these previously coordinated and complex actions to be consolidated for all purposes. Consolidation for all purposes should be ordered for the following reasons:

First, apart from the unique cross-claims of the Sheldon Blum Trust against the Bolthouse entities concerning rights and obligations under a lease between them, the various complaints and cross-complaints all raise common questions of law and fact concerning Basin groundwater, including safe yield, prescription, rights priority, and whether a physical solution should be imposed, among other issues common to any

1 California groundwater adjudication. These numerous claims have been ordered
2 coordinated and deemed complex.

3 Second, as a matter of efficiency for the Court and clarity to the parties and any
4 subsequently reviewing court, complete consolidation would result in the entry of a
5 single judgment, rather than a multitude of separate judgments. All concerned would
6 benefit from single statements of decision in subsequent phases of these proceedings, and
7 from a single judgment adjudicating the respective rights of the parties to extract or use
8 groundwater from the Basin, whose boundaries were determined in an earlier phase of
9 these coordinated proceedings, and imported and recycled water, and the physical
10 solution to be imposed to assure the long term health and viability of the Basin.

11 Third, complete consolidation of these presently coordinated complex proceedings
12 will further streamline the process of resolving the groundwater rights of the numerous
13 parties, which will result in saving time and attorney's fees to the parties, conserving
14 judicial resources, promoting settlement where possible, facilitating orderly discovery,
15 enabling equitable cost allocation, and simplifying subsequent appellant review.

16 Fourth, complete consolidation should resolve the concerns of the United States
17 (and others) that these proceedings satisfy the requirements of the McCarran Amendment
18 by avoiding piecemeal litigation.

19 The Court should accordingly order all complaints and cross-complaints presently
20 pending in Judicial Council Coordination Proceeding No. 4408, as well as any complaints
21 or cross-complaints hereinafter filed in or added onto the proceeding, transferred to the
22 Los Angeles County Superior Court and consolidated for all purposes.

23
24 **II. TO THE EXTENT NOT PREVIOUSLY ACCOMPLISHED, THE COURT**
25 **SHOULD ORDER ALL ACTIONS TRANSFERRED**

26 Pursuant to Rule of Court 3.541(b)(1), "[t]he judge may, for the purpose of
27 coordination and to serve the ends of justice ... [o]rder any coordinated action transferred
28 to another court under rule 3.543." That rule, in turn, provides: "The coordination trial

judge may order any coordinated action or severable claim in that action transferred from the court in which it is pending to another court for a specified purpose or for all purposes. Transfer may be made by the court on its own motion or on the motion of any party to any coordinated action.” Rule of Court 3.543(a).¹

Even absent these provisions, the trial court is vested with broad discretion to regulate these coordinated complex proceedings. Rule of Court 3.504 thus provides:

(b) To the extent that the rules in this chapter conflict with provisions of law applicable to civil actions generally, the rules in this chapter prevail, as provided by Code of Civil Procedure section 404.7.

(c) If the manner of proceeding is not prescribed by chapter 3 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure or by the rules in this chapter, or if the prescribed manner of proceeding cannot, with reasonable diligence, be followed in a particular coordination proceeding, the assigned judge may prescribe any suitable manner of proceeding that appears most consistent with those statutes and rules.”

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.”).

Thus to the extent not already transferred, the Court is authorized to order whatever transfers are deemed necessary to allow for complete consolidation.

III. THE COURT SHOULD ORDER COMPLETE CONSOLIDATION OF THE CASES

Pursuant to Code of Civil Procedure section 1048(a), “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing

¹ These provisions are entirely separate from the statutory provisions concerning transfer of non-complex matters (CCP § 403).

1 or trial of any or all the matters in issue in the actions; it may order all the actions
2 consolidated and it may make such orders concerning proceedings therein as may tend to
3 avoid unnecessary costs or delay.” A noticed motion may obtain the order of
4 consolidation. *See, Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391 (noticed
5 motion to consolidate two actions arising from same accident involving same parties;
6 witnesses, evidence, discovery, and questions of law and fact were common to both
7 cases).

8 “The purpose of consolidation is merely to promote trial convenience and
9 economy.” *Mueller v. J. C. Penny Co.* (1985) 173 Cal.App.3d 713, 722. “A
10 consolidation of actions does not affect the rights of the parties.” *Wouldridge v. Burns*
11 (1968) 265 Cal.App.2d 82, 86. Trial convenience and economy are promoted “by
12 avoiding duplication of procedure, particularly in the proof of issues common to both
13 actions.” *Id.*

14 Consolidation may be “complete” or “for trial only.” Under complete
15 consolidation, the pleadings are treated as merged and the court issues one set of findings
16 and one judgment. *Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal.4th 1127, 1147-1148.
17 By comparison, consolidation for trial only keeps all pleadings, findings, and judgments
18 separate and merely allows trial of the actions to occur together for the sake of
19 convenience. *Sanchez*, 203 Cal.App.3d at 1395-1399.

20 Consolidation is entirely appropriate here where the various cases comprising
21 these coordinated actions involve the same questions of law and fact, namely determining
22 rights to groundwater, imported and recycled water within the Basin, based upon the
23 familiar law and facts applicable in any groundwater adjudication, including safe yield,
24 overdraft, prescription, rights priority, and the physical solution. *See, City of Barstow v.*
25 *Mojave Water Agency* (2000) 23 Cal.4th 1224; *City of Los Angeles v. City of San*
26 *Fernando* (1975) 14 Cal.3d 199; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d
27 908.
28

1 The prior unchallenged order of coordination, moreover, establishes that these
2 cases necessarily involve predominating or significant common questions of law or fact.
3 CCP § 404.1.

4 Complete consolidation is warranted because all of the coordinated cases relate to
5 the same common and fundamental issue, viz. adjudicating the water rights of the parties
6 within the Basin, and generally involve the same parties. Although the identical parties
7 are not named in each of the respective complaints and cross-complaints, each shares the
8 same primary subject matter and will result in the same outcome. *See Jud Whitehead*
9 *Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867 (consolidation appropriate even
10 where all parties were not the same); *see also Paduano v. Paduano* (1989) 215
11 Cal.App.3d 346, 350-51 (separate findings issued in two consolidated actions
12 inappropriate where “primary subject matter” was the same); *see also Committee for*
13 *Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 197, 198
14 (court may look to nature of the underlying action and the propriety of issuing a single
15 judgment when ordering complete consolidation). By completely consolidating these
16 already coordinated actions, the Court will be able to enter a single judgment that would
17 unquestionably satisfy the requirements of the McCarran Amendment.

18 In addition, the single judgment that would result from complete consolidation of
19 these matters will greatly benefit the parties and the Court in administering a physical
20 solution. With only one judgment to govern the terms of the physical solution as to all
21 parties, those parties, the Court, and the Watermaster will be able to refer to one single
22 document for guidance. Therefore, post-trial practicalities also militate in favor of
23 complete consolidation.

24 Even absent this motion, the Court may order complete consolidation *sua sponte*.
25 The Rules of Court governing complex actions indicate that “it is the intent of the
26 Judicial Council to vest in the coordinating judge whatever great breadth of discretion
27 may be necessary and appropriate to ease the transition through the judicial system of the
28 logjam of cases which gives rise to coordination.” *McGhan*, 11 Cal.App.4th at 812.

Thus, the court in complex coordinated actions has wide latitude in making orders to satisfy its duty to “assume an active role in managing all steps of the pretrial, discovery, and trial proceedings to expedite the just determination of the coordinated actions without delay.” Rule of Court 3.541(b). *See also* CCP § 128(a)(3) (codifying the inherent authority “[t]o provide for the orderly conduct of proceedings before it, or its officers.”).

Inasmuch as the circumstances calling for consolidation are so variable, and the advantages and disadvantages of consolidated proceedings are so dependent on the facts of each case, the trial court enjoys broad discretion in granting or denying consolidation. *See, e.g., Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978-979 (trial court’s decision whether to consolidate actions involving common questions of law or fact will not be disturbed on appeal absent clear showing of abuse of discretion); *City of Los Angeles v. Klinker* (1933) 219 Cal. 198, 211.

IV. COMPLETE CONSOLIDATION WILL SATISFY THE REQUIREMENTS OF THE MCCARRAN AMENDMENT THAT THESE PROCEEDINGS RESULT IN A COMPREHENSIVE ADJUDICATION OF GROUNDWATER RIGHTS

The United States Congress was specific in providing for a limited waiver of the sovereign immunity of the United States from suit in the state courts. The legislative history demonstrates that the McCarran Amendment’s waiver is available only for the comprehensive adjudication of all water rights in a stream system. Only if the required conditions are met is there a waiver of sovereign immunity enabling the exercise of jurisdiction over the United States and the adjudication of federal water rights. In the United States Senate Report on the McCarran Amendment, the character of the water adjudications for which sovereign immunity shall be waived was described as follows:

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

rights ...”

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

“S. 18 is not intended . . . to be used for any other purpose than to allow the United States to be joined in a suit wherein it is necessary to adjudicate all of the rights of various owners on a given stream. This is so because unless all of the parties owning or in the process of acquiring water rights on a particular stream can be joined as parties defendant, any subsequent decree would be of little value.”

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

The subsequent case law is likewise clear that the McCarran Amendment waiver is only available for the comprehensive adjudication of all water rights in a stream system. As the United States Supreme Court explained, the “clear federal policy” underlying the consent to jurisdiction provided for under the McCarran Amendment is “the avoidance of piecemeal adjudication” of water rights. *Colorado River Water Conservation Dist. v. United States* (1976) 424 U.S. 800, 819. In accordance with this policy, the courts have ruled that federal sovereign immunity is waived to allow determination of water rights of the federal government only in a comprehensive adjudication. *Id.* at 819-20; *see also Arizona v. San Carlos Apache Tribe* (1983) 463 U.S. 545, 569. A comprehensive or general adjudication must involve all of the claimants to water rights along a given stream system. *Dugan v. Rank* (1963) 372 U.S. 609, 618-619; *Miller v. Jennings* (5th Cir. 1957) 243 F.2d 157, 159; *In re Snake River Basin Water System* (Idaho 1988) 764 P.2d 78, 83 (1988).

1 The United States Supreme Court explained that McCarran adjudications must be
2 all inclusive because “the allocation of water essentially involve the disposition of
3 property and are best conducted in unified proceedings.” *Colorado River Water*
4 *Conservation Dist.*, 424 U.S. at 819. The adjudication of rights to the use of water of a
5 river system “has no exceptions and . . . includes appropriate rights, riparian rights, and
6 reserved rights.” *Dist. Court in and for Eagle County, Colo.* 401 U.S. at 524.

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 V. CONCLUSION

2 For these reasons, the Court should accordingly order a transfer to the Los Angeles
3 County Superior Court and a complete consolidation of all cases previously coordinated.
4

5 Dated: July 15, 2009

BEST, BEST & KRIEGER LLP
ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND

6 OFFICE OF COUNTY COUNSEL
7 County of Los Angeles
8 JOHN KRATTLI
9 Senior Assistant County Counsel
10 MICHAEL L. MOORE
Senior Deputy County Counsel

11 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
12 DOUGLAS J. EVERTZ

13 LEMIEUX & O'NEILL
14 WAYNE K. LEMIEUX
15 W. KEITH LEMIEUX

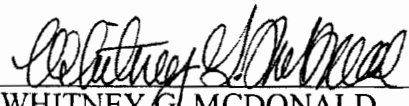
16 CALIFORNIA WATER SERVICE COMPANY
17 JOHN TOOTLE

18 CHARLTON WEEKS, LLP
19 BRADLEY T. WEEKS

20 LAGERLOF SENEAL GOSNEY & KRUSE
21 THOMAS BUNN III

22 WM. MATTHEW DITZHAZY
23 City Attorney
24 City of Palmdale

25 RICHARDS, WATSON & GERSHON
26 A Professional Corporation
27 JAMES L. MARKMAN
28 STEVEN R. ORR
WHITNEY G. MCDONALD

By: 

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

DECLARATION OF WHITNEY G. MCDONALD

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

8 2. Attached as Exhibit 1 is a true and correct copy of the Order Granting
9 Petition for Coordination filed in the Orange County Superior Court on June 17, 2005.

10 3. Attached as Exhibit 2 is a true and correct copy of the Amended Order
11 Assigning Coordination Trial Judge, entered by the Chair of the Judicial Council of
12 California, the Honorable Chief Justice Ronald George, and filed in the Santa Clara
13 County Superior Court on September 2, 2005.

14 4. Attached as Exhibit 3 is a list of the complaints coordinated under Judicial
15 Council Coordination Proceeding ("JCCP") No. 4408. Such proceedings have become
16 commonly as the "Antelope Valley Groundwater Cases." Through this motion, the
17 Public Water Suppliers seek to transfer the operative complaints, and all related cross-
18 complaints, to the Los Angeles County Superior Court, and thereafter to consolidate
19 those complaints and cross-complaints for all purposes.

20 5. I have reviewed the complaints and cross-complaints on file in these
21 proceedings.

22 6. There are numerous operative cross-complaints filed in the Antelope Valley
23 Groundwater Cases. Some of those cross-complaints were filed in response to specific
24 complaints, and many others in response to the cross-complaint of the Public Water
25 Suppliers. Other cross-complaints, such as the City of Palmdale's cross-complaints filed
26 in *Los Angeles County Waterworks District No. 40 vs. Diamond Farming Co., et al.*,
27 Kern County Superior Court Case No. S-1500-CV 254-348 and *Los Angeles County*
28 *Waterworks District No. 40 vs. Diamond Farming Co., et al.*, Los Angeles County

1 Superior Court Case No. BC 325201, have been superceded by the first amended cross-
2 complaint on the Public Water Suppliers in JCCP No. 4408, and are no longer operative.

3 7. The Antelope Valley Groundwater Cases collectively seek to adjudicate the
4 rights to groundwater, imported water and recycled water in the Antelope Valley
5 Groundwater Basin, the jurisdictional boundaries of which were determined in the Phase
6 1 proceedings ("Basin") on a comprehensive basis.

7 8. The parties to the Antelope Valley Groundwater Cases variously assert a
8 wide variety of claims and forms of relief. Many parties seek to quiet title, declaratory
9 and injunctive relief as to the right to extract and use Basin groundwater, a determination
10 of the safe yield of the Basin, that rights have been acquired or lost by prescription, that
11 certain rights enjoy priority over other rights, that money damages should be paid if
12 rights have been lost to public entities through prescription, and assert myriad other
13 types of claims typically associated with comprehensive groundwater adjudications in
14 California.

15 9. The trials to be conducted in these phased proceedings will concern
16 common questions and issues of law and fact, and will rely heavily on expert witness
17 testimony. For example, determining the safe yield of the Basin will impact resolution of
18 the claims and cross-claims of nearly every party. Whether production rights have been
19 acquired or lost by prescription, similarly, is an issue of concern to all parties. The form
20 of the physical solution to be imposed, if one were to be imposed, would, likewise, affect
21 the conduct of every party to these proceedings.

22 10. The Public Water Suppliers respectfully suggest that judicial economy is
23 served well by enabling the Court to enter a single judgment at the conclusion of these
24 proceedings, and that it should not be required to prepare a separate judgment to be
25 entered on each complaint and cross-complaint.

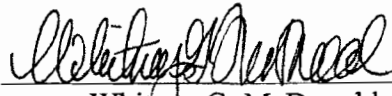
26 11. The Public Water Suppliers further wish to address the concerns of the
27 United States of America that the requirements of the McCarran Amendment (43 U.S.C.
28

1 § 666) are satisfied, and believe that the comprehensive relief sought herein should
2 accomplish that goal.

3 12. As the Court is thoroughly familiar with the parties and claims at issue
4 herein, the Public Water Suppliers will dispense with a further, more thorough
5 explanation of the underlying facts and claims. Should any party so desire, the Public
6 Water Suppliers will supplement this declaration on reply.

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

9 Executed this 15th day of July, 2009.

10
11 
12 Whitney G. McDonald

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 17 2005

ALAN SLATER, Clerk of the Court

C. Carr
BY C. CARR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

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

ANTELOPE VALLEY)
GROUNDWATER CASES)

Included actions:)

Los Angeles County Waterworks)
District No. 40 v. Diamond)
Farming Co.)

Los Angeles County Waterworks)
District No. 40 v. Diamond)
Farming Co.)

Wm. Bolthouse Farms, Inc. v.)

City of Lancaster)

Diamond Farming Co. v.)
City of Lancaster)

Diamond Farming Co. v.)
Palmdale Water District)

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Superior Court of California
County of Los Angeles
BC 325 201

Superior Court of California
County of Kern
S-1500-CV 254-348

Superior Court of California
County of Riverside - Consolidated
Actions
(RIC 353 840

RIC 344 436

RIC 344 668)

ORDER GRANTING PETITION FOR COORDINATION

Exhibit 1

The actions filed in Los Angeles and Kern County entitled *Los Angeles County Waterworks District No 40 vs Diamond Farming*, case no. BC 325201 and Kern County Superior Court case no. S-1500-CV 254348 are deemed complex pursuant to CRC 1800.

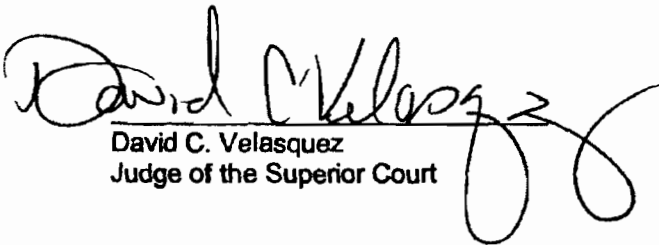
Good cause appearing that the coordination of the included actions is appropriate under the standards specified in CCP §§ 404 and 404.1, it is hereby ordered that the petition of Los Angeles County Waterworks District No. 40 for coordination of the included actions is granted; except, however, that the Riverside Superior Court retain jurisdiction over the consolidated case of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436 (the lead action); *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668; and *Diamond Farming Co. v. Palmdale Water District*, case no. RIC 353840, currently in trial, solely for the purpose of granting a motion for mistrial and for hearing and determining issues related to sanctions, costs of suit and fees resulting from that mistrial. In all other respects, that consolidated action is coordinated pursuant to this order.

The court orders coordination of *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, LASC case no. BC 32501; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, KCSC case no. S-1500-CV-25438; and the consolidated action of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436, *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668 and *Diamond Farming Co. v. Palmdale Water District*, case no. RIC 353840. The Court of Appeal, 4th Appellate District, Div. 2 (Riverside) is designated as the reviewing court with appellate jurisdiction for any petition for relief relating to any order in this proceeding.

This court recommends that the coordinated action be assigned to the Superior Court, County of Los Angeles, Complex Litigation. However, this court recommends that the Judicial Counsel appoint a judge from a neutral court (i.e., a sitting judge neither from Los Angeles County Superior Court nor Kern County Superior Court), or in the alternative, a retired judge to sit on assignment, to preside over this coordinated action as the coordination trial judge.

The clerk is directed to serve a copy of this order on the chair of the Judicial Council; the presiding judges of the Superior Courts of Los Angeles County, Kern County, Riverside County, and on counsel for all parties.

June 17, 2005


David C. Velasquez
Judge of the Superior Court

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 17 2005

ALAN SLATER, Clerk of the Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

C. Carr
BY C. CARR

ANTELOPE VALLEY GROUNDWATER CASES Plaintiff(s)	CASE NUMBER JCCP 4408
	CERTIFICATE OF SERVICE BY MAIL of ORDER GRANTING PETITION FOR COORDINATION dated 6-17-05

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on, 6-20-05 I served the ORDER GRANTING PETITION FOR COORDINATION, dated 6-17-05, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Judicial Council of California
Administrative Office of the Courts
Attn: Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Los Angeles County Superior Court
Executive Officer/Clerk, John A. Clarke
111 North Hill Street
Los Angeles, CA 90012

Riverside County Superior Court
Executive Officer/Clerk, Jose Octavio
Guillen
4100 Main Street
Riverside, CA 92501

Kern County Superior Court
Court Executive Officer, Terry McNally
1415 Truxton Ave.
Bakersfield, CA 93301-4172

Mr. Erick L. Gamer
Best, Best & Krieger, LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

County Counsel
Frederick W. Pfaefle
Senior Deputy County Counsel
Office of County Counsel, County of Los
Angeles, 500 West Temple St.
Los Angeles, CA 90012

Bob H. Joyce
LeBeau Thelen, LLP
P. O. Box 12092
Bakersfield, CA 93389-1127

James Markman, City Attorney, City of Palmdale,
Legal Department, 38300 North Sierra Highway,
Palmdale, Ca 93550

Michael Fife, Law Offices of Hatch &
Parent, 21 E. Carrillo Street, P.O. Drawer
720, Santa Barbara, Ca 93102-0720

Richard Zimmer, Law Offices of Clifford
& Brown, Bank of America Building, 1430
Truxtun Ave., Suite 900, Bakersfield, Ca
93301-5230

Julie A. Conboy, Deputy City Attorney,
Rockard J. Delgadillo City Attorney, 111
North Hope Street, Room 340, P.O. 51111,
Room 340, Los Angeles, Ca 90051

Steven O'Neill, Law Offices of Lemieux,
2393 Townsgate Road, Suite 201,
Westlake Village, ca 91361

Douglas Evertz, Law Offices Stradling
Yocca Carlson & Rauth, 660 Newport
Center Drive, Suite 1600, Newport Beach,
Ca 92660

Thomas Bunn, Law Offices of Lagerlof,
Senecal, Bradley, Gosney & Kruse, 301
North Lake Ave., 10th Floor, Pasadena, Ca
91101-4108

John Tootle, California Water Service Co.,
2625 Del Amo Blvd., Suite 350, Torrance,
Ca 90503

John Slezak, Law Offices of Iverson,
Yoakum, Papiano & Hatch, 624 South
Grand Ave., 27th Floor, Los Angeles, Ca
90017

Henry Weinstock, Nossman, Guthner,
Knox, Elliott, 445 South Figueroa St., 31 st
Floor, Los Angeles, Ca 90071

CERTIFICATE OF SERVICE BY MAIL

Page 2 of 3

ALAN SLATER,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 6-20-05

By: Christine Carr
Christine Carr, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

Page 3 of 3

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue, San Francisco, CA 94102-368

FILED

SEP 02 2005

Coordination Proceeding
Special Title (Rule 1550(b))

KIRI TORRE
Chief Executive Officer/Chief
Superior Court of Santa Clara
By ROWENA A. WALKER, DEPUTY

ANTELOPE VALLEY
GROUNDWATER CASES

JUDICIAL COUNCIL
COORDINATION PROCEEDING
NO. 4408

**AMENDED ORDER ASSIGNING
COORDINATION TRIAL JUDGE**

The order heretofore made authorizing the Presiding Judge of the Superior Court of California, County of Los Angeles to assign this matter to a judge of the court to sit as coordination trial judge is hereby terminated.

THE HONORABLE JACK KOMAR of the Superior Court of California, County of Santa Clara, is hereby assigned pursuant to Code of Civil Procedure section 404.3 and rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions listed below, at the site or sites he finds appropriate. Immediately upon assignment, 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.

COORDINATED ACTIONS

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Los Angeles	BC 325 201	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.

Exhibit 2

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Kern	S-1500-CV 254 348	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California County of Riverside (Consolidated Actions)	(RIC 353 840 ((RIC 344 436 ((RIC 344 668 (	(Wm. Bolthouse Farms, Inc. (v. City of Lancaster (Diamond Farming Co. v. (City of Lancaster (Diamond Farming Co. v. (Palmdale Water District

The coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division two as the reviewing court with appellate and writ jurisdiction. (Code of Civ. Proc., §404.2; rule 1505(a)).

Pursuant to rules 1501(17) and 1540, every paper filed in a coordinated action must be accompanied by proof of submission of a copy thereof to the coordination trial judge at the following address:

Hon. Jack Komar
Judge of the Superior Court
of California, County of Santa Clara
191 North First Street
San Jose, CA 95113

Pursuant to rule 1511, a copy of every paper required to be transmitted to the Chair of the Judicial Council must be sent to the following address:

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action, pursuant to rule 1540.

Dated: August 31, 2005



Chief Justice of California and
Chair of the Judicial Council

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA

PROOF OF SERVICE BY MAIL

JUDICIAL COUNCIL COORDINATION NUMBER: 4408	CASE NUMBER:
--	--------------

1. I am over the age of 18 and not a party to this legal action.
2. I am employed in the City and County of San Francisco and my business address is

**455 Golden Gate Avenue
San Francisco, CA 94102-3688**

3. On August 31, 2005, I served a copy of the following documents:

- | | |
|-------------------------------------|---|
| ☐ | ORDER ASSIGNING COORDINATION MOTION JUDGE |
| ☐ | ORDER ASSIGNING COORDINATION TRIAL JUDGE |
| ☐ | ORDER ASSIGNING COORDINATION MOTION JUDGE
AND SETTING DATE FOR HEARING |
| ☐ | AMENDED ORDER ASSIGNING COORDINATION MOTION JUDGE |
| ☒ | AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE |
| ☐ | OTHER |

on the interested parties listed on the attached mailing list by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the outgoing mailbox in my office, in accordance with ordinary business practices for deposit with the United States Postal Service in San Francisco, California. I am readily familiar with my office's business practice for collection of and processing of correspondence for mailing, and under that practice the above document is being deposited with the United States Postal Service this date in San Francisco, California, in the ordinary course of business.

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

Date: August 31, 2005


Carlotta Tillman

MAILING LIST

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

Mr. Erick L. Garner
Mr. Jeffrey V. Dunn
Mr. Marc S. Ehrlich
BEST, BEST & KRIEGER, LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

Raymond G. Fortner, Jr.
County Counsel
Frederick W. Pfaeffle
Senior Deputy County Counsel
OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
500 West Temple Street
Los Angeles, CA 90012

Exhibit 3

OPERATIVE COMPLAINTS

Wm Bolthouse Farms, Inc. vs. City of Lancaster, et al., Riverside County Superior Court Case No. RIC 353840;

Diamond Farming Co., et al. vs. City of Lancaster, et al., Riverside County Superior Court Case No. RIC 344436;

Diamond Farming Co. vs. Palmdale Water District, et al., Riverside County Superior Court Case No. RIC 344668;

Los Angeles County Waterworks District No. 40 vs. Diamond Farming Co., et al., Kern County Superior Court Case No. S-1500-CV 254-348

Los Angeles County Waterworks District No. 40 vs. Diamond Farming Co., et al., Los Angeles County Superior Court Case No. BC 325201

Rebecca Lee Willis, etc. vs. Los Angeles County Waterworks District No. 40, et al., Los Angeles County Superior Court Case No. BC 364553;

Richard A. Wood, etc. vs. Los Angeles County Waterworks District No. 40, et al., Los Angeles County Superior Court Case No. BC 391869; and,

And all cross-complaints filed in the above-actions or in these coordinated proceedings.

Exhibit 3

PROOF OF SERVICE

I, Kelley Herrington, declare:

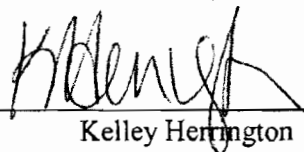
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On July 15, 2009, I served the within documents:

**NOTICE OF MOTION AND MOTION TO TRANSFER AND TO
CONSOLIDATE FOR ALL PURPOSES; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF WHITNEY G. MCDONALD**

- ☐ 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 July 15, 2009.


Kelley Herrington