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

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

Judicial Council Coordination
Proceeding No. 4408

20 **REPLY MEMORANDUM OF**
21 **POINTS AND AUTHORITIES IN**
22 **SUPPORT OF MOTION TO**
23 **TRANSFER AND TO**
24 **CONSOLIDATE FOR ALL**
25 **PURPOSES**

26 Date: August 17, 2009

27 Time: 10:00 a.m.

28 Dept.: 17C

(Hon. Jack Komar)

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MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

7 As stated in the Public Water Suppliers’ moving papers, the Court has authority to
8 consolidate these already-coordinated actions pursuant to Code of Civil Procedure
9 sections 1048 and 128(a)(3) and Rule of Court 3.541(b). *See also McGhan Med. Corp.*
10 *v. Superior Court* (1992) 11 Cal.App.4th 804, 812 (“... it is the intent of the Judicial
11 Council to vest in the coordinating judge whatever great breadth of discretion may be
12 necessary and appropriate to ease the transition through the judicial system of the logjam
13 of cases which gives rise to coordination.”) Code of Civil Procedure section 403 does
14 nothing to alter this authority. The Court has already determined that these actions share
15 common questions of law and fact under Code of Civil Procedure section 404.1. Section
16 1048 allows consolidation under the exact same circumstances. (C.C.P. § 1048(a) (court
17 may order consolidation “[w]hen actions involving a common question of law or fact...”)
18 Not only is consolidation allowed here, but it would serve multiple laudable purposes,
19 namely the ability to enter a single judgment, satisfaction of the McCarran Amendment,
20 and avoiding the unnecessary costs and delay involved with further fussing over pleading
21 issues.

22 It is not important that the parties to each individual complaint and cross-
23 complaint are not entirely identical. The Public Water Suppliers’ First Amended Cross-
24 complaint has been asserted against all parties but the two classes, who have alternately
25 sued the Public Water Suppliers. All together, the operative complaints and cross-
26 complaints in these coordinated actions involve the same parties and the same
27 fundamental issue, namely the adjudication of rights to water in the basin. Consolidation
28

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

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

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

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

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

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

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

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

"2. Declaring that Plaintiff's and the Class' overlying rights to use water from the Basin are superior and have priority vis-à-vis all non-overlying users and Appropriators;

3. Apportioning water rights from the Basin in a fair and equitable manner and enjoining any and all uses inconsistent with such apportionment;"

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

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

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

IV. CONCLUSION

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

Dated: August 7, 2009

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PROOF OF SERVICE

I, Maurine Lopes, declare:

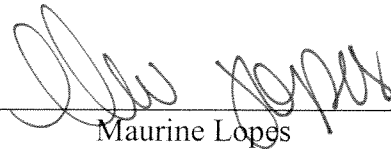
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On August 7, 2009, I served the within documents:

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

- ☐ by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

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

Executed on August 7, 2009.



Maurine Lopes