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

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

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  
23

Judicial Council Coordination  
Proceeding No. 4408

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

**ANAVERDE LLC'S MOTION FOR  
JUDGMENT**

**Phase 2 Trial:** October 6, 2008  
**Location:** LASC, Dept. 1  
**Time:** 9:00 a.m.

24 Pursuant to California Code of Civil Procedure section 631.8, subdivision (a), cross-defendant,  
25 Anaverde LLC ("Anaverde"), respectfully moves this Court for a judgment as to the Public Water  
26 Suppliers' ("PWS") First Amended Cross-Complaint ("FACC"), the United States Department of  
27 Justice ("USDOJ"), and the City of Los Angeles ("City of LA") (collectively referred to as "Single  
28 Basin Proponents") because the evidence presented is insufficient to support a judgment with regard

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**LOS ANGELES  
SUPERIOR COURT**

1 to any cause of action. This motion is based upon the grounds that the Single Basin Proponents  
2 presented insufficient evidence on the essential elements of their cause(s) of action, and Anaverde is  
3 therefore entitled to a judgment.

4 I. **AUTHORITY FOR A MOTION FOR JUDGMENT.**

5 The statutory authority for a Motion for Judgment in non-jury trials is set forth in California  
6 Code of Civil Procedure section 631.8, subdivisions (a) through (c). These sections provide, in  
7 pertinent part:

8 (a) After a party has completed his presentation of evidence in a trial by the court, the other  
9 party, without waiving his right to offer evidence in support of his defense or in rebuttal in the  
10 event the motion is not granted, may move for a judgment. The court as trier of the facts shall  
11 weigh the evidence and may render a judgment in favor of the moving party, in which case the  
12 court shall make a statement of decision as provided in Sections 632 and 634, or may decline to  
13 render any judgment until the close of all the evidence. The court may consider all evidence  
14 received, provided, however, that the party against whom the motion for judgment has been  
15 made shall have had an opportunity to present additional evidence to rebut evidence received  
16 during the presentation of evidence deemed by the presenting party to have been adverse to  
17 him, and to rehabilitate the testimony of a witness whose credibility has been attacked by the  
18 moving party. Such motion may also be made and granted as to any cross-complaint.

19 (b) If it appears that the evidence presented supports the granting of the motion as to some but  
20 not all the issues involved in the action, the court shall grant the motion as to those issues and  
21 the action shall proceed as to the issues remaining. Despite the granting of such a motion, no  
22 final judgment shall be entered prior to the termination of the action, but the final judgment in  
23 such action shall, in addition to any matters determined in the trial, award judgment as  
24 determined by the motion herein provided for.

25 (c) If the motion is granted, unless the court in its order for judgment otherwise specifies, such  
26 judgment operates as an adjudication upon the merits.

27 A motion for judgment properly challenges whether the facts presented in plaintiffs' evidence  
28 are sufficient as a matter of law to prove a *prima facie* case. (*Willis v. Gordon* (1978) 20 Cal. 3d 629,  
633.) The purpose of this motion "is to dispense with the need for the defendant to produce evidence  
where the court is persuaded that the plaintiff has failed to sustain its burden of proof." (*Combs v.*  
*Skyriver Communications* (2008) 159 Cal. App. 4th 1242 at 1263) (applying the "substantial evidence  
standard of review" to a judgment entered under Code of Civil Procedure section 631.8, reviewing the  
record in the light most favorable to the judgment and making all reasonable inferences in favor of the  
prevailing party.) The Court is also granted latitude to weigh evidence and "may refuse to believe

1 witnesses and draw conclusions at odds with expert opinion”, so long as the findings are supported by  
2 substantial evidence. (*Jordan v. City of Santa Barbara* (1996) 46 Cal. App. 4th 1245 at 1255.) By  
3 way of analogy, a partial non-suit, or judgment in this instance, is proper where plaintiff fails to prove  
4 a *prima facie* case on certain causes of action asserted at trial. (*Abreu v. Svenhard's Swedish Bakery*  
5 (1989) 208 Cal. App. 3d 1446, 1456-1457.) In the interest of streamlining the case, the Court has the  
6 discretionary authority to enter a motion for partial judgment which will not impact other parties to the  
7 adjudication. (C.C.P. §531.8, subd. (d).)

8 **II. PWS' CAUSES OF ACTION HINGE UPON AN ESSENTIAL FACT WHICH IT HAS**  
9 **FAILED TO PROVE.**

10 Rules governing granting of a non-suit, or motion for judgment, do not relieve plaintiff of the  
11 burden of establishing the elements of his case and therefore, plaintiff must produce evidence which  
12 supports logical inference in his favor and which does more than merely permit speculation or  
13 conjecture. (*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal. App. 4th 507.) If  
14 plaintiff produces no substantial evidence of liability or proximate cause, then granting of a non-suit is  
15 proper. (*Id.*)

16 The only factors at issue in Phase 2 involve whether there is meaningful or sufficient hydrologic  
17 connectivity between the Basin and any sub-units, including Anaverde's, to constitute a single aquifer  
18 for purposes of adjudication. As recognized by the Court, parties asserting a single basin have the  
19 burden of proof to demonstrate the connectivity, or lack of barriers to flow, from the Anaverde Basin  
20 to the larger adjudication basin. The Single Aquifer Proponents have failed to do so, particularly since  
21 their experts have conducted no field work, have no foundation upon which to base their opinions  
22 regarding the permeability of the San Andreas Fault, and have no foundation as to the specifics of the  
23 property at issue. Although the Single Basin Proponents, throughout Phase 2, have asserted that  
24 evidence exists regarding the hydrologic connectivity between the Anaverde Basin and Antelope  
25 Valley Basin, their statements have been general in nature, and they have failed to prove any such  
26 connection. As a result, Anaverde's Motion for Judgment should be granted.<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> Unlike Anaverde, the PWS or Single Basin Proponents have been in this litigation for years and  
(footnote continued)

1 Plaintiffs' experts have not provided any opinion regarding Anaverde, despite PWS' assertions  
2 that "the evidence will show that significant groundwater flow occurs across features" thought to  
3 impede or restrict groundwater flow. (PWS' Phase 2 Trial Brief, Oct. 1, 2008 at pg. 4:8-11.) PWS  
4 acknowledged that Anaverde's property is south of the San Andreas Fault/Rift Zone. (*Id.*) The PWS  
5 contend that "[w]hile there may be some evidentiary support for [the fault serving as a barrier] the  
6 Anaverde area southerly of the San Andreas Fault does not meet the criteria for a groundwater basin."  
7 (*Id.* at pg. 8:26-28.) These factual allegations are not supported by PWS/Single Basin Proponents'  
8 evidence.

9 No direct evidence of connectivity has been presented in either deposition or trial testimony.  
10 Mr. Scalmanini, expert for the PWS, testified that the Anaverde Basin is outside the area under  
11 adjudication in his deposition dated September 24, 2008. (Deposition of Mr. Scalmanini, Sept. 24,  
12 2008, pg. 96:20-25 and pg. 97:1-22.) Notably, Mr. Scalmanini also has acknowledged that the alluvial  
13 basin, upon which the Phase 1 Adjudication boundary was based, was drawn not on strong geological  
14 or hydrological foundations, but rather on political boundaries at least in part. (*Id.*) He had no opinion  
15 regarding Anaverde.

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

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

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

21 Mr. Utley, a second PWS expert, testified in his deposition that his scope was merely to lay a  
22 geological foundation for Mr. Scalmanini. (Court Reporter Draft of Mr. Utley Deposition, Sept. 23,  
23 2008, pg. 12:18-25, pg. 13:1-17.) He acknowledged having no personal idea regarding the Anaverde  
24 site, stratigraphy, or any opinion thereto. (*Id.*)

25 The City of Los Angeles' expert, Mr. Durbin similarly had no direct evidence. He testified:

26 \_\_\_\_\_  
27 years. They had ample time since June to propound discovery; conduct physical inspections of the  
28 property and otherwise present expert testimony. Rather, they did nothing in the face of this trial.

1 Q: Have you ever undertaken any study or analysis of the groundwater level differentiation  
2 of the levels of the Anaverde property relative to the levels on the opposite side of the  
3 San Andreas Fault to come to any conclusions?

4 A: I have not.

5 (Deposition of Durbin, Sept. 29, 2008, pg. 227:22-25; pg. 228:1-2.)

6 Q. We're talking about the barriers specifically in the general area including the Anaverde  
7 property. You haven't undertaken to see whether there are any barriers to groundwater  
8 movement in that particular area before it gets into the, I'll call the northern area across the  
9 fault . . ."

10 A: Not specific work. I would presume there's some effect of the San Andreas Fault. But  
11 that is not relevant with respect to the continuity of groundwater flow vertically under  
12 natural conditions from your area into the larger valley.

13 (*Id.* at pg. 235:24-25 and pg. 236:1-10.)

14 Rather than have facts relating to Anaverde, Mr. Durbin's "opinions" concerning the absence  
15 of separate basins was strongly influenced by his concerns that such a determination would open the  
16 flood gates to "thousands" of litigants claiming a separate basin. As this Court is aware, only three  
17 parties have raised legitimate issues concerning separate basins. Mr. Durbin's predisposition against a  
18 separate basin conclusion significantly undercut any technical conclusions he may have rendered.  
19 Regardless, he provided no direct evidence concerning the Anaverde Basin. It is for the Court, and  
20 not witnesses, to ultimately decide the proper administration of the basin. The experts should be  
21 limited to the technical basis for supporting or rejecting the existence of one aquifer, as opposed to a  
22 separate basin.

23 Finally, Dr. Williams, for the PWS, and Dr. Oberdorfer, USDOJ expert witness, also testified  
24 they had no opinions, and had not done any analysis regarding the connectivity of the Anaverde site to  
25 the Basin. Dr. June Oberdorfer testified for the United States that she has no "actual person[al]  
26 knowledge of [the] Anaverde Creek Watershed" nor has she "formed an opinion yet" in relation to  
27 Anaverde. (Deposition of Dr. Oberdorfer, Sept. 30, 2008 at pg. 197:18-21 and pg. 199:1-6.) Dr.  
28 Dennis Williams testified that he had no opinion regarding Anaverde's sub-basin. (Deposition of Dr.  
Dennis Williams, Oct. 2, 2008, Draft Transcript Not Yet Received.) Not one of the numerous PWS  
experts had any opinions relating to the Anaverde property or the Anaverde Creek Basin. Similarly,

1 in the Deposition of Dr. Jason Sun, Dr. Sun also stated that he had no opinions regarding Anaverde.  
2 (Deposition of Dr. Sun, Oct. 2, 2008, Draft Transcript Not Yet Received.)

3 To date, every Single Basin Proponent expert has testified in their deposition that they have no  
4 opinion regarding Anaverde's site, nor the connectivity of Anaverde Creek Watershed to the Basin.  
5 Experts testifying at trial also expressed no opinion regarding the Anaverde property. In accordance  
6 with her deposition testimony, Dr. Oberdorfer confirmed that she had no opinion as to whether  
7 Anaverde's property overlies a separate sub-unit. Mr. Durbin, expert for the City of Los Angeles, by  
8 his own admission, has no foundation upon which to base any expert opinion with regard to Anaverde.  
9 When asked about his "specific knowledge of the actual Anaverde property", Mr. Durbin responded  
10 that he was "unaware of any logs from the Anaverde property" and had not analyzed the stratigraphy  
11 for the alluvium specific to the Anaverde site. (Antelope Valley Groundwater Adjudication, Trial  
12 Transcript, October 6, 2008 at pg. 149:9-20.)

13 Further testimony confirmed that Mr. Durbin has no personal knowledge, opinion, foundation,  
14 or scientific analysis to determine whether Anaverde's property overlies a hydrologically distinct unit:

15 Q: You haven't done any detail study of the San Andreas Fault immediately adjacent to  
16 the Anaverde property?

17 A: I have not.

18 Q: You haven't studied any of the groundwater elevations on the Anaverde property  
19 overtime; correct?

20 A: Have not.

21 Q: And you haven't done any comparison studies between the groundwater elevations on  
22 the Anaverde property and the area immediately across the San Andreas Fault; correct?

23 A: Between the property and to the north of the fault.

24 (*Id.* at pg. 149:22-28; pg. 150:1-28.)

25 During cross-examination at Phase 2 trial, Mr. Scalmanini testified that he has no foundation  
26 or basis to assess the geologic nature and formation beneath Anaverde's property. In terms of general  
27 concepts, however, Mr. Scalmanini references Richter, 1974, cited in Schneider, "Groundwater Rights  
28 in California, Background and Issues", and recognizes that a fault can indicate "no appreciable

1 movement or groundwater” or “restricted movement of groundwater”. (See PWS’ F-9 marked on Oct.  
2 8, 2008.) Absent data specific to Anaverde’s property, Mr. Scalmanini is not in a position to  
3 determine whether the San Andreas Fault, just north of the Anaverde property, impedes or restricts the  
4 groundwater movement along the Fault.

5 Q: Looking at the Anaverde Creek Basin as depicted on F20, were you asked to form an  
6 opinion as to whether or not that area should be considered separate or hydrologically  
7 disconnected from the adjudication area so that this Anaverde Creek Basin should be  
8 either excluded from the Adjudication or treated as a separate subarea or subbasin . . .

8 A: No, not really.

9 Q: Okay. Do you have any opinions as to whether or not the Anaverde Creek Basin as  
10 depicted on F20 is under your criteria and under your professional opinion, a separate  
11 area hydrologically separate from groundwater . . .rights determination.

11 A: My best answer today is the same one that I provided anybody who asked me, including  
12 up through deposition, about what did I think about this outlined area. And I said, well,  
13 it is a rectilinear area that has – we call it “no history.” You can’t go find the Anaverde  
14 Creek Basin in reports and analyses, mapping, et cetera.

14 (Antelope Valley Groundwater Adjudication, Trial Transcript, Oct. 8, 2008 at pg. 185:13-19, pg.  
15 185:28, 2-13.) Failing to state any scientific basis for his opinion, Mr. Scalmanini merely asserts  
16 that “I don’t think there are any separate basins within the area of adjudication.” (*Id.* at pg.  
17 194:12-15.) Notwithstanding that Mr. Scalmanini may have a personal opinion regarding the  
18 existence or absence of separate basins, Mr. Scalmanini has testified as to any factual or scientific  
19 evidence to support that personal opinion. Given his specific testimony that he has not studied the  
20 Anavede property or separate basin at all, his opinions regarding the absence of a separate basin  
21 should be rejected.

22 As a result, PWS’ assertions regarding hydrologic connectivity are not supported by scientific  
23 evidence or foundation. Absent sufficient foundation for opinions regarding connectivity of the  
24 Anaverde Basin, PWS, USDOJ, and the City of LA failed to meet their burden of proof and  
25 Anaverde’s Motion for Judgment should be granted.

26 **III. CONCLUSION.**

27 The Single Basin Proponents bear the burden of proving that there are no separate sub-basins.  
28 The law does not permit them to do so based solely on rebuttal evidence. Having failed to present any

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direct evidence concerning the Anaverde Basin or Sub-Basin, Anaverde is entitled to judgment. All Eight Causes of Action in the FACC inevitably fail because each hinges on the essential element of the existence of one Hydrologic Basin. Similarly, the Court should find that the USDOJ and the City of LA have unsuccessfully demonstrated a single aquifer, inclusive of the Anaverde property. Therefore, Defendant Anaverde respectfully requests this Court grant its motion for judgment regarding the Plaintiff's Eight Causes of Action against Cross-Defendant Anaverde.

DATED: October 9, 2008

Respectfully submitted,

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**PROOF OF SERVICE**

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I declare that:

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

On October 9, 2008, 2008, I served **ANAVERDE LLC'S MOTION FOR JUDGMENT** posting the document(s) to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater matter.

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

ME  
Maritza Estrada

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