

# EXHIBIT 3

**EXHIBIT A**

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## ***The Antelope Valley Accord***

### **A Statement of Agreed Principles for Settlement of the Antelope Valley Groundwater Adjudication**

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#### **Introduction**

This *Antelope Valley Accord -- A Statement of Agreed Principles for Settlement* represents a comprehensive set of agreements establishing a physical solution for Antelope Valley groundwater management and providing a basis for final resolution of pending litigation over the amount and allocation of groundwater pumping rights in the Antelope Valley Area of Adjudication.

Litigation over groundwater rights has clouded the use of groundwater in the Antelope Valley for more than ten years. Known as the Antelope Valley Groundwater Cases (JCCP 4408, Superior Court of California, Santa Clara County), an initial dispute in 1999 between some urban and agricultural interests grew through filing of related lawsuits into a general adjudication of all groundwater rights in the basin. In addition to the original municipal and industrial purveyors (*i.e.*, urban and industrial water systems operated by cities and local water and community service districts – generally referred to as “purveyors” or “appropriators”) and active agricultural pumpers, the cases also involve local water recycling districts, Edwards Air Force Base (“EAFB”), the City of Los Angeles, an industrial user, and State Water Contractors. Two court-certified classes of groundwater rights holders are also litigants – a class including small landowners who pump relatively small amounts of groundwater, and a class including landowners who are not currently pumping but currently possess rights to do so. Under California law, landowners whose land holdings overlie an aquifer suitable for pumping groundwater but who are not yet pumping hold inchoate, equal rights with other landowners to pump available groundwater and put it to reasonable beneficial use on their land (“overlyers’ rights”).

In the *Antelope Valley Accord*, landowners who are pumping groundwater are generally referred to as “overlyers.” Landowners who have not yet pumped groundwater are generally referred to as “dormant overlyers” or “dormant landowners,” and by court order belong to the certified class known as the “Willis Class” unless they have separate representation before the Court.

In the first two phases of trial, the Court defined the geographic area of the basin being adjudicated (the Antelope Valley Adjudication Area; the “AVAA”), and determined that the

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AVAA contains no discrete sub-basins (*i.e.*, the basin is a single hydrogeologic unit) for the purposes of defining the groundwater adjudication area. Phase III of the trial, currently scheduled for September, 2010, would determine the Total Sustainable Yield<sup>1</sup> of the AVAA; *i.e.*, whether recharge and pumping are in balance or whether the aquifer is in a state of overdraft requiring a reduction in pumping.

Most of the litigants want to settle the litigation, and began mediation in earnest this spring to reach a comprehensive settlement and avoid litigating Phase III of the trial, and other subsequent litigation to resolve further issues in the adjudication. The parties to the *Antelope Valley Accord* have engaged in serious negotiations as a group, meeting in two-day sessions every other week starting in March, 2010. Virtually all major landowners have participated, including the two certified landowner classes and most of the mutual water companies, along with a representative of EAFB (which is not a signatory of the *Antelope Valley Accord*, however), the Cities of Lancaster and Palmdale, Los Angeles County Sanitation District Nos. 14 and 20, Tejon Ranch, Rio Tinto/U.S. Borax, and most of the water purveyors participating in the litigation: Palmdale Water District, Phelan-Piñon Hills Community Services District, Quartz Hill Water District, and Rosamond Community Services District, as well as the Antelope Valley-East Kern Water Agency.

Jim Waldo, a mediator experienced in complex negotiations and resolving water conflicts, led the mediation team and effort. Mr. Waldo has successfully mediated a number of complex, multi-party water rights disputes in California, including the milestone *Monterey Agreement* among State Water Contractors. The negotiation sessions have consumed more than 70 hours since March, 2010, in addition to several hundred hours in breakout sessions, work team assignments, and preparation for negotiation sessions.

A technical analysis effort was the primary assignment of Bill West, one of the mediation team members. Bill's 25-year background as a natural resources scientist prior to becoming a lawyer was valuable in developing a quality product. Five technical papers intended to inform the group's decisions were prepared by a working group composed of mediation principals. These reports and associated documents are being reviewed by two independent experts in hydrogeology.

The *Antelope Valley Accord* settles all claims to native groundwater by and between the settling parties. It also serves as a basis for fair settlement of claims with non-participating parties, thereby providing a basis for a comprehensive settlement as required by the McCarran Amendment, 43 U.S.C. § 666, a statute allowing the United States to be joined as a defendant in certain suits concerning the adjudication of water rights.

The *Antelope Valley Accord* represents a comprehensive physical solution to the AVAA's groundwater management challenges. It includes an agreed initial Total Sustainable Yield based on sound science, agreed reductions in current groundwater pumping in the AVAA, and agreed application of available groundwater management tools in designated management areas to reach

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<sup>1</sup> Total Sustainable Yield = native recharge plus return flows from both native and imported water.

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and sustain the Total Sustainable Yield target. The pumping reductions, applied groundwater management tools, and resulting groundwater levels will be studied and monitored over an initial 10-year period, at the end of which the Total Sustainable Yield target will be re-evaluated and additional pumping adjustments and application of new or other combinations of water management tools will be pursued as advisable. The plan includes “Special Emphasis Areas” in which more acute groundwater management concerns have been raised, and in which the plan authorizes flexible, proactive management to address those concerns.

The pumping adjustments and water management tools set forth in the *Antelope Valley Accord* will improve groundwater conditions in the basin, while offering water users real opportunities to secure adequate water supplies for urban needs and economic development, and irrigated agriculture. The *Antelope Valley Accord* will benefit the environment and all water users, and will provide a sound basis for moving forward toward sustainable groundwater management in the AVAA.

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**Statement of Agreed Principles for Settlement**

- I. **Settlement Goals** – The agreed-upon goals provide a foundation for the comprehensive settlement. They include:
- A. determination of the initial Total Sustainable Yield of groundwater in the AVAA based on sound science and informed by the history of groundwater use and levels, where Total Sustainable Yield represents the native recharge plus return flows from both native and imported water; Total Sustainable Yield as initially agreed and as modified after the 10-year monitoring period will prevent long-term substantial negative impacts to the basin’s groundwater resource and avoid jeopardy to the basin’s aquifer;
  - B. allocation of Total Sustainable Yield among current and future groundwater users in the AVAA;
  - C. establishment of a system for managing groundwater resources in the AVAA that will include the structure, responsibilities, funding, and authority of a Watermaster to administer the groundwater management system according to the Settlement Agreement and Court decrees;
  - D. achievement of certainty and stability in groundwater management necessary for the water users to act now to enhance the Basin’s water supplies for the future;
  - E. creation of transition mechanisms by which the participants can move from present practices in an orderly, predictable, and manageable fashion towards a long-term sustainable water management system for the Basin while minimizing negative socioeconomic impacts to the Antelope Valley community in the interim; and

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**C. Objectives**

1. identify practicable recovery activities and tools for each SEA;
2. determine benchmarks for each activity that will reliably measure progress toward recovery;
3. determine which recovery activities should be included in the action plan document, and which should be managed by local entities outside of the settlement; and
4. establish agreements that apply the best tools to perform the recovery activities and achieve the recovery goals.

**D. Potential tools:**

1. collect groundwater improvement fees from water users;
2. reduce pumping in the SEAs;
3. water transfers;
4. design and construct additional water conveyance infrastructure;
5. develop the City of Palmdale's Amargosa Creek Recharge Project;
6. pumping forbearance payments to farmers in the SEAs;
7. recycled water exchange for potable groundwater;
8. acquire additional imported surface water as available, and within conveyance and treatment limitations, use imported surface water to reduce groundwater pumping in the SEAs;
9. use only recycled water for farming east of Plant 42;
10. establish additional recycled water recharge areas and blending facilities;
11. encourage urban and on-farm conservation and efficiency measures in order to reduce pumping in the SEAs or shift the location of pumping;
12. use pumped water in SEAs as much as practicable to meet needs at times of peak demand;
13. utilize water storage and banking; and
14. use Tejon Ranch "surplus" water during the initial 10-year period per the provisions of Section VIII.

**X. Watermaster**

A. The Watermaster will manage native groundwater in the AVAA.

B. Creation of Watermaster - The Watermaster will be established through a combination of court action and state legislation.

1. The Court would approve the Settlement Agreement subject to adoption of state legislation, creating a California Water District, and the Court would then approve the legislatively created body as the Watermaster and retain jurisdiction to oversee water rights and associated issues outside the authority of the Watermaster;
2. The legislation would provide the authorization for establishing, funding and implementing the Settlement Agreement by establishing and authorizing funding for the Watermaster through the imposition and collection of fees assessed against all tax parcels in the AVAA, as provided below; and

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3. The Court would implement the Watermaster and the Groundwater Management System based on the combined authority of the state legislation and the Court's continuing jurisdiction.
- C. Watermaster Rules and Regulations - The Watermaster will create rules and regulations that can be periodically updated. Samples of rules and regulations from other watermaster districts in the state will be reviewed for guidance.
- D. Governance by Board - The Watermaster will be governed by a voluntary (non-paid) seven member Board, each with a designated alternate, made up of representatives of the following interest groups:<sup>6</sup>
  1. Agricultural overlyers;
  2. Appropriators;
  3. The City of Lancaster;
  4. The City of Palmdale;
  5. Mutual water companies;
  6. Rosamond Community Services District; and
  7. Small pumpers.

The intent is to have a balanced Board, represented by the diverse interests in the Antelope Valley, and specifically including Board representation from each management area and SEA in order to best achieve Basin-wide solutions.

If additional seats are necessary in order to effectuate the intent of this *Antelope Valley Accord*, such seats will be created.

If certain entities, such as EAFB, do not participate in a voting or representative capacity under applicable law, or such as State Water Project Contractors who do not have a direct groundwater connection (e.g., AVEK) but who will play a critical role in a physical solution, the Board may add additional ex-officio, non-voting Board representatives.

Terms will be three years (or as otherwise decided), and staggered for continuity of changing Board representatives.

Voting will be equal by representative (that is seven votes). Specified "major" decisions will be by super majority vote of the Board (that is, 5/2 vote); routine decisions will be by majority vote of the Board (that is, 4/3). Samples of Board bylaws from other watermaster districts in the state will be reviewed for guidance.

- E. Initial priorities to accomplish native groundwater management goals:
  1. implement the 10-year verification and monitoring program;

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<sup>6</sup> Discussions will be held with the United States concerning its participation in the Watermaster Board. AVEK has also raised a question about its participation on the Board.