

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

**SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
TRANSFER AND TO
CONSOLIDATE FOR ALL
PURPOSES; DECLARATION OF
WHITNEY G. McDONALD IN
SUPPORT THEREOF**

[Request for Judicial Notice Filed
Concurrently Herewith]

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(Hon. Jack Komar)

1 BEST, BEST & KRIEGER LLP
Eric L. Garner, Bar No. 130665
2 Jeffrey V. Dunn, Bar No. 131926
5 Park Plaza, Suite 1500
3 Irvine, California 92614
Telephone: (949) 263-2600; (949) 260-0972 fax
4 Attorneys for ROSAMOND COMMUNITY SERVICES DISTRICT and
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

5 OFFICE OF COUNTY COUNSEL
6 County of Los Angeles
John Krattli, Bar No. 82149
7 Senior Assistant County Counsel
Michael L. Moore, Bar No. 175599
8 Senior Deputy County Counsel
500 West Temple Street
9 Los Angeles, California 90012
Telephone: 9213) 974-8407; (213) 687-7337 fax
10 Attorneys for LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

11 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
Douglas J. Evertz, Bar No. 123066
12 250 Main Street, Suite 500
Irvine, California 92614
13 (949) 747-3700 (916) 251-5830 fax
Attorneys for CITY OF LANCASTER

14 LEMIEUX & O'NEILL
15 Wayne Lemieux, Bar No. 43501
2393 Townsgate Road, Suite 201
16 Westlake Village, California 91361
(805) 495-4770 (805) 495-2787 fax
17 Attorneys for LITTLE ROCK CREEK IRRIGATION DISTRICT
and PALM RANCH IRRIGATION DISTRICT, *et al.*

18 CALIFORNIA WATER SERVICE COMPANY
19 John Tootle, Bar No. 181822
2632 West 237th Street
20 Torrance, California 90505
(310) 257-1488; (310) 325-4605 fax

21 CHARLTON WEEKS, LLP
22 Bradley T. Weeks, Bar No. 173745
1007 West Avenue M-14, Suite A
23 Palmdale, CA 93551
(661) 265-0969; (661) 265-1650 fax
24 Attorneys for QUARTZ HILL WATER DISTRICT

25 LAGERLOF SENECA GOSNEY & KRUSE
26 Thomas Bunn III, Bar No. 89502
301 North Lake Avenue, 10th Floor
27 Pasadena, California 91101-4108
(626) 793-9400; (626) 793-5900 fax
28 Attorneys for PALMDALE WATER DISTRICT

MEMORANDUM OF POINTS AND AUTHORITIES

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

I. OVERVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4
5 **V. CONCLUSION**

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

9 Dated: September 8, 2009

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

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

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

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

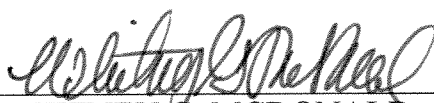
CALIFORNIA WATER SERVICE COMPANY
JOHN TOOTLE

CHARLTON WEEKS, LLP
BRADLEY T. WEEKS

LAGERLOF SENEAL GOSNEY & KRUSE
THOMAS BUNN III

WM. MATTHEW DITZHAZY
City Attorney
City of Palmdale

RICHARDS, WATSON & GERSHON
A Professional Corporation
JAMES L. MARKMAN
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

I, Whitney G. McDonald, hereby declare:

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

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

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

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

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

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

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

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

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

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

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

Executed this 8th day of September, 2009.



Whitney G. McDonald