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14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT  
17

18 **ANTELOPE VALLEY  
GROUNDWATER CASES**

19 **Included Actions:**

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

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

25 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster, Diamond Farming Co. v. City of  
26 Lancaster, Diamond Farming Co. v.  
Palmdale Water Dist., Superior Court of  
27 California, County of Riverside, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668  
28

Judicial Council Coordination No. 4408

CLASS ACTION

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

**RESPONSE TO VAN DAM PARTIES AND  
ANTELOPE VALLEY WATER STORAGE  
LLC NOTICE AND OBJECTION TO  
FAILURE TO JOIN INDISPENSABLE  
PARTY**

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RESPONSE

As acknowledged by previous rulings from the Court, this action is a comprehensive adjudication of water rights. It satisfies McCarran Amendment requirements and is consistent with California law. Over the last several years the Court has obtained jurisdiction over more than 70,000 parties in an approximately 1,000 square mile area. In yet another attempt by a large landowner party to delay the Court’s safe yield determination, only now do the Van Dam parties (collectively, “Van Dam”) in their self-labeled “objection” claim that three overlying owners have not yet been served and these coordinated actions cannot proceed without these 3 parties.

Even if these parties were not included in the adjudication proceedings, the coordinated cases would continue to be comprehensive within the meaning of the McCarran Amendment and under California law. Regardless, the Public Water Suppliers will serve the additional three property owners in order to avoid yet another attempt to delay this proceeding.

I. Van Dam Lacks Standing To Object Pursuant to the McCarran Amendment

The Van Dam assertion that “indispensable parties” have not been joined and that this is not a comprehensive adjudication shows their effort to delay the proceedings based on the Van Dam misunderstanding of the McCarran Amendment. It resolves “ a general problem arising out of the limitations that federal sovereign immunity placed on the ability of the States to adjudication water rights.” *Arizona v. San Carlos Apache Tribe of Arizona* (1983) 463 U.S. 545, 545. The McCarran Amendment waives federal sovereign immunity in cases comprehensively adjudicating water rights to rivers or other source of water. *Orff v. United States* (9th Cir. 2004) 358 F. 3d 1137, 1142. By waiving federal sovereign immunity for comprehensive adjudications only, the McCarran Amendment protects the federal government from “piecemeal adjudication” of water rights. As the intent of the McCarran Amendment is to protect the federal government only the federal government has standing to object to an adjudication under the McCarran Amendment.

Over the course of several years, this Court has considered and addressed the United States’ position regarding the McCarran Amendment. To have the comprehensiveness issue come before the Court, the United States filed a motion to dismiss in August 2006. In the motion, the United

1 States took the position that the Court lacked subject matter jurisdiction under the McCarran  
2 Amendment due to a lack of comprehensiveness because not all potential claimants are parties.  
3 (United States' Motion for Judgment on the Pleadings an Memorandum in Support, August 18,  
4 2006.) After many months of extensive briefing and argument, this Court denied the motion.  
5 (Order After Hearing, September 22, 2006.)

6 Even if Van Dam had standing to object and this issue had not already been resolved by the  
7 Court, the "objection" would still fail. As previously established, the McCarran Amendment does  
8 not require that all users of water in a groundwater basin be included in the adjudication to be  
9 comprehensive adjudication . Both state and federal courts have rejected this argument. (*See In*  
10 *re the General Adjudication of All Rights to Use Water in the Gila River System and Source* (Ariz.  
11 1993) 175 Ariz. 382, 394 ["A properly crafted de minimus exclusion will not cause piecemeal  
12 adjudication of water rights or in any other way run afoul of the McCarran Amendment."])

13 In the case of *In re the General Adjudication of All Rights to Use Water in the Gila River*  
14 *System and Source*, the Arizona Supreme Court found the McCarran Amendment does not require  
15 that each and every claimant be a party. The court held that the McCarran Amendment allows a  
16 court to exclude well owners pumping minimal amounts of groundwater: "It is sensible to  
17 interpret the McCarran Amendment as permitting the trial court to adopt reasonable simplifying  
18 assumptions to allow us to finish these proceedings within the lifetime of some of those presently  
19 working on the case." (*Id.* at 394.)

20 Instead of requiring every actual or potential water right claimant to be joined, courts have  
21 taken a reasonable and practical approach by examining the overall proceedings to determine a  
22 genuine effort to comprehensively adjudicate the parties' rights or merely a bilateral action by  
23 certain claimants against the United States. (*See generally Dugan v. Rank* (1963) 372 U.S. 609;  
24 *United States v. District In And For County Of Eagle, Colorado* (1981) 401 U.S. 520.) In these  
25 proceedings with more than two thousand named parties and more than 70,000 class members,  
26 there can be no legitimate claim the Antelope Valley Groundwater Adjudication is anything but a  
27 comprehensive adjudication of water rights.

28

1           II. The Adjudication Is Consistent With California Law

2           The Antelope Valley Groundwater Adjudication is consistent with California law governing  
3 comprehensive adjudications. Although there is no judicial or administrative framework for  
4 comprehensively resolving groundwater claims, California does have a statutory scheme for  
5 comprehensive river and stream adjudications. ( See Water Code Section 2500.) Significantly,  
6 this statutory scheme provides a minimus exclusion for parties using relatively small quantities of  
7 water, less than 10 acre feet annually. (Water Code Section 2503.) Thus, California’s statutory  
8 framework for river and stream adjudications contemplates an adjudication without every water  
9 potential water right claimant.

10           Additionally, the California Supreme Court has found that not all users of water are  
11 necessary for a comprehensive adjudication. In *City of Pasadena v. City of Alhambra* (1949) 33  
12 Cal.3d 908, the California Supreme Court upheld a stipulated judgment in a groundwater  
13 adjudication even though some users were not parties to the proceeding. The Supreme Court  
14 found that the need for a comprehensive adjudication must yield to practical considerations:

15                     The line must be drawn somewhere in order to bring the proceeding  
16                     within practical bounds, and it would have been impossible to reach  
17                     a solution of the problems involved and to render a valid judgment  
18                     if jurisdiction to make an allocation depended on the joinder of  
19                     every person having some actual or potential right to the water in  
20                     the basin and its sources of supply. *Id.* at 920.

21           Already, the Public Water Suppliers have personally served thousands of individuals and  
22 through the class action mechanism have mailed notices to over 70,000 individuals. No statutory  
23 or case law imposes the unreasonable requirement to continuously track each and every change in  
24 property ownership interests. Finally, the Public Water Suppliers have published legal notices of  
25 the adjudication proceedings in several newspapers which, as the Court has commented, provides  
26 notice to the general public of the adjudication proceedings.

27           III. The Court Adopted A Methodology For Property Transfers

28           The Court has already had briefing, heard argument and adopted a method for dealing with  
property transfers within the adjudication area. Prior to a May 21, 2007 Case Management

1 conference, the Court asked Tejon Ranchcorp legal counsel to brief the question of how to obtain  
2 jurisdiction over transferees. This issue was then discussed further at subsequent case  
3 management conferences. Eventually, during the December 18, 2007, hearing the Court directed  
4 legal counsel for Tejon Ranchcorp to prepare a Proposed Order.

5 Tejon Ranchcorp submitted a Proposed Order on January 8, 2008, a copy is attached hereto  
6 as Exhibit A. A signed copy of this Order, however, is not posted on the Court's website. For  
7 that reason, the Public Water Suppliers' respectfully request the Court to sign or post a signed  
8 copy of the Proposed Order, attached as Exhibit "A."

9 Dated: May 3, 2010

BEST BEST & KRIEGER LLP

By 

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# EXHIBIT “A”

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8 Attorneys for Defendant and Cross-Complainant Tejon Ranchcorp

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY ) Judicial Council Coordination Proceeding No.  
12 GROUNDWATER CASES ) 4408  
13 Included Actions: )  
14 Los Angeles County Waterworks District No. 40 ) Santa Clara Case No. 1-05-CV-049053  
15 v. Diamond Farming Co. ) Assigned to The Honorable Jack Komar  
16 Superior Court of California )  
17 County of Los Angeles, Case No. BC 325 201 ) **[PROPOSED]**  
18 Los Angeles County Waterworks District No. 40 ) **ORDER RE JURISDICTION OVER**  
19 v. Diamond Farming Co. ) **TRANSFEREES OF PROPERTY**  
20 Superior Court of California, County of Kern, ) Hearing Date: January 14, 2008  
21 Case No. S-1500-CV-254-348 ) Time: 9:00 a.m.  
22 ) Department: 1  
23 Wm. Bolthouse Farms, Inc. v. City of Lancaster )  
24 Diamond Farming Co. v. City of Lancaster )  
25 Diamond Farming Co. v. Palmdale Water Dist. )  
26 Superior Court of California, County of Riverside, )  
27 consolidated actions, Case Nos. )  
28 RIC 353 840, RIC 344 436, RIC 344 668 )

29 Prior to the May 21, 2007 Case Management Conference, the Court asked Tejon  
30 Ranchcorp counsel to brief the question of how best to obtain jurisdiction over transferees of Antelope  
31 Valley land, so that the Court's final judgment will be binding upon them. In a brief dated May 11,  
32 2007, Tejon Ranchcorp discussed these issues, including the inadvisability of relying on a *lis pendens*.  
33 Instead, it recommended, in summary, that the Court order that the transferors of property post notice of  
34 their transfers on the Court website and notify their transferees of this litigation. These issues were  
35 discussed further in subsequent case management conferences. At the Case Management Conference on

1 December 18, 2007, there was further discussion of these issues, and the Court requested that counsel  
2 for Tejon Ranchcorp prepare and circulate this Proposed Order prior to the hearing on January 14, 2008,  
3 which Tejon Ranchcorp counsel has done.

4 NOW, THEREFORE, THE COURT ORDERS AS FOLLOWS:

5 1. This Order applies to all parties to this adjudication, including individual parties  
6 and class members, that own real property or an interest in real property within the jurisdictional  
7 boundaries of this adjudication, as previously or hereafter defined by the Court.

8 2. This Order shall be effective from the date hereof and continue after entry of  
9 judgment, until such time as it is modified or terminated by this Court.

10 3. Any party (hereinafter "transferor") that sells, assigns, gives, exchanges, or  
11 otherwise transfers (hereinafter "transfers") an interest, in whole or in part, in any real property within  
12 the jurisdictional boundaries of the Antelope Valley Groundwater Adjudication shall, within 20 days  
13 after the transfer, post notice of the transfer on the Court website. This notice shall include: the name,  
14 address, and phone number of the buyer, transferee, recipient, or assignee (hereinafter "transferee"); the  
15 Assessor Parcel Number and the address or legal description of the property transferred; and  
16 identification of all applicable County Deed Numbers or Deed Reference Numbers. If the transferor is  
17 required to provide a Real Estate Transfer Disclosure Statement by Civil Code § 1102, et seq., the  
18 transferor shall provide the above information with that Statement.

19 4. At least 10 days before completion of any such transfer, the transferor shall  
20 provide to the transferee the following information regarding this adjudication: the title of this case; the  
21 case number; the location of the court; a copy of this Order; a copy of the current Cross-Complaint of  
22 the "Public Water Suppliers"; a copy of the current answer and/or cross-complaint filed by the  
23 transferor; and a copy of any Settlement Agreement and/or Judgment in this adjudication that applies to  
24 the transferred real property.

25 5. The notice of transfer required to be posted by paragraph 3 above shall include a  
26 representation to the Court by the transferor that it provided the information required in paragraph 4  
27 above.

28 6. Counsel for all parties shall advise their clients, both individuals and class





1 **PROOF OF SERVICE**

2  
3 The undersigned declares:

4 I am employed in the County of , State of California. I am over the age of 18 and am not a party  
5 to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 S.  
6 Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

7 On January 4, 2008, I served the foregoing **[PROPOSED] ORDER RE JURISDICTION**  
8 **OVER TRANSFEREES OF PROPERTY** on all interested parties:

9 (X) (By U.S. Mail) On the same date, at my said place of business, said correspondence was sealed  
10 and placed for collection and mailing following the usual business practice of my said employer.  
11 I am readily familiar with my said employer's business practice for collection and processing of  
12 correspondence for mailing with the United States Postal Service, and, pursuant to that practice,  
13 the correspondence would be deposited with the United States Postal Service, with postage  
14 thereon fully prepaid, on the same date at Los Angeles, California, addressed to:

15  
16 Honorable Jack Komar  
17 Judge of the Superior Court of California  
18 County of Santa Clara  
19 191 North First Street, Department 17C  
20 San Jose, CA 95113

21 (X) (By E-Filing) I posted the document(s) listed above to the Santa Clara County Superior Court  
22 website in regard to the Antelope Valley Groundwater matter in compliance with the Court's  
23 electronic posting instructions and the Court's Clarification Order dated October 27, 2005.

24 ( ) (By Federal Express) I served a true and correct copy by Federal Express or other overnight  
25 delivery service, for delivery on the next business day. Each copy was enclosed in an envelope  
26 or package designated by the express service carrier; deposited in a facility regularly maintained  
27 by the express service carrier or delivered to a courier or driver authorized to receive documents  
28 on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying  
service list.

Executed on January 4, 2008 at Los Angeles, California.

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

( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

\_\_\_\_\_  
Mitchi Shibata

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

**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 May 3, 2010, I served the within document(s):

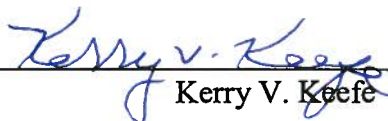
**RESPONSE TO VAN DAM PARTIES AND ANTELOPE VALLEY WATER STORAGE LLC NOTICE AND OBJECTION TO FAILURE TO JOIN INDISPENSABLE PARTY**

- 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 May 3, 2010, at Irvine, California.

  
Kerry V. Keefe