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

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Judicial Council Coordination  
Proceeding No. 4408

**REPLY MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF PUBLIC WATER  
SUPPLIERS' PROPOSED ORDER  
FOR CONSOLIDATION**

Date: February 5, 2010  
Time: 9:00 a.m.  
Dept.: 1

(Hon. Jack Komar)

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

The Public Water Suppliers respectfully submit this Reply Memorandum of Points and Authorities in support of their Proposed Order Transferring and Consolidating Actions for All Purposes

**I. OVERVIEW**

At the status conference held in this matter on January 22, 2010, the Court ordered the Public Water Suppliers to submit a proposed order for consolidation. The Public Water Suppliers did so on January 25, 2010, and this memorandum is submitted in support of the proposed order.

All of the actions coordinated herein seek a declaration of rights to produce water from the Antelope Valley Groundwater Basin ("Basin"), which requires the *inter se* adjudication of the rights of all parties to these coordinated proceedings appropriately stated in a single judgment. As a result, it is irrelevant, for purposes of determining these correlative rights, that certain parties may have named only certain other parties in their operative pleadings. Accordingly, the Public Water Suppliers' proposed order consolidates all actions to enable the Court to enter a single judgment as to the parties' respective water rights.

The Public Water Suppliers' proposed order would also sever, for purposes of trial, certain causes of action that request damages, allowing parties who have asserted individual claims for damages to prove those damages as against the parties they have specifically named. These causes of action are proposed to proceed after trial on the determination of rights to water within the Basin because those causes of action necessarily rely upon this determination. The proposed order merely reflects this practical reality and in no way prejudices any parties' rights to present their claims.

Therefore, the Public Water Suppliers respectfully request that the Court enter its Proposed Order Transferring and Consolidating Actions for All Purposes.

**II. THE COURT IS AUTHORIZED TO CONSOLIDATE CASES, BUT NOT SPECIFIC CAUSES OF ACTION**

Code of Civil Procedure section 1048 provides that, “[w]hen *actions* involving a common question of law or fact are pending before the court, it may order all the *actions* consolidated. . .” C.C.P. §1048(a) (emphasis added). This section further states that the court “may order a separate trial of any *cause of action*. . . or of any separate *issue* or of any number of causes of action or issues.” C.C.P. 1048(b) (emphasis added). Thus, courts may order actions consolidated and causes of action or issues bifurcated for trial. The Public Water Suppliers’ proposed order does just this. It consolidates all of the actions included in these coordinated proceedings and then separates certain causes of action alleged in those actions for trial.

Consolidation of causes of action would not be compatible with the “one judgment rule.” As the California Supreme Court has stated: “There cannot be a separate judgment as to one count in a complaint containing several counts. On the contrary, there can be but one judgment in an action no matter how many counts the complaint contains.” *Bank of America Nat. Trust & Savings Ass’n v. Superior Court of Los Angeles County* (1942) 20 Cal.2d 697, 700.

**III. CONSOLIDATION OF ALL COORDINATED CASES IS APPROPRIATE IN THIS *INTER SE* ADJUDICATION OF RIGHTS TO PRODUCE GROUNDWATER FROM A COMMON SOURCE OF SUPPLY**

These coordinated proceedings require the *inter se* determination of rights to water within the groundwater basin. As the materials submitted by the Public Water Suppliers in support of their motion to consolidate demonstrate, each action here includes a request for such a determination, be that in a cause of action for quiet title or for declaratory relief

as to the priority of the complainants’ water rights. The Court should, therefore, consolidate these actions to enable it to enter a single judgment declaring all parties’ priority of rights to produce water from the Basin regardless of whether any one specific pleading asked for a declaration of the rights of any other specific party.

The California Supreme Court addressed a similar situation in the adjudication of the Raymond Basin Area in *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908. There, the Court established that a court may enter an order (such as a consolidation order) that water rights may be adjudicated *inter se* with the rights of each party established as against all other parties regardless of whether each party filed charging pleadings against all other parties. *Id.* at 919. In doing so, the Court stated:

“Appellant claims that the trial court improperly enlarged the scope of the proceedings. In response to a request of the referee for instructions, the court, after a hearing, ruled that the issues should ‘embrace an adjudication of rights of the defendants *inter se* and the rights of each and every party as against each and every other party.’ Although the answers of the respective defendants did not present claims against the other defendants and were not served on them, the action was tried on the theory that these matters were at issue, and the ensuing judgment limiting the amount of water that each could pump was also based on this theory. The trial court has authority, under section 24, to include, in the matters which are to be submitted to the referee and determined by the judgment, any issues necessary to a proper determination of the controversy. [Citation.] It was within the discretion of the trial court to determine whether it was necessary to adjudicate *inter se* the amount of water to which each party was entitled, and the record indicates that it would have been impracticable to decide the matter solely between plaintiff and each defendant. Moreover, appellant had ample time to prepare its case after notice of the scope of the proceedings, and there is

1 no basis for any claim that it was misled to its prejudice or that it was  
2 denied due process of law.”

3 *Id.*

4 All rights to produce water from the Basin impact the rights of all other parties  
5 who do so. The Court cannot enter a meaningful judgment establishing the rights of one  
6 party without establishing the right of all other parties. Consolidation of all of the actions  
7 already coordinated here is proper and necessary to the entry of a meaningful judgment  
8 herein.

9  
10 **IV. THE PROPOSED ORDER FOR CONSOLIDATION**

11 The Public Water Suppliers’ proposed order includes a list of all actions sought to  
12 be consolidated, representing all actions included in these coordinated proceedings. (*See*  
13 *Proposed Order*, ¶3.) The order excludes from this list the cross-complaint filed by  
14 Sheldon Blum because that pleading does not seek a determination of water rights.

15 Paragraphs 5, 6, and 7 outline the causes of action that are to proceed first, second,  
16 and third at trial based upon the nature of the cause of action. In total, these paragraphs  
17 depict all causes of action alleged in all complaints and cross-complaints filed in these  
18 coordinated cases based upon a review of the pleadings. Paragraphs 6 and 7 represent the  
19 causes of action that seek money damages or that do not relate to the determination of the  
20 parties’ water rights. The United States is excepted from paragraphs 6 and 7 because it  
21 has not waived immunity as to those causes of action by way of the McCarran  
22 Amendment and none of those causes of action are asserted against the United States.

23  
24 **V. RESPONSES TO COMMENTS ON AND OPPOSITION TO THE ENTRY OF**  
25 **THE PROPOSED ORDER**

26 Several parties have commented on or objected to the entry of the proposed  
27 consolidation order posted earlier. Following are responses to some of those comments  
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1 and objections, including some agreement which has caused the moving parties to revise  
2 the previously posted draft order and post a new draft this date. The comments and  
3 responses thereto follow.

4 a. Comments by the Sanitation Districts. The Sanitation Districts proposed  
5 the deletion of the word “correlative” from paragraph 5(b) of the proposed order and the  
6 modification of the first sentence of paragraph 5 to reflect the fact that the determinations  
7 listed in paragraph 5 include claims to more than the right to withdraw groundwater from  
8 the Basin. The moving parties concur in these suggestions and the revised proposed  
9 order includes those changes.

10 b. Comments by Phelan Pinon Hills Community Services District. This party  
11 suggested adding the issue of the export of water to the issues list included in paragraph  
12 5(b). The moving parties agree with that suggestion and the revised proposed order  
13 includes that addition. Phelan Pinon Hills Community Services District also seems to  
14 suggest that the proposed order include a provision allowing a party to request reopening  
15 the basin boundary determination for the purpose of “creating a No Man’s Land, into  
16 which no groundwater adjudication extends.” (Phelan Pinon Hills Response, p. 4). The  
17 moving parties disagree with that request in the present context because it does not  
18 concern the question of consolidation of the coordinated cases.

19 c. Comments by the City of Los Angeles. Los Angeles requests the  
20 modification of the fifth finding in the proposed order which gives the impression that the  
21 imposition of a physical solution is the only goal of the declaratory relief sought herein.  
22 The moving parties agree with Los Angeles’ suggestion and have provided amended  
23 language for finding 5 in the revised posted order making it clear that the parties seek  
24 declaratory relief to establish water production rights as well as the imposition of a  
25 physical solution.

26 d. Comments by the Nonpumpers’ Class. The nonpumpers’ class requests the  
27 addition of language stating that consolidation will not substantively impact parties’  
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1 rights. The moving parties do not agree with that suggestion. The moving parties submit  
2 that the proposed order will establish a structure for an *inter se* adjudication of all rights  
3 to produce water from the basin as authorized by legal precedent cited and discussed in  
4 Part III of these points and authorities. The order itself should not contain language  
5 which purports to determine whether that fact constitutes a substantive impact on parties'  
6 water rights.

7 e. Comments by Tejon Ranchcorp. Tejon objects to paragraph 5 insofar as  
8 that paragraph provides for the entry of an appealable judgment on any approved  
9 settlements, including the *Willis* and *Wood* class settlements. Tejon contends, without  
10 citation of authority, that this is inconsistent with complete consolidation. It is wrong.

11 In a complete consolidation, the actions are viewed as if there were a single  
12 complaint on joined causes of action. (4 Witkin, Cal. Proc. (5th ed. 2008) Pleadings §346  
13 at p. 475.) Generally, this results in a single judgment. (*Id.*; see *Page v. Bakersfield*  
14 *Uniform etc. Co.* (1966) 239 Cal.App.2d 762, 772-73.) However, when a settlement  
15 resolves all issues among the settling parties, it is appropriate to enter a judgment as to  
16 those parties, even though the action remains pending as to other parties. (See CCP §§  
17 578, 579; *Oakland Raiders v. National Football League* (2001) 93 Cal.App.4th 572,  
18 577-78; *Estate of Gonzalez* (1990) 219 Cal.App.3d 1598, 1601-02.) This principle is  
19 recognized as an exception to the one final judgment rule. (*BGJ Associates v. Wilson*  
20 (2003) 113 Cal.App.4th 1217, 1225 n. 2.)

21 The foregoing principle is equally applicable, whether there was originally only  
22 one action among multiple parties, or whether the actions have become one through  
23 complete consolidation. This is especially true given the broad powers of the court to  
24 control coordinated cases. (Rule of Court 3.541.) Here, the proposed order contemplates  
25 a final, appealable judgment on each class settlement, with the classes and their members  
26 to remain parties to the remainder of the action for their water rights to be determined  
27 *inter se* with all parties, including other overlying producers. These judgments will  
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1 eventually be incorporated and merged into a single final judgment in the consolidated  
2 cases. This procedure is fully appropriate under the authorities cited above.

3 Tejon also objects to the inclusion of paragraphs 5 through 8 of the proposed order  
4 as being beyond the scope of the Court's stated intention. The moving parties do not  
5 agree. The purpose of paragraphs 5 through 8 is to delineate which legal principles and  
6 theories should be grouped to be tried to generate one declaration of the parties' water  
7 rights *inter se* and the placement of a physical solution and which should be severed  
8 because they constitute claims for monetary damages. This delineation responds to the  
9 Court's instruction to do so and is necessary because only whole cases may be  
10 consolidated and many of the coordinated cases contain both declaratory relief and  
11 damages causes of action.

12 f. Comments by AGWA, U.S. Borax, Inc., Bolthouse Properties, LLC,  
13 Diamond Farming Company, AV Mutual Group, and others. This group of parties  
14 offered several objections which are delineated and responded to as follows:

15 1. The group claims that they cannot consider consolidation without  
16 first being aware of the terms of the class settlements. The moving parties simply do not  
17 understand this claim since no explanation for it is provided.

18 2. The group seeks a modification to the order which precludes them  
19 from being exposed to a claim of attorneys' fees from class counsel. The moving parties  
20 disagree with this proposal. As stated many times in this process, it is clear that a  
21 comprehensive groundwater adjudication requires an *inter se* adjudication of all rights to  
22 produce water regardless of the posture of the pleadings. Accordingly, if sometime in the  
23 future an adversary relationship exists between this group of parties and the classes, it is  
24 not inconceivable that the classes could seek to recover fees from the group. The group  
25 cannot obtain from the Court "the insurance policy" it seeks.

26 3. The group points out an inconsistency in the order because the first  
27 paragraph purports to consolidate all the cases, but the Blum case is later severed. The  
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1 moving parties concur in this observation and an amendment to the language in the first  
2 paragraph dealing with that issue is included in the revised proposed order posted this  
3 date.

4           4.       The group claims that the subject matter of the order is beyond the  
5 scope of the Court's stated intent. As stated above in response to Tejon's comment, the  
6 order both consolidates cases and then groups water rights causes of action together and  
7 severs damages causes of action because cases are subject to consolidation while cause of  
8 action are not. The moving parties have responded to the Court's stated intent in the  
9 manner available under the law.

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1 VI. CONCLUSION

2 For these reasons and for those presented in the moving papers, the Public Water  
3 Suppliers' request that the Court enter the revised Proposed Order Transferring and  
4 Consolidating Actions For All Purposes posted this date.

5  
6 Dated: February 3, 2010

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**PROOF OF SERVICE**

I, Maurine Lopes, declare:

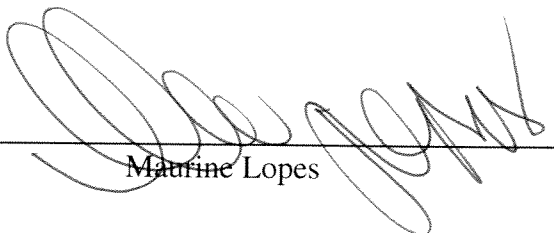
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On February 3, 2010, I served the within documents:

**REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PUBLIC WATER SUPPLIERS' PROPOSED ORDER FOR CONSOLIDATION**

- ☐ 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 February 3, 2010.

  
\_\_\_\_\_  
Maurine Lopes