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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.
16 Superior Court of California
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: January 9, 2009

TIME: 1:30 pm

LOCATION: LASC, Dept. 1

23
24 Cross-Defendant Anaverde LLC ("Anaverde") hereby submits the following narrative
25 Case Management Statement pursuant to the Court's directive in the Minute Order after the
26 November 25, 2008 Case Management Conference.

27 In accordance with Anaverde's previously filed Case Management Statement, Anaverde
28 requests further clarification from the Court regarding its Phase 2 ruling. As the current record

4818-4821-6067.1

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

7 Anaverde is uniquely situated – in terms of geographic location and physical barriers that
8 effectively restrict the flow between the basin underlying its property and the larger adjudication
9 area. Assuming Phase 3 will focus on issues of safe yield, overdraft, and the Public Water
10 Suppliers’ claims of prescription, Anaverde requires direction from the Court as to whether it is
11 expected to conduct field work and provide expert witness analysis on the entire adjudication
12 basin or, rather, the smaller separate area underlying its property. Even if the Anaverde Basin is
13 not perfectly “sealed off” from the Antelope Valley Basin, it is sufficiently distinct 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 Anaverde also previously requested greater clarification as to what elements are necessary
17 to develop a management remedy. To date, the parties are not in agreement as to such
18 requirements and whether certain elements, and case law, are controlling in this adjudication. This
19 is evinced by the conflicting arguments made during the Phase 2 trial:

20
21 ANAVERDE: “. . . [T]he Court has indicated numerous times throughout this
22 trial that there are many factors as to whether or not there is a separate basin. And
23 according to the case law that we have, there are actually four factors as to
24 whether or not there is a separate basin: one of those being hydrological
25 connectivity as the Court has focused in upon; and the second is whether or not
26 there is a physical barrier, and the third is whether there are impacts from
27 pumping in two different places. And, of course, the fourth is whether or not
28 there are differences in the water levels . . . In the *San Fernando* case, the
Supreme Court tells us that mere connection alone is not the bellwether standard.
It is not enough to create hydrologic connectivity. There has to be something
more.”

(Antelope Valley Groundwater Adjudication Phase 2 Trial Transcript, Nov. 5, 2008 at pg.

1 17:1-13 and 17:15-20.)

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

10 (Antelope Valley Groundwater Adjudication Phase 2 Trial Transcript, Nov. 5, 2008 at
11 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 again requests an accelerated briefing schedule on these issues so that some
15 resolution of its claim can be made sooner, rather than later, and it can avoid weighing in on the
16 many issues pending that do not relate to its isolated area. As for whether the Phase 3 trial should
17 determine additional Basin characteristics, including overdraft, safe yield, and notice (for purposes
18 of assessing claims of prescription), Anaverde seeks to limit its presentation to evidence relating to
19 its watershed and separate basin.

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

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

1 impeded flow). As a result, several key considerations, such as pumping impacts and the geologic
2 characteristics of the barriers, were not thoroughly evaluated. It remains unclear whether these
3 issues will be addressed during the Phase 3 proceedings.

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

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

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1 **II. PHASE 3 TRIAL ISSUES.**

2 Other parties, including U.S. Borax and Bolthouse Properties LLC, contend that the Phase
3 3 trial should include claims of prescription that, by definition, include a determination of safe
4 yield and assessment of whether the adjudication basin is in a state of overdraft. Anaverde firmly
5 believes that including these causes of actions in the Phase 3 trial will ensure the most efficient
6 and cost-effective means of resolving these outstanding issues.

7 In an effort to streamline the remaining phases of this adjudication, further briefing is
8 needed. As explained in Section I of this Case Management Statement, the Phase 2 parties did not
9 have the benefit of a clear outline of the various legal elements (and physical attributes) that the
10 Court considered when deciding the sub-basin issue. Without this much-needed framework, the
11 parties were not afforded the opportunity to collect compatible data, particularly given the short
12 amount of time to prepare for the Phase 2 trial. As a result, the parties expended time, money, and
13 energy collecting data and information that was not necessarily helpful to the Court. Therefore,
14 Anaverde suggests that for the Phase 3 trial, the Court seek briefs to set forth the: (1) causes of
15 actions to be heard, (2) legal elements necessary to prove such actions, and (3) whether these legal
16 elements translate into numerical thresholds that the parties should be cognoscente of.

17 **III. TIMING AND SCHEDULE.**

18 One of the difficulties in Phase 2 was that all parties were forced to develop and to present
19 evidence in too short a period of time. Unlike many litigants, Anaverde had been in the case for
20 only a short time and had not been part of the Technical Committee. Adding to that prejudice,
21 discovery was so truncated, between June and September 2008, that the claims of the various
22 parties were never fully vetted nor was their evidence. Moreover, thousands of dollars were
23 expended on expedited transcripts and overlapping depositions schedules. Given the highly
24 technical nature of this case, Anaverde would urge this Court to develop a more deliberate
25 schedule when it approaches Phase 3 so that the parties are not forced to litigate under such
26 challenging deadlines. These are important issues for our clients' long-term economic

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1 investments in the Antelope Valley and they should be accorded a full and fair opportunity to have
2 their property interests adjudicated.

3 Anaverde anticipates that it will take approximately nine months to a year to complete on-
4 site technical work that will further substantiate its claims in Phase 2 and form the basis for the
5 separate management of its basin. Since Anaverde's issues are somewhat unique to this case, it
6 would be willing to then submit its evidence to a court-appointed mediator, in hopes, that the
7 parties could reach agreement on the appropriate management of its basin. That mediator could
8 then make recommendations to this Court and perhaps eliminate the need for another trial on this
9 issue. Anaverde has received several overtures from parties concerning settlements; however, the
10 number of parties involved in this case makes it difficult to reach any closure without the
11 assistance of a third-party.

12 **IV. CONCLUSION.**

13 For the reasons stated above, Anaverde respectfully requests that the Court consider the
14 points raised and request further briefing on the legal elements of a separate basin, for either
15 adjudication or management purposes. Establishing a definitive framework will undoubtedly
16 facilitate a more efficient approach to preparing for the Phase 3 trial. If the parties are able to
17 delineate the discrete legal elements at issue, this will also result in the streamlined presentation of
18 evidence, which will also reduce the amount of time expended on hearing expert testimony.
19 Therefore, it only serves to benefit all those involved that the parties are fully apprised of the
20 Court's intentions. Moreover, the same is true for the safe yield and overdraft elements that will
21 be heard throughout the Phase 3 trial. Full disclosure as to the legal elements is fundamentally
22 intertwined with claims of prescription, quantification of hydrologic connectivity, and determining
23 sustainable yield figures and establishing whether the basin is in a state of overdraft.

24 DATED: January 2, 2009

KIMBERLY A. HUANGFU
LEWIS BRISBOIS BISGAARD & SMITH LLP

25
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27 By: /s/ _____
Kimberly A. Huangfu
Attorneys for ANAVERDE LLC
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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 January 2, 2009, 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 January 2, 2009.

/s/
Maritza Estrada

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