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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

**ANTELOPE VALLEY
GROUNDWATER CASES**

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

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

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

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40, et al.

Judicial Council Coordination Proceeding
No. 4408

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

**CASE MANAGEMENT CONFERENCE
STATEMENT OF A.V. UNITED MUTUAL
GROUP**

DATE: May 22, 2008
TIME: 9:00 a.m.
DEPT: 1

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1 I.

2 **INTRODUCTION**

3 These Mutual Water Companies, collectively referred to as the “A. V. United Mutual
4 Group”, respectfully present their recommendations as to the phasing of the trial of these
5 coordinated actions. These recommendations are made in an attempt to expedite the trial of these
6 actions by trying each phase described herein in the sequence set forth. Each phase should, for
7 the most part, build on the tentative decisions that the Court makes with respect to prior phases.
8 Several of the phases, especially the earlier ones, should involve little controversy. Empirical
9 data, already existing in published works of state and federal agencies, should be of valuable
10 assistance to the court and to the parties. For example, reports by appropriators located in Los
11 Angeles County, made for the purpose of complying with Water Code sections 4999 *et seq.* can
12 be relied on, at least in part, to determine the pumping history of each appropriator.
13

14 Further, to minimize delays that might occur between phases, all restrictions on discovery
15 should be lifted at this time.
16

17 II.

18 **EXTERNAL BOUNDARY OF THE ANTELOPE VALLEY GROUNDWATER BASIS**

19 The external boundary was tentatively adjudicated in Phase 1.
20

21 III.

22 **CLASS ACTION CERTIFICATION**

23 The trial of any issues pertaining to class action certification can proceed on a parallel
24 timeline with the other phases mentioned herein.

25 IV.

26 **SUB-BASINS OR SUB-AREAS**

27 In a groundwater basin that encompasses approximately one thousand square miles, the
28

1 chances that it is a homogeneous “soup bowl”, either hydrological or stratigraphical, are
2 practically nil. The issue is whether there exists parts of the basin which are separated from the
3 other parts in ways that either prevent or significantly impede the flow of groundwater between
4 them. For example: Even if the basin, as a whole, is in overdraft, if an appropriator and an
5 overlying landowner are both pumping from a sub-basin that is not in overdraft, then, by
6 definition, that appropriator cannot have acquired prescriptive rights against that landowner.
7

8 For this reason the issue of sub-basins or sub-areas cannot be ignored. As with the case
9 of appropriator pumping, state and federal reports, while possibly not determinative, should at
10 least provide a starting point.

11 V.

12 REASONABLE AND BENEFICIAL USES

13 In California no one can acquire a property right in a use of groundwater which is either
14 not beneficial or unreasonable. All waters in excess of the reasonable and beneficial needs of
15 lawful users, including riparians and overlying landowners, are considered unappropriated waters
16 and are available for appropriation for beneficial use. *Stevinson Water Dist. v. Roduner* (1950)
17 36 Cal.2d 264, 269-270. The priority order of some beneficial uses is found in Cal. Code Regs.
18 Title 23, sections 659 *et. seq.* 1) domestic use; 2) irrigation; 3) power; 4) frost protection; 5)
19 municipal etc. However, some of these beneficial uses may, under the facts of a given case, be
20 unreasonable. For example, in *People ex el. State Water Resources Control Board v. Forni*
21 (1976) 54 Cal. App.3d 743, it was determined that using all of the flow of the Napa River for
22 frost protection during certain times of the year was unreasonable.
23
24

25 Whether or not there exist unreasonable or non-beneficial uses of groundwater in the
26 Antelope Valley Groundwater Basin, either by overlying landowners or appropriators, must be
27 determined in some phase of this litigation. Because non-beneficial and unreasonable uses of
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1 water are excluded from a party's water right, doing so in this phase appears appropriate.

2 The Court could direct the parties to proceed as follows:

- 3 A. Any party that contends that any other party's use of water is not beneficial and/or is
4 unreasonable shall identify such other party and specifically state why it is contended that
5 such use is not beneficial and/or unreasonable.
6
- 7 B. The Court shall first determine whether, as a matter of law, the identified use is beneficial
8 and reasonable within the Antelope Valley Groundwater Basin.
- 9 C. If the Court does not rule the use beneficial and reasonable, then the contesting parties
10 shall present their evidence on the issues, and the party whose use is challenged shall bear
11 the burden of proof.
12

13 VI.

14 THE PUMPING HISTORY OF PUBLIC AND PRIVATE APPROPRIATORS

15 The next phase of this case should focus on the pumping history of each appropriator.

16 Each appropriator's water right is determined by the principal "first in time, first in
17 right". *Irwin v. Phillips* (1855) 5 Cal.140, 148; *People v. Shirokow* (1980) 26 Cal.3d 301, 307-
18 308. Thus, when the amount of water available is insufficient to meet the needs of all
19 appropriators, junior appropriators can be prevented from exercising their rights until the water
20 rights of senior appropriators are satisfied.

21 Determination of priorities among basin appropriators cannot be ignored. See *Tulare Irr.*
22 *Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 549-550. Whether any given
23 appropriator has acquired prescriptive rights against any given overlying landowner is directly
24 dependent on that appropriator's position on the priority ladder. In a groundwater basin wherein
25 increased pumping is occurring with the passage of time, such that an overdraft might ultimately
26 come into existence, if all other things are equal it will be the junior appropriator that first
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28

1 acquires prescriptive rights against overlying landowners. Consequently, the water rights claim
2 of each appropriator is adverse to all other appropriators.¹

3
4 **VII.**

5 **REMAINING PHASES**

6 Several remaining issues, including existence of overdraft, if any; identity of prescripting
7 entities, if any; as well as the identity of their respective victims, can probably be litigated
8 together. However, it must be kept in mind that for prescriptive rights to be acquired, they must
9 be proven on a parcel by parcel basis and by clear and convincing evidence.

10 In the event any given appropriator tentatively proves that it has acquired prescriptive
11 rights as against any overlying landowner, then each such landowner must be allowed the
12 opportunity to introduce evidence of its "self help".

13
14 Respectfully submitted,

15 Dated: May 20, 2008

COVINGTON & CROWE, LLP

16
17 By: 
18 ROBERT E. DOUGHERTY

WILLIAM A. HAUCK

19 Attorneys for Cross-Defendants and Cross-
20 Complainants A.V. United Mutual Group

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26 ¹ In this case it is incumbent upon the trial court, on its own motion, to examine whether a conflict of interest exists
27 for those attorneys, and their law firms, who are representing more than one appropriator in these coordinated
28 actions. See *Flatt v. Superior Court (Daniel)* (1994) 9 Cal.4th 275, 282-286; *People ex rel. Department of*
Corporations v. Speedee Oil Change Systems, Inc. (1999) 20 Cal.4th 1135, 1144-1147; *City and County of San*
Francisco v. Cobra Solutions, Inc. (2006) 38 Cal.4th 839, 846.

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

4 I am employed in the County of San Bernardino, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is Covington & Crowe,
6 LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

7 On **May 20, 2008**, I served the foregoing document described as
8 **CASE MANAGEMENT CONFERENCE STATEMENT OF A.V. UNITED MUTUAL**
9 **GROUP** on the interested parties in this action:

10 by posting the document listed above to the Santa Clara County Superior Court e-
11 filing website under the Antelope Valley Groundwater matter pursuant to the
12 Court's Order dated October 27, 2005.

13 by placing the original a true copy thereof enclosed in a sealed envelope
14 addressed as follows:

15 **BY MAIL**

16 * I deposited such envelope in the mail at Ontario, California. The envelope
17 was mailed with postage thereon fully prepaid.

18 As follows: I am "readily familiar" with the firm's practice of collection and
19 processing correspondence for mailing. Under that practice it would be deposited with
20 U.S. Postal Service on that same day with postage thereon fully prepaid at Ontario,
21 California, in the ordinary course of business. I am aware that on motion of the party
22 served, service is presumed invalid if postal cancellation date or postage meter date is
23 more than one day after date of deposit for mailing in affidavit.

24 **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of
25 the addressee.

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

28 Executed on **May 20, 2008**, at Ontario, California.

23
24 
25 DOLORES C. CRUZ