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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

**PUBLIC WATER SUPPLIERS’
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION TO DISMISS**

Date: June 19, 2009
Time: 2:00 p.m.
Dept.: 17C

(Hon. Jack Komar)

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MEMORANDUM OF POINTS AND AUTHORITIES

The Public Water Suppliers¹ respectfully submit this memorandum of points and authorities in opposition to certain landowner cross-defendants'² motion to dismiss the Public Water Suppliers' first amended cross-complaint.

I. OVERVIEW

Cross-defendants' motion to dismiss misses the mark in several respects and should be denied. In essence, the motion argues that the Public Water Suppliers' cross-complaint should be dismissed for failure to join indispensable parties, specifically the *Wood* and *Willis* classes. Their argument relies entirely on the assumption that the "general adjudication" is encompassed solely within the four corners of the Public Water Supplier' first amended cross-complaint. That assumption, however, is an error because it ignores the fact that the Antelope Valley Groundwater Cases are pending pursuant to order of the Judicial Council as complex *coordinated* actions. There are more than 25 complaints and cross-complaints on file herein. Taken together, the judgments to be entered in these coordinated actions will result in a "general adjudication" of all groundwater rights within the Antelope Valley Groundwater Basin ("Basin") regardless of whether the Public Water Suppliers' cross-complaint names the *Wood* and *Willis* classes as cross-defendants. In light of the many complaints and cross-complaints coordinated herein, the *Wood* and *Willis* classes are not in fact absent indispensable parties under Code of Civil Procedure section 389, and the motion should be denied.

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¹ The Public Water Suppliers include Los Angeles County Waterworks District No. 40, Rosamond Community Services District, City of Palmdale, Palmdale Water District, City of Lancaster, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District, and California Water Service Company.

² Those cross-defendants are listed on page 3 of the motion to dismiss and include more than 60 parties.

1 Were the Court to be inclined to view the present procedural posture of these
2 coordinated complex proceedings as somehow not constituting a “general adjudication,”
3 the Public Water Suppliers will promptly bring a motion to consolidate so as to allow for
4 the entry of a single judgment. All of the coordinated actions herein involve the same
5 issues of law and fact concerning rights in the Basin, and would be the proper subject of
6 an order of consolidation.

7 Alternately, the Public Water Suppliers could name the *Wood* and *Willis* classes as
8 cross-defendants to their first amended cross-complaint. The moving parties’ suggestion
9 that adding the classes as cross-defendants is somehow not feasible is simply unfounded.
10 The classes have already been certified and could be easily and equitably required to
11 defend against the Public Water Suppliers’ cross-claims, which in many respects, are
12 similar to those advanced by the classes against the Public Water Suppliers.

13 For these reasons, the motion to dismiss should be denied.
14

15 **II. THESE COMPLEX COORDINATED ACTIONS WILL RESULT IN A**
16 **GENERAL ADJUDICATION OF THE BASIN, REGARDLESS OF**
17 **WHETHER THE PUBLIC WATER SUPPLIERS’ CROSS-COMPLAINT**
18 **SPECIFICALLY NAMES THE WOOD AND WILLIS CLASSES.**

19 The moving parties apparently fail to appreciate the significance of the fact that
20 these are complex coordinated actions, collectively entitled “Antelope Valley
21 Groundwater Cases.”

22 Pursuant to Rule of Court 3.545(a), “[t]he coordination trial judge may terminate
23 any coordinated action by settlement or final dismissal, summary judgment, or
24 judgment...” A judgment will be issued in each coordinated action and entered by the
25 clerk of the court in which the action was pending when coordination was ordered. Cal.
26 Rule of Court 3.545(b). Thus, the end result of these coordinated actions is that
27 judgments will be entered in each case, and a “general adjudication” of the rights of the
28 parties to produce groundwater from the Basin will be determined.

Those judgments will collectively constitute a general adjudication of water rights within the basin. A general adjudication, for purposes of the McCarran Amendment, is one which “is intended to be universal and to result in a complete ascertainment of all existing rights. . .” *City of Chino v. Superior Court* (1967) 255 Cal.App.2d 747, 758 (quoting S.Rep.No. 755, 82d Congress, 1st Session 5 (1951)); see also *State of California v. Rank* (9th Cir. 1961) 293 F.2d 340, 347, affirmed in part and reversed in part on other grounds by *Dugan v. Rank* (1962) 369 U.S. 836. Nothing within the McCarran Amendment requires that such a general adjudication be reflected in one single judgment on one single pleading. All of the complaints and cross-complaints included in these coordination actions, when taken together, clearly seek “a complete ascertainment of all existing rights” to groundwater within the basin. The coordinated “Antelope Valley Groundwater Cases,” therefore, constitute a general adjudication.

Due to the coordination of these cases, it is irrelevant whether or not the Public Water Suppliers’ cross-complaint, in particular, names the *Wood* and *Willis* classes.³ Those classes have initiated their own lawsuits, which have been coordinated with the Public Water Suppliers’ cross-complaint, among others, and which will protect those classes’ rights within the basin.

In that respect, the *Wood* and *Willis* classes are not indispensable parties to the Public Water Suppliers’ cross-complaint at all. Code of Civil Procedure section 389(a) requires joinder of a party where “in his absence complete relief cannot be accorded among those already parties,” or where disposition of a claim, without that party’s inclusion will:

“(i) as a practical matter impair or impede his ability to protect [his] interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.”

³ It is likewise irrelevant that the *Wood* class has unilaterally declared that it is not a party to the comprehensive adjudication. See Motion p. 9, lines 26-28.

Here, complete relief will be accorded to all parties of these coordinated cases by way of the judgments to be issued in each of the actions. Those judgments will, in effect, constitute a general adjudication of the basin. Moreover, the *Wood* and *Willis* classes' interests will be adequately protected by their own lawsuits and by inclusion in the coordinated action; the collection of judgments that will be issued in these coordinated cases will resolve the rights of the *Wood* and *Willis* Classes, and all other parties, in the same manner as if the Public Water Suppliers had sued them directly. Additionally, no inconsistent judgments will result, as the judgments will take into account all claims asserted in all of the coordinated pleadings and will effectively adjudicate all rights to groundwater within the basin. Thus, that the Public Water Suppliers' cross-complaint does not specifically name the classes is an observation of no importance.⁴

III. ALTERNATIVELY, THE COURT SHOULD ORDER COMPLETE CONSOLIDATION OF THE CASES OR ALLOW AMENDMENT OF THE PUBLIC WATER SUPPLIERS' CROSS-COMPLAINT TO ADD THE WOOD AND WILLIS CLASSES AS CROSS-DEFENDANTS.

The Court is, in no event, required to dismiss the Public Water Suppliers' cross-complaint. The perceived defects in the pleading, *if any*, are entirely curable by way of

⁴ The true motivation behind this motion to dismiss appears on page 11, lines 4-11, which states "the Wood class has represented in court that it is in settlement negotiations with the Public Water Suppliers. . . . Allowing these negotiations to move forward in the absence of all other water rights holders would prejudice any landowner's ability to represent its interests in the current adjudication."

The Public Water Suppliers intended no slights or exclusions in trying to undertake a voluntary settlement conference with the classes. However, the previously attempted "all parties" mediation terminated with the resignation of the mediator. On the other hand, some progress is being made in the "principals only" process. The Public Water Suppliers welcome the participation of all parties in the settlement process but believe that everyone does not have to be part of every discussion. Any settlement agreement will, of course, be presented to the Court for approval after notice to all parties.

one of two options: (1) complete consolidation via the Court’s inherent powers or a noticed motion by the Public Water Suppliers, or (2) amendment of the cross-complaint to add the Wood and Willis classes as defendants.

A. The Court May Order Complete Consolidation of All Actions Included in These Coordinated Proceedings.

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 or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

Consolidation may be “complete” or “for trial only.” Under complete consolidation, the pleadings are treated as merged and the court issues one set of findings and one judgment. *Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal.4th 1127, 1147-48. By comparison, consolidation for trial only keeps all pleadings, findings, and judgments separate and merely allows trial of the actions to occur together for the sake of convenience. *Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1395-99.

Consolidation is entirely appropriate here as the various cases that make up these coordinated actions involve the same questions of law and fact, namely the proper determination of rights to groundwater within the Basin based upon issues such as safe yield, overdraft, prescription, appropriation, and priority. In fact, that these cases have already been coordinated means that they necessarily involve a predominating or significant common question of law or fact. Code of Civ. Proc. § 404.1.

Complete consolidation would be warranted herein because all of the coordinated cases relate to the same fundamental issue, adjudication of water rights within the Basin, and generally involve the same parties. Although the identical parties are not named in each respective lawsuit, they all share the same primary subject matter and will result in the same outcome. *See Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867 (consolidation appropriate even where all parties were not the same); *see also*

Paduano v. Paduano (1989) 215 Cal.App.3d 346, 350-51 (separate findings issued in two consolidated actions inappropriate where “primary subject matter” was the same); *see also Committee for Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 197, 198 (court may look to nature of the underlying action and the propriety of issuing a single judgment when ordering complete consolidation). By completely consolidating these already coordinated actions, the Court could simply enter one omnibus judgment that would unquestionably constitute a “general adjudication” under the McCarran Amendment. No joinder of the *Wood* or *Willis* classes would be required.

Complete consolidation may be ordered by the court *sua sponte* in a complex coordinated action. The Rules of Court governing complex actions indicate that “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.” ***McGhan Med. Corp. v. Superior Court*** (1992) 11 Cal.App.4th 804, 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). Code of Civil Procedure section 403 further provides that “[t]he court to which a case is transferred may order the cases consolidated for trial pursuant to Section 1048 without any further motion or hearing.” Finally, the court has inherent authority “[t]o provide for the orderly conduct of proceedings before it, or its officers.” Code of Civ. Proc. § 128(a)(3). Therefore, the Court may order complete consolidation here on its own motion.

Inasmuch as a stipulation to consolidation is not practical given the large number of parties involved, the Public Water Suppliers request the Court to order complete

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consolidation, should it find it necessary, or to allow the Public Water Suppliers to bring a noticed motion to achieve the same goal.⁵

B. Alternatively, the Court Should Allow the Public Water Suppliers to Amend Their Cross-Complaint to Name the Classes as Cross-Defendants.

Were the Court to determine that the *Wood* and *Willis* classes should be named as cross-defendants to the Public Water Suppliers' first amended cross-complaint, the Public Water Suppliers respectfully request the Court to allow them to do so. As a general matter, classes may be named as defendants. Code of Civil Procedure section 382 states:

"... when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue *or defend* for the benefit of all."

(Emphasis added.)

Typically, courts exercise more exacting scrutiny when certifying defendant classes in order to guard against the risk that a plaintiff may fraudulently name a class representative who will not fairly defend the interests of the represented class. *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 844. This risk is not present here, however, because the *Wood* and *Willis* classes have already been certified in their own individual actions. All that would be required, then, would be to amend those certificates to include defense of the Public Water Suppliers' first amended cross-complaint.

The moving parties assert that joinder of the classes to the Public Water Suppliers' cross-complaint is not feasible. However, they do so without any real support for this claim or recognition of the work put into certifying the classes. *See* Motion, p.12. Likewise, the moving parties' assertion that a defendant class "could never be certified" is entirely unfounded. Motion, p. 12, line 17. Cross-defendants point to specific

⁵ To the extent that any parties to these coordinated actions objects to consolidation, the Public Water Suppliers invite those parties to file such objections with the Court prior to the hearing on cross-defendant's instant motion to dismiss.

1 problems with the *Wood* class for support for this proposition. Motion, p. 17. However,
2 these perceived problems are all curable and do not affect the ability to name either of the
3 classes as defendants.

4 Thus, the Court should allow the Public Water Suppliers to add the *Wood* and
5 *Willis* classes as defendants to their cross-complaint should the Court determine that such
6 a step is necessary.

7
8 **IV. CONCLUSION.**

9 For these reasons, the motion to dismiss should be denied.

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11 Respectfully submitted,

12 Dated: June 8, 2009

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PROOF OF SERVICE

I, Yvonne Alamillo, 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 June 8, 2009, I served the within documents:

**PUBLIC WATER SUPPLIERS' MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO MOTION TO DISMISS**

- ☐ 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 June 8, 2009.


Yvonne Alamillo