

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
MALISSA HATHAWAY McKEITH, SB# 112917  
2 E-Mail: [mckeith@lbbslaw.com](mailto:mckeith@lbbslaw.com)  
JOSEPH SALAZAR, JR., SB# 169551  
3 E-Mail : [salazar@lbbslaw.com](mailto:salazar@lbbslaw.com)  
KIMBERLY A. HUANGFU, SB# 252241  
4 E-mail: [huangfu@lbbslaw.com](mailto:huangfu@lbbslaw.com)  
221 North Figueroa Street, Suite 1200  
5 Los Angeles, California 90012  
Telephone: 213.250.1800  
6 Facsimile: 213.250.7900

7 Attorneys for ANAVERDE LLC

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SANTA CLARA**

10 **ANTELOPE VALLEY GROUNDWATER**  
11 **CASES:**

12 Included Actions:

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

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

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

Judicial Council Coordination  
Proceeding No. 4408

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

**CROSS-DEFENDANT ANAVERDE  
LLC'S CASE MANAGEMENT  
STATEMENT**

**DATE:** November 25, 2008

**TIME:** 10:30 a.m.

**LOCATION:** Dept. 17C

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4845-5301-2995.1

1 Cross-Defendant Anaverde LLC (“Anaverde”) hereby submits the following narrative  
2 Case Management Statement pursuant to the Court’s directive in the November 6, 2008 Order  
3 After Phase Two Trial on Hydrologic Nature of Antelope Valley (“November 6, 2008 Order”).

4 The current record before this Court strongly indicates that the amount of flow from the  
5 Anaverde Creek Watershed and Anaverde Basin into the larger Antelope Valley Groundwater  
6 Basin (“Antelope Valley Basin”) is *de minimis* relative to the amount of water at issue in this  
7 adjudication. Anaverde therefore understandably seeks to extricate itself from what may be a  
8 long, expensive trial and proposes a procedural approach that would allow its issues to be timely  
9 resolved after sufficient technical work is completed.

10 Previously, Anaverde had roughly four months to prepare for the Phase 2 trial, including  
11 the development of substantial physical evidence from field work. As such, it was limited in its  
12 presentation by what evidence existed as of October 2008.<sup>1</sup> Even if the Anaverde basin is not  
13 perfectly “sealed off” from the Antelope Valley Basin, it is separately distinct as to warrant  
14 separate management subject to objective verification that pumping on Anaverde does not have a  
15 measured impact on the remaining groundwater in Antelope Valley Basin.

16 In order to move in that direction, Anaverde requires greater clarification as to what  
17 elements are necessary to develop a management remedy. To date, the parties are not in  
18 agreement as to such requirements and whether certain elements, and case law, are controlling in  
19 this adjudication. This is evinced by the conflicting arguments made at trial:

20 ANAVERDE: “. . . [T]he Court has indicated numerous times throughout this  
21 trial that there are many factors as to whether or not there is a separate basin. And  
22 according to the case law that we have, there are actually four factors as to  
23 whether or not there is a separate basin: one of those being hydrological  
24 connectivity as the Court has focused in upon; and the second is whether or not  
25 there is a physical barrier, and the third is whether there are impacts from  
26 pumping in two different places. And, of course, the fourth is whether or not

25 <sup>1</sup> The only witness offering specific evidence concerning Anaverde at trial was Dr. June  
26 Oberdorfer, for the United States, who estimated that the amount of flow over the San Andreas  
27 Fault was 34 acre-feet per year (“AFY”) through alluvium and 54 AFY through bedrock  
28 infiltration. This was in contrast to Dr. Lambie’s testimony that the flow was approximately 9 to  
90 AFY.

1 there are differences in the water levels . . . In the *San Fernando* case, the  
2 Supreme Court tells us that mere connection alone is not the bellwether standard.  
3 It is not enough to create hydrologic connectivity. There has to be something  
4 more.”

4 (Antelope Valley Groundwater Adjudication Phase 2 Trial Transcript, Nov. 5, 2008 at pg.  
5 17:1-13 and 17:15-20.)

6 PUBLIC WATER SUPPLIERS: “. . . one thing that needs to be understood about  
7 *San Fernando* is that it does not establish a principal that can be broadly used and  
8 applied to other situations. For example, [the City of Palmdale] do[es] not believe  
9 it stands for the proposition that some degree of flow between areas will  
10 determine whether these areas ought to be adjudicated separately or as one area . .  
11 . So [the Public Water Suppliers] . . . urge the Court to make the decision without  
12 reaching any conclusion with the City of San Fernando. *Los Angeles vs. San*  
13 *Fernando* would require the Court to hold that these are two separate basins.”

11 (Antelope Valley Groundwater Adjudication Phase 2 Trial Transcript, Nov. 5, 2008 at  
12 pgs. 35:24-28, 36:1-2, and 39:11-15.)

12 In its November 6, 2008 Order, this Court reserved any views on whether there was a  
13 separate basin for management purposes and provided no guidance on what those elements should  
14 be. Anaverde requests an accelerated briefing schedule on these issues so that some resolution of  
15 its claim can be made sooner, rather than later, and it can avoid weighing in on the many issues  
16 pending that do not relate to its isolated area. Alternatively, Anaverde would ask for the  
17 appointment of a mediator by this Court to resolve its outstanding issues.

18 **I. THE COURT SHOULD OBTAIN BRIEFING FROM PARTIES AND MAKE A**  
19 **DETERMINATION REGARDING THE LEGAL ELEMENTS OF**  
20 **ESTABLISHING SEPARATE BASINS.**

21 Pursuant to this Court’s Case Management Order for Phase 2, dated September 9, 2008,  
22 the Court indicated that the Phase 2 trial will “address whether sub-basins exist in the Antelope  
23 Valley Area of Adjudication . . .” (Case Management Order for Phase 2, Sept. 9, 2008 at pg. 1:21-  
24 22.) After the conclusion of the Phase 2 trial, however, the Court provided, “[s]pecifically, the  
25 issue was whether there were any distinct groundwater sub basins within the valley that did not  
26 have hydrologic connection to other parts of the aquifer underlying the valley.” (November 6,  
27 2008 Order at pg. 2:11-13 (emphasis added).) Rather than analyzing and interpreting the  
28 multitude of physical characteristics and legal elements at issue, the focus was narrowed to

1 whether any water flowed across the physical barriers (that the separate basin proponents asserted  
2 impeded flow). As a result, several key considerations, such as pumping impacts and the geologic  
3 characteristics of the barriers, were not thoroughly evaluated. It remains unclear whether these  
4 issues will be addressed during the Phase 3 proceedings.

5         Though the Court heard testimony from various experts (including the Public Water  
6 Suppliers' expert, Mr. Scalmanini), during the Phase 2 trial, as to what constitutes a separate basin  
7 "for purposes of adjudication", the legal standard was not clearly established during this phase.  
8 (Antelope Valley Groundwater Adjudication Trial Transcript, Nov. 8, 2008 at pg. 122:15-28 and  
9 123:1-9.) As a result, inconsistencies still exist regarding the legal elements needed to establish a  
10 "separate basin" for all purposes, including management and adjudication. During closing  
11 arguments, Anaverde set forth the legal elements articulated in the *City of Los Angeles v. City of*  
12 *San Fernando* (1975) 14 Cal. 3d 199 ("*San Fernando*") case. During the Public Water Suppliers'  
13 closing statement and rebuttal, the City of the Palmdale argued that the *San Fernando* case is  
14 highly fact specific, and therefore does not apply in this adjudication. (Antelope Valley  
15 Groundwater Adjudication Phase 2 Trial Transcript, Nov. 5, 2008 at pg. 36:10-13.) No ruling has  
16 been issued to resolve these differing assertions.

17         Given the uncertainty as to whether the legal standard set forth in *San Fernando* and  
18 *Wright v. Goleta Water District* (1985) 174 Cal. App. 3d 74 applies, the Court should seek  
19 briefing on this issue now. Subsequent to receiving and reviewing such briefs, Anaverde  
20 respectfully requests that the Court issue a ruling that clarifies the legal requirements that must be  
21 established to prove up a separate basin, whether it be for management, adjudication, or any other  
22 purpose. This clarification will narrow the scope and substance of Phase 3, thereby streamlining  
23 the presentation of evidence. This ruling would also assist parties in the proper allocation of  
24 resources necessary for the Phase 3 trial. Given the Court's statement that "not . . . every part of  
25 the valley [will] . . . be treated identically depending upon what the issues might later turn out to  
26 be", this ruling would be highly desirable. (Antelope Valley Groundwater Adjudication Trial  
27 Transcript, Nov. 5, 2008 at pg. 46:21-27.)

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1           **II. REMAINING CLAIMS TO BE ADJUDICATED IN SUBSEQUENT PHASES.**

2           In response to the Court’s request for suggestions regarding the subsequent trial phasing,  
3 Anaverde asserts that it has no knowledge of whether the small and non-pumping classes have  
4 received proper notice or, subsequently, whether any parties have opted out. As a result,  
5 Anaverde cannot comment as to the status of whether parties to the various classes have been  
6 properly served and provided notice. To ensure that all interested parties are before the Court for  
7 subsequent phases, however, it is imperative that all class certification, service of process, and  
8 notice concerns are fully resolved prior to the commencement of Phase 3.

9           As for whether the Phase 3 trial should determine additional Basin characteristics,  
10 including overdraft, safe yield, and notice (for purposes of assessing claims of prescription),  
11 Anaverde seeks to limit its presentation to evidence relating to its watershed and basin. In the  
12 November 6, 2008 Order, this Court even acknowledges that this approach is reasonable: “[t]he  
13 resolution of many of these claims [declaratory relief, prescription, and quiet title] may well be  
14 affected by the nature and extent of the hydrologic connectivity of water within various portions of  
15 the aquifer.” (November 6, 2008 Order at pg. 3:22-27.) The Court did not address how it  
16 intended to prioritize these issues.

17           Anaverde asserts that it is more than appropriate for it to establish what a safe yield is for  
18 its basin and how much water can be extracted without impeding whatever historic flow seeps  
19 from its area. Quantifying that flow answers the question of whether downgradient pumpers can  
20 have any conceivable prescription rights since they cannot prescribe water that has never reached  
21 their wells.

22           Similarly, ascertaining the significance of pumping impacts, if any, north and south of the  
23 San Andreas Fault will also allow the parties to develop appropriate management  
24 recommendations and ultimately a judgment. At the close of the Phase 2 trial, the Court indicated  
25 that it simply did not have enough evidence to affirmatively determine impacts of pumping south  
26 of the San Andreas Fault on the area to the north of the fault, and vice versa. (Antelope Valley  
27 Groundwater Adjudication Phase 2 Trial Transcript, Nov. 5, 2008 at pg. 44:16-23.) A  
28 determination as to the impact of pumping in one area on other areas in the adjudication area is

1 crucial to ascertaining the extent of hydrologic connectivity within the Basin. As a result, the  
2 Phase 3 trial should commence with the presentation of evidence and expert opinion regarding the  
3 impact of pumping within the adjudication boundary.

4 Assuming the notice element, or any other elements, involving claims of prescription are  
5 heard during Phase 3, such evidence should only be heard after the Court makes a definitive  
6 finding regarding the extent of hydrologic connectivity from areas separated by geological  
7 boundaries, such as the San Andreas Fault. Likewise, determinations of overdraft and safe yield  
8 in the Antelope Valley Basin should also be addressed after parties are afforded an opportunity to  
9 provide evidentiary support to substantiate (and quantify) whether pumping impacts exist.

10 **III. TIMING AND SCHEDULE.**

11 One of the difficulties in Phase 2 was that all parties were forced to develop and to present  
12 evidence in too short a period of time. Unlike many litigants, Anaverde had been in the case for  
13 only a short time and had not been part of the Technical Committee. Adding to that prejudice,  
14 discovery was so truncated, between June and September 2008, that the claims of the various  
15 parties were never fully vetted nor was their evidence. Moreover, thousands of dollars were  
16 expended on expedited transcripts and overlapping depositions schedules. Given the highly  
17 technical nature of this case, Anaverde would urge this Court to develop a more deliberate  
18 schedule when it approaches Phase 3 so that the parties are not forced to litigate under such  
19 challenging deadlines. These are important issues for our clients' long-term economic  
20 investments in the Antelope Valley and they should be accorded a full and fair opportunity to have  
21 their property interests adjudicated.

22 Anaverde anticipates that it will take approximately nine months to a year to complete on-  
23 site technical work that will further substantiate its claims in Phase 2 and form the basins for the  
24 separate management of its basin. Since Anaverde's issues are somewhat unique to this case, it  
25 would be willing to then submit its evidence to a court-appointed mediator, in hopes, that the  
26 parties could reach agreement on the appropriate management of its basin. That mediator could  
27 then make recommendations to this Court and perhaps eliminate the need for another trial on this  
28 issue. Anaverde has received several overtures from parties concerning settlements; however, the

1 number of parties involved in this case makes it difficult to reach any closure without the  
2 assistance of a third-party.

3 **IV. CONCLUSION.**

4 For the reasons stated above, Anaverde respectfully requests that the Court consider the  
5 points raised and allow for sufficient time to finalize service of process, class certification, and  
6 notice before proceeding with the Phase 3 trial. Furthermore, briefing on the legal elements of a  
7 separate basin, for either adjudication or management purposes, will facilitate effective  
8 preparation for the Phase 3 trial so that the parties are fully apprised of the Court's intentions. Full  
9 disclosure as to the legal elements is also fundamentally intertwined with claims of prescription,  
10 quantification of hydrologic connectivity, and water quantities for purposes of management.

11  
12 DATED: November 21, 2008

KIMBERLY A. HUANGFU  
LEWIS BRISBOIS BISGAARD & SMITH LLP

13  
14 By: /s/ \_\_\_\_\_  
15 Kimberly A. Huangfu  
16 Attorneys for ANAVERDE LLC  
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**PROOF OF SERVICE**

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 November 21, 2008, 2008, I served **CROSS-DEFENDANT ANAVERDE LLC'S CASE MANAGEMENT STATEMENT** by 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 November 21, 2008, 2008.

/s/ \_\_\_\_\_  
Maritza Estrada