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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES:**

13 Included Actions:

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC325201

16 Los Angeles County Waterworks District No.
17 40 v. Diamond Farming Co.
Superior Court of California
18 County of Kern, Case No. S-1500-CV-254-
348

19 Wm. Bolthouse Farms, Inc. v. City of
Lancaster
20 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
21 Superior Court of California
County of Riverside, consolidated actions
22 Case Nos. RIC 353840, RIC 344436,
RIC 344668

Judicial Council Coordination
Proceeding No. 4408

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

**ANAVERDE LLC'S PHASE II TRIAL
BRIEF**

Phase 2 Trial: October 6, 2008
Time: 9 a.m.
Location: LASC, Dept. 1

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Statutory Authority

Cal. Evid. Code § 5003

1 **I. INTRODUCTION.**

2 Cross-defendant, Anaverde LLC (“Anaverde”) owns approximately 2,000 undeveloped
3 acres of property located five miles southwest of Palmdale, California. Due to its unique location
4 south of the San Andreas Fault, Anaverde’s property overlies a restricted aquifer, defined as the
5 Anaverde Creek Watershed or Anaverde Basin, which is distinct and separate from the larger
6 Antelope Valley Adjudication Basin (the “Basin”). Expert witness testimony taken over the past
7 two weeks revealed that insufficient evidence existed to include the Anaverde Creek Watershed in
8 the Basin at the time of the Phase I Trial. In contrast, substantial evidence generated by the new
9 owners of Anaverde subsequent to June 19, 2008¹, convincingly shows a separate basin that
10 provides a safe yield for future development. At the commencement of trial, Anaverde will seek a
11 judgment in its favor so that it will not be required to further participate in these proceedings.

12 **II. ANAVERDE DID NOT PARTICIPATE IN PHASE I OF THIS ADJUDICATION AND**
13 **IS NOT WITHIN THE PHASE 1 ORDER DETERMINING THE ADJUDICATION**
14 **BOUNDARY.**

15 Just under ten years ago in 1999 and 2001, Diamond Farming Company (“Diamond
16 Farming”) and Bolthouse Properties, LLC. (“Bolthouse”), respectively, sued Rosamond
17 Community Services District, Los Angeles County Waterworks District No. 40 (“LACWW”), and
18 other public agencies, for access to the groundwater basin. In 2004, LACWW filed an
19 adjudication action. In January 2005, LACWW filed a Petition for Coordination to consolidate the
20 actions. In approximately 2005, all three actions were coordinated and are at issue in the present
21 adjudication. Virtually all parties in these consolidated actions have been in the case for just under
22 four years and participated in the Phase I trial. Despite the longstanding awareness of Anaverde’s
23 potential claims, the Phase I trial commenced on October 10, 2006, long before Anaverde was

24 _____
25 ¹Due to the significant downturn in the real estate market in 2007-2008, Empire Lands, the
26 Administrative Manager of Anaverde, filed for Chapter 11 bankruptcy on April 25, 2008. On June 19,
27 2008, the United States Bankruptcy Court issued an order transferring the interests in Anaverde to a
28 new owner and Administrative Manager.

29 A discovery stay was in place until May 22, 2008. As soon as the stay was verbally lifted, the
30 new owners of Anaverde commenced investigation and discovery.

1 served. On November 3, 2006, this Court issued an Order defining the adjudication boundary for
2 Phase II. (Court Order, Nov. 3, 2006, pg. 3:1-2.) made special appearances at several case
3 management conferences prior to its formal entry as a Phase II participant. On November 13,
4 2006, Anaverde specially appeared and informed the Court that Anaverde had not yet been served.
5 (See Transcript of Case Management Conference, November 13, 2006.) Almost five months
6 later, Anaverde filed a Motion to Intervene on March 15, 2007 in an effort to protect its rights to
7 water underlying its property as the adjudication continued to progress. (See Anaverde's Motion
8 to Intervene, March 15, 2007.) Anaverde was finally served on May 22, 2007. Anaverde filed an
9 Answer and Cross-complaint in response on June 20, 2007. (See Anaverde's Answer and Cross-
10 complaint, June 20, 2007.)

11 In Phase I, the Court concluded that the alluvial basin set forth in the California
12 Department of Water Resources Bulletin 118-2003 ("Bulletin 118") should serve as the basic
13 jurisdictional boundary for purposes of this adjudication. Unfortunately, the evidentiary support
14 upon which Bulletin 118 established the alluvial basin is generic at best and not supported by a
15 strong factual basis. In fact, the expert for the Public Water Suppliers', ("PWS") (self-named in
16 their First Amended Cross-Complaint against Anaverde ("FACC")) testified that the Anaverde
17 Basin is outside the area under adjudication. In his deposition dated September 24, 2008, Mr.
18 Scalmanini acknowledged that the alluvial basin was drawn, not on strong geological or
19 hydrological foundations, but rather, on political boundaries at least in part. (Deposition of Mr.
20 Scalmanini, Sept. 24, 2008, pg. 96:20-25 and pg. 97:1-22.)

21 Despite its decision that the area at issue is within the adjudication, the Court did recognize
22 that certain "watersheds" are "not part of the aquifer within the ground water basin." (Court
23 Order, Nov. 3, 2006 at pg. 3:1-2.) Thus, "the court decline[d] to define the jurisdictional
24 boundaries to include the watershed area and will limit the boundaries to the basin aquifer itself."
25 (*Id.* at 3:18-19.)

26 Phase I included several disputed areas, including the Cottonwood fault lines to the north
27 and Leona Valley to the west of Anaverde. Importantly, the Court indicated that it was open to
28 further consideration of the defined boundaries: "as the litigation in this case progresses certain

1 geographical areas, upon further evidence, may appear to lack any real connection to the Antelope
2 Valley aquifer and such areas may ultimately be excluded.” (*Id.* at 4:20-22.) The Anaverde Creek
3 Watershed, or “Anaverde Basin”, is one such area that should be excluded from the larger
4 adjudication Basin for three reasons. First, Anaverde was not a party to the action, and is therefore
5 not bound by the Court’s Phase I determination.² Second, the PWS’ assertion of the existence of
6 one aquifer lacks proof of hydrologic connectivity and no expert was able to cite any evidence of
7 such connectivity other than general statements. As discussed in detail, the experts for the PWS
8 had no direct evidence about the Anaverde area and included it within the Basin solely based on
9 the “generic” argument that “any” transport of molecules from one aquifer was sufficient to defeat
10 a Basin. Third, Anaverde will prove facts establishing that the Anaverde watershed is independent
11 from the Basin, and thus must be excluded from the Phase I boundary.

12 **III. THE DISTRICT HAS THE BURDEN OF PROOF.**

13 **1. Plaintiff PWS Must Prove All Essential Facts to Their Claims For Relief.**

14 California law requires that the “[a] party has the burden of proof as to each fact the
15 existence or nonexistence of which is essential to the claim for relief or defense that he is
16 asserting.” (*Cal. Evid. Code* § 500.) This comports with the general principal that courts
17 generally place the burden of proof on the initiating party. (*Aguilar v. Atlantic Richfield Co.*
18 (2001) 25 Cal. 4th 826, 850.) As a result, the burden is on the plaintiff to prove the allegations
19 that the plaintiff placed at issue in the complaint. (*Smith v. Santa Rosa Police Dept.* (2002) 97
20 Cal. App. 4th 546, 569; *Polk v. Polk* (1964) 228 Cal. App. 2d 763, 787.)

21 **2. PWS’ First Amended Cross-Complaint puts the existence of “Sub-Basins” at
22 Issue.**

23 PWS squarely placed at issue in its FACC, whether there is one aquifer which is the single
24 source of water. Specifically, the PWS seek a judicial determination of rights “to all water within
25

26 ² A court has no jurisdiction over an absent party and is not bound by any judgment rendered
27 therein. *Goleta v. Santa Barbara* (1985) 174 Cal. App. 3d 74, 88. This is true even though such a
28 result may leave a party exposed to a later inconsistent recovery by the absent person. (*Id.*)

1 the adjudication area of the Basin.” (FACC, pg. 3, ¶1:7-9.) Further, PWS desire a comprehensive
2 adjudication of “the rights of all claimants to the use of a source of water. . . i.e., the Basin.”
3 (FACC, pg. 8, ¶15:10-12.) PWS define a basin as “an alluvial aquifer with reasonably well-
4 defined lateral and vertical boundaries.” (FACC, pg. 9, ¶20:2-4.) PWS defines the single source,
5 as follows:

6 The Basin encompasses about 1,000 square miles in both Los Angeles and Kern Counties,
7 and is separated from the northern part of the Antelope Valley by faults and low-lying
8 hills. The Basin is bounded on the south by the San Gabriel Mountains and on the
9 northwest by the Tehachapi Mountains. The Basin generally includes the communities of
10 Lancaster, Palmdale and Rosamond as well as Edwards Air Force Base.

11 (FACC, pg. 9, ¶21:6-12.)

12 Further, PWS specifically place at issue the existence of sub-basins as a separate versus
13 single source of water. In the FACC, PWS notes that investigators have studied the
14 Antelope Valley and “some have divided the Basin into ‘sub-basins.’” (FACC, pg. 9,
15 ¶22:14-15.) PWS assert that “to the extent the Antelope Valley is composed of such ‘sub-
16 basins,’ they are sufficiently hydrologically connected to justify treating them as a single
17 source of water,” (FACC, pg. 9, ¶22:14-18.) And implicitly, by describing the Basin water
18 loss in acre-feet of water, the amount of overdraft, the resulting land subsidence due to
19 unlimited pumping in the Basin, and the need to establish a safe yield for the Basin, the
20 PWS presumes the existence of a single aquifer for purposes of this adjudication. (FACC,
21 pg. 10, ¶25-27:4-20.)

22 3. Anaverde Merely Responds To Issues Raised by PWS and Does Not Assert New 23 Matters.

24 It is fundamental that a defendant’s allegations or affirmative defenses in the answer not
25 shift the burden of proof on the defendant unless the defendant raises a “new matter” and, thereby,
26 creates a new issue. “A plea controverting the original cause of action and tendering no new issue
27 is a mere traverse and cannot be properly described as a plea setting up new matter.” (*Rancho
28 Santa Margarita v. Vail* (1938) 11 Cal. 2d 501, 543 (“*Rancho Santa Margarita*”).) Mere denial of
Plaintiff’s claim does not shift the burden of proof even if it contains an affirmative statement. In
Rancho Santa Margarita, Plaintiff initiated the action to determine the neighboring property
owner’s riparian rights in the Temecula-Santa Margarita River, and to obtain an injunction to
prohibit diversion beyond one-seventh of the total flow. (*Id.* at 517.) The Plaintiff argued that it
was entitled to six times the amount of water as Defendants. (*Id.* at 543.)

1 There, the Defendants answered the complaint and denied that Plaintiff owned six times
2 the amount of irrigable riparian land than they did, or at all. Defendants affirmatively stated the
3 amount and location of lands which they claimed to be riparian and irrigable. The Supreme Court
4 noted that “the Defendants put at issue the extent of the parties’ riparian acreage, the extent thereof
5 which could be profitably irrigated, the quantity of water available, and Plaintiff’s right to the
6 injunction.” (*Id.* at 543.) However, the Supreme Court concluded that because the Defendants’
7 answer did not raise any new issues regarding the irrigability of areas other than those found in the
8 complaint, Plaintiff retained the burden of proof.

9 The instant case is astonishingly similar to the facts in *Rancho Santa Margarita*. PWS
10 asserted one single source of water despite the existence of recognized sub-basins. The foundation
11 for this claim asserts that the underlying groundwater of parties to this adjudication are
12 hydrologically connected. Anaverde denied this claim that the water source is sufficiently
13 hydrologically connected to justify treating the sub-basin and aquifer as a single water source.
14 (*Anaverde’s Answer to Plaintiff’s FACC (“Answer”)* pg. 2:3-4.) Anaverde both generally denied
15 the PWS’ claims and affirmatively alleged that PWS’s claims contained insufficient facts to
16 constitute a cause of action. (*Answer*, pg. 2:5-8.) The general denial and the general affirmative
17 defense merely respond to allegations in the FACC. Anaverde does not raise new matters.

18 Anaverde also filed a Cross-Complaint in this action which alleges that “Anaverde owns
19 and operates water wells that draw water from beneath its land. . .” (*Anaverde, LLC.’s Cross-*
20 *Complaint (“ACC”)* pg. 2, ¶3:12-14.) Additionally, Anaverde asserts that “the water was, and is,
21 being pumped from a portion of the overlying aquifer that is not hydraulic connection [sic] with
22 aquifers pumped by Cross-Defendants.” (*ACC*, pg. 5, ¶21:19-20.) Anaverde “possesses an
23 appurtenant right to storage space in the fractured bedrock and alluvial water basin beneath its
24 land.” (*ACC*, pg. 6, lln. 1-2.) These issues are not “new matters” constituting new issues.
25 Anaverde does nothing more than contest the PWS’ claims. The PWS put directly into question
26 whether the sub-basins were sufficiently hydrologically connected to treat them as one single
27 water source versus separate and distinct sub-basins. This is the only relevant issue to Phase II of
28 this adjudication. Consequently, PWS bear the burden of proof.

1 **4. PWS Has No Facts to Support Hydrologic Connectivity Regarding Anaverde.**

2 PWS primary expert, Mr. Scalmanini, testified in his deposition that he had no opinion
3 regarding Anaverde.

4 Q: Do you have any opinion as to whether there is a separate groundwater basin separate
5 from the Antelope Valley Basin that underlies the Anaverde property?

6 A: No, I haven't done any kind of work that would allow me to reach a conclusion one
7 way or the other.

8 (Deposition of Scalmanini, Sept. 24, 2008, pg. 60:15-24.)

9 A second PWS expert Mr. Uteley testified that his scope was merely to lay a geological
10 foundation for Mr. Scalmanini. He has not taken any core samples, he has no personal idea
11 regarding the Anaverde stratigraphy. (Court Reporter Draft of Mr. Uteley Deposition, Sept. 23,
12 2008, pg. 12:18-25, pg. 13:1-17.) The expert for the City of Los Angeles, Mr. Durbin testified:

13 Q: Have you ever taken any analysis [of] what impact if any the Anaverde formation has
14 with respect to water underlying the Anaverde property, how it effects the groundwater
15 movement?

16 A: I have not.

17 (Draft Deposition of Durbin, Sept. 29, 2008, pg. 227:9-13.)

18 Although even draft transcripts are not yet available for Mr. Williams (PWS' third expert)
19 and Ms. Oberdorfer (USDOJ expert witness), both experts also testified they had no opinions, nor
20 had they done any analysis regarding the connectivity of the Anaverde site to the Basin. Thus, to
21 date, every expert (other than Mr. Lambie, expert for Anaverde), has testified they have no
22 opinion regarding Anaverde's site, nor the connectivity of Anaverde Creek Watershed to the
23 Basin. Even while drafting this brief, depositions and discovery are proceeding and this brief, or
24 other trial documents may require supplementation as a result.

25 **IV. IN RESPONSE TO PWS' CLAIM OF ONE AQUIFER, ANAVERDE WILL REBUT**
26 **THIS CLAIM WITH PROOF THAT THE ANAVERDE CREEK WATERSHED**
27 **LACKS CONNECTIVITY.**

28 **1. Underground Formations Act as a Barrier Between the Anaverde Creek Basin**
 and the Larger Basin at Issue.

 First, Anaverde will refer to Mr. Scalmanini's opinions described below which support that
 Anaverde is not hydrologically connected to the aquifer at issue. Further, according to the

1 Department of Water Resources California Groundwater Bulletin 118, a sub-basin is created "by
2 dividing a groundwater basin into smaller units using geologic and hydrologic barriers or, more
3 commonly, institutional boundaries." (Dept. of Water Resources, California's Groundwater
4 Bulletin 118 - Update 2003, Oct. 2003, at pg. 90.) These "subbasins" are "created for the purpose
5 of collecting and analyzing data, managing water resources, and managing adjudicated basins."
6 (*Id.*) "The limiting rule for a subbasin is that it should not cross over a groundwater basin
7 boundary." (*Id.*) Due to the geologic characteristics beneath Anaverde's property, the Anaverde
8 Creek Watershed is physically separated by the San Andreas Fault.

9 This "separation" is in conflict with the PWS assertion that Anaverde's separate basin is
10 "sufficiently hydrologically connected to justify treating [this subbasin and the aquifer] as a single
11 source of water." (FACC, pg. 9, ¶22:14-18.) Hydrologic connectivity is evinced by the amount of
12 flow between separate aquifers, namely demonstrable inflows and outflows of water over time.
13 For example, in *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908 at 921-922, when
14 adjudicating the water rights of the respective parties in litigation, the Supreme Court recognized
15 that no substantial quantity of water from the Eastern section of an underground storage basin or
16 reservoir reached wells in the Western Unit. As a result, the court would only adjudicate the water
17 rights relating to what it determined to be a single water source: the Western Unit. (*Id.* at 923.) In
18 dicta, the court noted that the Raymond Fault was similar to a dam because it *impeded the*
19 *movement of water.* (*Id.*) The court described the fault as "a '[b]arrier in the alluvium . . . which
20 greatly impedes the sub-surface movement of water from the area, although it does not entirely
21 stop it, thus creating a vast underground storage reservoir." (*Id.* at 921.) The court further
22 recognized that,

23 Natural underground formations divide the area into two practically separate units . . . At
24 the present water table elevations movement of ground water from the Western to the
25 Eastern Unit is so small as to be immaterial . . . Movement from the Eastern to the Western
Unit is almost totally lacking.

26 (*Id.*)

27 ///

28 ///

1 In light of the natural barriers separating the two units, even though some water arguably
2 passed from one unit to the other, the court adjudicated only the Western Unit, which was the
3 single water source. According to Anaverde’s expert witness, John Lambie³, Anaverde is
4 similarly bounded by two fault lines, and other natural geologic barriers, which effectively serve
5 as impediments to groundwater flow from the Anaverde Creek Watershed to the larger
6 adjudication Basin. The Nadeau Fault and the San Andreas Fault are geological structural controls
7 which confine the groundwater beneath Anaverde’s property by restricting the lateral movement
8 of groundwater. (See Anaverde Creek Groundwater Basin Hydrologic Review (“Anaverde
9 Report”), Sept. 2008 at pg. 6.) Hydraulic stress-testing of the Anaverde Creek Basin shallow-
10 aquifer, conducted on Anaverde’s property, demonstrates low permeability along the fault. The
11 test results depict “a boundary condition on both the drawdown and recovery phases [which are]
12 consistent with a lateral no-flow boundary.” (Anaverde Report at pg. 12.) Therefore, the fault
13 restricts the flow of groundwater across the fault line and further evidences the existence of two
14 separate basins with distinct water sources.

15 **2. Passage of Water From Anaverde’s Separate Basin Does Not Prove Connectivity**
16 **to the Aquifer.**

17 *Wright v. Goleta Water District* (1985) 174 Cal. App. 3d 74 raises similar issues. *Wright*
18 involved a determination of water production rights of sub-basins geologically contained within
19 the Goleta Groundwater Basin. One dispute resolved in the case concerned whether the Central
20 and West sub-basins should be merged to determine one safe yield number (presumably with one
21 resulting merged set of water rights). Despite the fact that some groundwater flow occurred
22 between the sub-basins, the court determined a safe yield number for each sub-basin *independent*
23 *of the other*. The court noted that in the persuasive opinion of an expert involved in the
24 adjudication, the expert factually determined that “. . . although a sharp boundary may not exist

25 _____
26 ³ Mr. Lambie graduated from MIT undergraduate degree and later his Masters. His training and education centers on
27 hydrogeology, including subsurface geology, quantitative analysis of groundwater movement, and water
28 geochemistry. He is a Professional Civil Engineer in California, a Certified Engineering Geologist in California, a
Professional Geologist in California, and a Certified Water Rights Examiner in Oregon.

1 between the sub-basins, very little ground water migrates between the two sub-basins and there
2 were sufficient differences between the two to consider their safe yields separately.” (*Id.* at 79.)
3 There was no data upon which to conclude that a substantial or even significant amount of water
4 migrated between the two sub-basins. (*Id.*) Thus, in this factual environment, the court
5 adjudicated the safe yield as to each basin separately. These decisions support a conclusion that
6 minor water flow between sub-basins does not establish a link, or “hydrologic connectivity”,
7 between two independent water sources.

8 Anaverde’s evidence will show that only small amounts of water – as low as 5 to 10 acre
9 feet of year flow between the Anaverde Creek Watershed and the Basin. In support of previous
10 studies dating back to 1967, Anaverde’s expert used the streamtube method to analyze
11 groundwater flow across fault lines. (Anaverde Report at pg. 7.) The hydrogeology of flow
12 across fault lines results in limited movement of groundwater due to a low permeability fault zone.
13 Though negligible amounts of groundwater cross the fault, the quantity of water that crosses the
14 San Andreas fault “is insignificant to the [B]asin . . . as demonstrated by both the angle of
15 refraction and corresponding size of the streamtube downgradient of the fault.” (*Id.*) Moreover,
16 “[i]n the case of the Anaverde Ranch property most if not all of the groundwater flow that may
17 cross the fault is lost to evapotranspiration.” (*Id.*) Thus, even if groundwater flows across the
18 fault line, the quantity of water bears little to no impact on the larger Basin at issue. Therefore, the
19 PWS’ cannot claim prescriptive rights to the groundwater underlying Anaverde’s property.

20 PWS experts assert that even limited amounts of waterflow between two separate “sub-
21 basins” prove the existence of a watershed that should be considered a single aquifer. However,
22 Mr. Scalmanini testified to the contrary and indicated that “the fact that you don’t have perfect
23 closer around a basin of interest does not—is not intended to specify whether there’s a “separate
24 groundwater basin” on the other side. (Deposition of Mr. Scalmanini, pg. 88:1-25.) This Court
25 previously adopted findings that the Leona basin was not part of the adjudication area because less
26 than 100 acre-feet of water per year escaped that basin. (Draft Deposition of Mr. Durbin, Sept. 29,
27 2008, pg. 229:13-25, 230:1-25.) Excerpts from Mr. Durbin’s recent deposition testimony illustrate
28 the use of a low escape volume determined exclusion of Leona.

1 A: "The formulation of the [Leona] boundary, consideration was given to the flows across
2 these boundaries and.

3 Q: By Whom? A: "By me and I came to a couple of conclusions . . . And then with respect
4 to number 3, it was the same thing, the presumption was what the amount of ground-water
flow was small and therefore the area within the Leona Valley to the west of the boundary
could reasonably be excluded."

5 (Deposition of Mr. Tim Durbin, Sept. 29, 2008, pg. 34:13-25, and pg. 35:1-6.)

6 **V. IN ORDER TO AVOID A NON-SUIT AS TO ANAVERDE, PWS MUST PROVE**
7 **HYDROLOGIC CONNECTIVITY.**

8 PWS' cannot meet its burden of proof as to Anaverde. In January 2002, Luhdorff and
9 Scalmanini prepared a technical memorandum, entitled "Ground-water Basin and Subbasin
10 Boundaries Antelope Valley Ground-Water Basin." At that time, the technical memorandum was
11 prepared by Diamond Farming Inc.'s non-retained expert, Mr. Scalmanini, prior to coordination of
12 several related actions in September 2005. Plate I delineates the proposed adjudication boundary
13 for purposes of determining respective water rights. The map sets the outer boundary of the
14 aquifer as falling to the west of the Anaverde property, rendering Anaverde excluded from the
15 groundwater basin.

16 In 2006, the 2002 technical memorandum resurfaced during Phase I of this adjudication.
17 In his Phase I testimony, on October 11, 2006, Mr. Scalmanini, subsequently retained by the
18 PWS' expert witness, testified that his analysis of the appropriate jurisdictional boundary was, in
19 part, dependent on the "hydrology of the area outside the basin and within the basin." (Phase 1
20 Trial, Scalmanini Testimony, Oct. 10, 2006 at 19:26-28; 20:1-12.) This refers to the amount of
21 flow or hydroconnectivity between various areas and its impact on the water table. (*Id.*)

22 In addition to his conclusion, as represented in Plate I, Mr. Scalmanini admitted that he
23 "identified [his] southern boundary in this area as being the San Andreas Fault Zone." (*Id.* at
24 32:18-21.) Mr. Scalmanini also acknowledged that "flow is running essentially parallel to the
25 fault lines" on both sides of the Rosamond-Willow Springs Fault to the north and the Cottonwood
26 Fault. (*Id.* at 47:22-28.) Because Anaverde's property and the Anaverde Creek Watershed are
27 south of the San Andreas Fault, Scalmanini's dividing line places Anaverde outside the scope of
28 the adjudication boundary.

1 More recently, in his deposition on September 24, 2008, Mr. Scalmanini testified that he
2 had no opinions specific to the Anaverde site and has made no efforts to “determine whether . . . a
3 separate groundwater basin . . . underlies at least portions of the Anaverde” property. (Scalmanini
4 Deposition, Sept. 22, 2008, 64:6-12.) Absent further analysis of the Anaverde site and its
5 relationship, or hydrologic connection, to the Basin, it will be difficult, at best, for PWS to prove
6 hydrologic connectivity sufficient to meet PWS burden of proof, and to avoid a non-suit as to
7 Anaverde.

8 For example, there is no evidence that pumping in the Basin has affected water levels on
9 the Anaverde Ranch. In fact, Anaverde’s water levels are so high that it is forced to dewater in
10 order to develop. The water levels between onsite and offsite wells are nearly 700 feet different.
11 This head differential almost irrefutably defeats any argument of hydraulic connection between the
12 two areas.

13 **VI. CITY OF PALMDALE LACKS STANDING TO PARTICIPATE IN THIS**
14 **ADJUDICATION.**

15 Anaverde filed a separate motion in limine concerning the standing of the City of Palmdale
16 to raise any issues in this litigation – including participating in Phase II. Obviously, if Anaverde
17 is dismissed from the lawsuit because its property is outside the Basin, then this issue is not
18 relevant. Anaverde raised the matter to avoid any claim later that it had waived its right to dispute
19 Palmdale’s standing in the litigation.

20 **VII. CONCLUSION.**

21 Anaverde respectfully requests that this Court grant its motion *in limine* and enter judgment in
22 favor of Anaverde and against City.

23 For the reasons set forth above, Plaintiff bears the burden of proving, by a preponderance
24 of the evidence, that there is one single source of water, ie. that the Anaverde sub-basin enjoys
25 hydrologic connectivity to the aquifer. Anaverde’s evidence will rebut this PWS claim. The
26 Anaverde Creek Watershed is distinct and separate from the Basin. Based on the evidence, the
27 Court must find that the sub-basin lacks hydrologic connectivity and must be treated as an
28 independent water source.

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DATED: October 1, 2008

Respectfully submitted,

MALISSA HATHAWAY McKEITH
JOSEPH SALAZAR, JR.
JACQUELINE MITTELSTADT
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By: /s/ _____
KIMBERLY A. HUANGFU
Attorneys for ANAVERDE, LLC.

PROOF OF SERVICE

1 I declare that:

2 I am employed in the County of Los Angeles, State of California. I am over the age of
3 eighteen years and not a party to the within action. My business address is 221 North Figueroa
4 Street, Suite 1200, Los Angeles, California 90012.

5 On October 1, 2008, 2008, I served **ANAVERDE LLC'S PHASE II TRIAL BRIEF**
6 posting the document(s) to the Santa Clara Superior Court website in regard to the Antelope
7 Valley Groundwater matter.

8 I declare under penalty of perjury under the laws of the State of California that the above is
9 true and correct, executed on October 1, 2008, 2008.

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12 Maritza Estrada
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