

Sep 22 2005 2:19 PM

KIRI TORRE
Chief Executive Officer
Superior Court of CA, County of Santa Clara
Case #1-05-CV-049053 Filing #G-164
By R. Walker, Deputy

1 Michael T. Fife (State Bar No. 203025)
2 Robert J. Saperstein (State Bar No. 166051)
3 Hatch & Parent, A Law Corporation
4 21 East Carrillo Street
5 Santa Barbara, CA 93101
6 (805) 963-7000
7 (805) 965-4333

5 Attorneys for Eugene B. Nebeker, Robert A. Jones, Forrest G. Godde and Steven F. Godde, Gailen
6 W. Kyle, and John A. Calandri, collectively known as the Antelope Valley Ground Water
7 Agreement Association ("AGWA")

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CLARA**

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

Judicial Council Coordination Proceeding No.
4408

13 Included Actions:

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

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co. Superior Court of
16 California County of Los Angeles, Case No. BC
17 325 201 Los Angeles County Waterworks
18 District No. 40 v. Diamond Farming
19 Co. Superior Court of California, County of
20 Kern, Case No. S-1500-CV-254-348 Wm.
21 Bolthouse Farms, Inc. v. City of
22 Lancaster Diamond Farming Co. v. City of
23 Lancaster Diamond Farming Co. v. Palmdale
24 Water Dist. Superior Court of California, County
25 of Riverside, consolidated actions, Case
26 Nos. RIC 353 840, RIC 344 436, RIC 344 668

**CASE MANAGEMENT CONFERENCE
STATEMENT**

Date: September 27, 2005
Time: 11:00 a.m.
Dept: 17

23 On September 20, 2005, The Tejon Ranchcorp filed a Case Management Conference
24 Statement and Proposed Agenda pursuant to California Rule of Court 1541(a). The Antelope Valley
25 Groundwater Agreement Association ("AGWA") is currently composed of five large agricultural
26 water users in the Antelope Valley who reasonably anticipate that they will eventually be brought in
27 to the adjudication since their aggregate historical groundwater use from the Antelope Valley
28

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

1 Groundwater Basin totals more than 20,000 acre-feet per year. AGWA joins in the CMC Statement
2 and Proposed Agenda filed by Tejon Ranchcorp with the following additional comments.

3 **1. Venue**

4 One of the issues before the Coordination Motion Judge was the question of venue of the
5 adjudication. In the interests of equity for the many small landowners who will ultimately be brought
6 in to the case, consensus was established amongst the parties that the case should be heard in Los
7 Angeles County and that to the greatest extent possible, all proceedings should take place in
8 Lancaster. Attached to this CMC Statement as Exhibit "A" is a true and correct copy of a letter dated
9 March 16, 2005 from counsel for Los Angeles County Waterworks to all other counsel in the case
10 acknowledging this consensus. AGWA, on behalf of the local landowners, strongly supports this
11 consensus and provided an articulation of the reasons why equity supports the proceedings taking
12 place in Lancaster in its Response to Petition for Coordination. A true and correct copy of this
13 Response (absent exhibits in the interest of brevity) is attached to this CMC Statement as Exhibit
14 "B."

15 Equity strongly supports holding this case as near to the Antelope Valley as possible. The
16 Coordination Judge considered these equities and accordingly recommended that the case be heard
17 in Los Angeles County. To whatever degree possible, this Court should follow that recommendation.

18 **2. Mandatory Settlement Meetings**

19 This litigation is essentially now six years old. All of the involved parties are very familiar
20 with the legal issues under consideration and the ways in which these issues are typically resolved in
21 the adjudication context. There have been several attempts at settlement over the last several years,
22 and settlement proposals have been offered by various parties at various times over this period. In
23 AGWA's view, there is no reason why prolonged and expensive litigation of this case should not be
24 avoided; the only thing currently preventing full settlement of this case is the willingness of the
25 parties to make reasonable compromises.

26 ///

27 ///

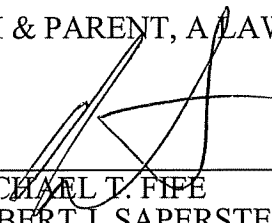
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Court should use whatever discretionary powers it has and immediately order mandatory settlement conferences that include the parties who are currently on the service list.

Dated: September 22, 2005

HATCH & PARENT, A LAW CORPORATION

By: 
MICHAEL T. FIFE
ROBERT J. SAPERSTEIN
ATTORNEYS FOR AGWA

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On September 22, 2005, I served the foregoing document described as:

CASE MANAGEMENT CONFERENCE STATEMENT

on the interested parties in this action.

X By sending an electronic copy to the party's e-mail address listed on the attached service list at 3 p.m./a.m. on ~~March 9/22~~ 2005. This electronic transmission was reported as complete and without error.

- by U.S. Mail to the three courts listed on the attached service list. I am readily familiar with the firm's practice of collection and processing correspondence on the same day with postage thereon fully prepaid at Santa Barbara, California, in the ordinary course of business.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Santa Barbara, California, on September 22, 2005.

Angelina Favia
TYPE OR PRINT NAME

Angelina Favia
SIGNATURE

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

SERVICE LIST

1
2
3 Eric Garner, Esq. Attorneys for Los Angeles County Waterworks
4 Jeffrey Dunn, Esq. District No. 40 and for Rosamond Community
5 BEST BEST & KREIGER Services District
6 3750 University Avenue, Suite 400
7 Riverside, CA 92502-1028
8 (951) 686-1450, 301; Fax (951) 682-4612
9 Addresses for electronic service:
10 ELGarner@bbklaw.com,
11 Lynda.Serwy@bbklaw.com,
12 JVDunn@bbklaw.com, kkeefe@bbklaw.com

13 Douglas J. Evertz, Esq. Attorneys for City of Lancaster
14 STRADLING, YOCCA, CARLSON & RAUTH
15 660 Newport Center Drive, Suite 1600
16 Newport Beach, CA 92660-6522
17 (949) 725-4000; Fax (949) 725-4100
18 Address for electronic service:
19 devertz@sycr.com

20 John Tootle, Esq. Attorneys for Antelope Valley
21 CALIFORNIA WATER SERVICE COMPANY Water Company
22 3625 Del Amo Boulevard, Suite 350
23 Torrance, CA 90503
24 (310) 257-1488; Fax (310) 257-4654
25 Address for electronic service:
26 jtootle@calwater.com

27 Thomas Bunn, Esq. Attorneys for Palmdale Water District and
28 LAGERLOF, SENEAL, BRADLEY, Quartz Hill Water District
29 GOSNEY & KRUSE
30 310 North Lake Avenue, 10th Floor
31 Pasadena, CA 91101-4108
32 (626) 793-9400; Fax (626) 793-5900
33 Address for electronic service:
34 TomBunn@lagerlof.com

35 Richard Zimmer, Esq. Attorneys for WM Bolthouse Farms
36 CLIFFORD & BROWN
37 1430 Truxton Avenue, #900
38 Bakersfield, CA 93301
39 (661) 322-6023; Fax (661) 322-3508
40 Address for electronic service:
41 rzimmer@clifford-brownlaw.com

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

1 Robert H. Joyce, Esq. Attorneys for Diamond Farming
LEBEAU, THELEN, LAMPE, MCINTOSH
2 & CREAR, LLP
5001 East Commercenter Drive, Ste 300
3 Bakersfield, CA 93389-2092
Fax (661) 325-1127
4 Addresses for electronic service:
bjoyce@lebeauthelen.com,
5 DLuis@Lebeauthelen.com

6 James L. Markman, Esq. Attorneys for City of Palmdale
Steve Orr, Esq.
7 RICHARDS, WATSON & GERSHON
P.O. Box 1059
8 Brea, CA 92822-1059
(714) 990-0901; FAX (714) 990-2308
9 Addresses for electronic service:
jmarkman@rwglaw.com, sorr@rwglaw.com

10 Janet Goldsmith, Esq. Attorneys for City of Los Angeles
11 KRONICK, MOSKOWITZ, TIEDEMANN &
GIRARD
12 400 Capital Mall, 27th Floor
Sacramento, CA 95814-4417
13 FAX: (916) 321-4555
Address for electronic service:
14 jgoldsmith@kmtg.com

15 John Slezak, Esq. Attorneys for Los Angeles Department of Water
16 IVERSON, YOAKUM, PAPIANO & HATCH and Power
One Wilshire Blvd., 27th Floor
624 S. Grand Ave.
17 Los Angeles, CA 90017
(213) 624-7444; FAX: (213).629-4563
Address for electronic service:
18 Jslezak@iyph.com

19 Julie A. Conboy Attorneys for Los Angeles Department of Water
20 Deputy City Attorney and Power
Department of Water and Power
111 North Hope Street
21 P.O. Box 111
Los Angeles, CA 90012
22 213-367-4513; FAX: (213) 241-1416
Address for electronic service:
23 Julie.Conboy@ladwp.com

24
25
26
27
28

1 Henry Weinstock, Esq.
Fred Fudacz, Esq.
2 NOSSAMAN, GUTHNER, KNOX, ELLIOTT LLP
445 South Figueroa Street, 31st Floor
3 Los Angeles, CA 90071
(213) 612-7839; FAX (213) 612-7801
4 Addresses for electronic service:
hweinstock@nossaman.com,
5 ffudacz@nossaman.com

Attorneys for Tejon Ranch

6 Michael T. Fife, Esq.
HATCH & PARENT, A LAW CORPORATION
7 21 East Carrillo Street
Santa Barbara, CA 93101
8 (805) 963-7000; Fax (805) 965-4333
Address for electronic service:
9 Mfife@HatchParent.com,
Karce@HatchParent.com

Attorneys for Eugene B. Nebeker, Robert A. Jones, Forrest G. Godde and Steve Godde, Gailen W. Kyle, and John A. Calandri, collectively known as the Antelope Valley Ground Water Agreement Association ("AGWA")

10 Hon. Ralph W. Dau – Dept. 57
Los Angeles County Superior Court
11 111 North Hill Street
Los Angeles, CA 90012

12 Hon. Louis P. Etcheverry
13 Department 14
Kern County Superior Court
14 Metropolitan Division
1215 Truxtun Avenue
15 Bakersfield, CA 93301-4698

16 Hon. Gary B. Tranbarger – Dept. 07
Riverside County Superior Court
17 4050 Main Street
Riverside, CA 92502-0431

18
19
20
21
22
23
24
25
26
27
28

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

EXHIBIT A

BEST BEST & KRIEGER LLP

A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

RIVERSIDE
(909) 886-1450

INDIAN WELLS
(760) 568-2611

LAWYERS
5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614
(949) 263-2600
(949) 260-0972 FAX
BBKLAW.COM

ONTARIO
(909) 989-6584

SAN DIEGO
(619) 525-1300

SACRAMENTO
(916) 325-4000

JEFFREY V. DUNN
(949) 263-2616
JEFFREY.DUNN@BBKLAW.COM
FILE No 26345.00001

March 16, 2005

VIA U. S. MAIL AND ELECTRONIC MAIL

All Legal Counsel
In the Antelope Valley
Groundwater Adjudication
Proceedings

Re: Venue for the Antelope Valley Ground Water Adjudication Proceedings

Dear Counsel:

We are pleased to learn that many of your respective clients now support the County of Los Angeles in its desire to have these proceedings take place within the County of Los Angeles. We appreciate your support for the County's position; and that the parties are willing to have the proceedings take place in Lancaster. We look forward to working with you to keep this matter within Los Angeles County where it was originally filed by the County. As always, if you have any questions or comments, please do not hesitate to call.

Very truly yours,

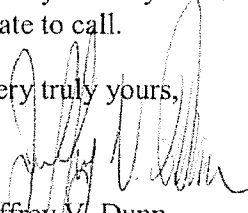

Jeffrey V. Dunn
of BEST BEST & KRIEGER LLP

EXHIBIT B

**ELECTRONICALLY
FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Mar 07 2005

ALAN SLATER, Clerk of the Court
by N. PERAZA

1 Michael T. Fife (State Bar No. 203025)
2 HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
3 Santa Barbara, CA 93101
4 Telephone No. (805) 963-7000
5 Facsimile No. (805) 965-4333

6 Attorneys for Eugene B. Nebeker, Robert A. Jones, Forrest G. Godde and Steven F. Godde, Gailen
7 W. Kyle, and John A. Calandri, collectively known as the Antelope Valley Ground Water
8 Agreement Association ("AGWA")

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

11 Coordination Proceeding

Judicial Council Coordination Proceeding No.
4408

12 **ANTELOPE VALLEY GROUNDWATER**
13 **CASES**

**RESPONSE TO PETITION FOR
COORDINATION**

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co.

Assigned To:
Hon. David C. Velasquez, Dept. CX101

16 Los Angeles County Waterworks District No.
17 40 v. Diamond Farming Co.

Hearing Date: March 17, 2005, 1:30 pm

18 Wm. Bolthouse Farms, Inc. v. City of Lancaster

19 Diamond Farming Co. v. City of Lancaster

- 1. Riverside County Superior Court
Lead Case No. RIC 344436
Case No. RIC 344668
Case No. RIC 353840

20 Diamond Farming Co. v. Palmdale Water
21 District

- 2. Los Angeles Superior Court
Case No. BC-325201

- 3. Kern County Superior Court
Case No. S-1500-CV-254348

Coordination Petition Filed: January 3, 2005

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 **I. SUMMARY**

2 Once coordinated and consolidated, the cases at issue in this proceeding will constitute a
3 comprehensive adjudication of the Antelope Valley Groundwater Basin. This Response to the
4 Petition for Coordination is filed pursuant to California Rules of Court, Rule 1526, in order to
5 request that a site or sites different than that requested by the Petitioner be selected for the
6 adjudication. The adjudication of the Antelope Valley Groundwater Basin should be heard by a
7 neutral judge in Lancaster at the Michael D. Antonovich Antelope Valley Courthouse.

8 An adjudication of a groundwater basin tends to pit public agencies against private
9 landowners, primarily farmers. As explained in detail below, this division of the parties results in a
10 situation where venue can have a significant impact on the ability of one side of the case to
11 effectively litigate its position. Several of the landowner farmers in the Antelope Valley who
12 believe that they will be named as defendants in the adjudication have organized together into a
13 joint defense team known as the Antelope Valley Ground Water Agreement Association
14 (“AGWA”)¹ in order that their perspective might be considered in the determination of the venue of
15 the coordinated cases.

16 It appears that the true purpose of the request to locate the coordinated cases in Orange
17 County is (1) the advantage it will give to the Petitioner and the public agency defendants with
18 which it is aligned, and (2) the strategic inconvenience that will be caused to all of the landowner
19 defendants who will constitute the vast majority of the parties in this litigation.

20 Instead, the adjudication should be heard in Lancaster at the newly constructed Michael D.
21 Antonovich Antelope Valley Courthouse by a neutral judge. Empty courtrooms currently exist at
22 this location that could be utilized exclusively for this case. Such a venue choice not only will
23 respect the needs of the majority of the parties to the case, but will also be the most appropriate
24 decision for the future as the Court exercises its continuing jurisdiction long after the initial
25 litigation of the case is complete.

26 _____
27 ¹ The current members of AGWA include Eugene B. Nebeker, Robert A. Jones, Forrest G. Godde and Steven F. Godde,
28 Gailen W. Kyle, and John A. Calandri, collectively known as the Antelope Valley Ground Water Agreement
Association (“AGWA”)

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. GROUNDWATER ADJUDICATION BACKGROUND

In order to appreciate the way in which the venue determination can unjustly favor one side over another in a groundwater adjudication, it is necessary to briefly describe the nature of the dispute.

A. The Two Sides in a Groundwater Adjudication are Public Agencies versus Private Landowners

California law lacks a comprehensive system of groundwater regulation. Because of this, in areas of the State where the use of groundwater is intense, the amount of pumping can reach a level where it threatens to exceed the sustainable amount of groundwater that is available from the basin. In such situations, conflicts arise concerning who has the right to continue using the groundwater, and who must reduce pumping and instead purchase imported water from the State Water Project.

Under California law, the owners of land overlying the groundwater basin have the prior and paramount right to use the groundwater beneath their land. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240-1241.) The groundwater is considered part and parcel of the land. In the Antelope Valley, the landowners who pump water are primarily farmers.

Public entities that pump groundwater usually do not own any land. Because of this, their rights to use the groundwater are termed “appropriative” rights. (*Id.*) It is a well-settled principle of the law that appropriative rights are subordinate to the rights of the overlying landowners. This means that the overlying landowners have the first right to the use of the groundwater, and the public entity appropriators only have a right to use the surplus. If there is not enough surplus to satisfy the needs of the appropriators, then they are expected to purchase imported water. In the Antelope Valley, this water is available through the East Branch of the State Water Project, which runs along the Western edge of the Antelope Valley where the majority of the appropriator’s water needs are located.

Typically, the legal conflict in a groundwater adjudication centers on the attempt by the public entity appropriators to subvert the priority rights of the landowners. Thus, one of the central

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 contentions in the adjudication complaint filed by Petitioner is the claim that the water rights of the
2 overlying landowners have been taken by the appropriators through prescription. (*Complaint for*
3 *Declaratory and Injunctive Relief and Adjudication of Water Rights*, Cause of Action No. 1, filed
4 by LA County Waterworks, Dist. No. 40, November 29, 2004 (LA County) and December 1, 2004
5 (Kern County).)² Similarly, the Riverside County litigation is composed of quiet title actions by
6 Diamond Farming and Wm. Bolthouse Farms seeking a declaration that the overlying priority *has*
7 *not* been lost through prescription. If the appropriators are able to take away some portion of the
8 water rights of the overlying landowners, then they may be able to shift the need to purchase
9 imported water away from themselves and onto the farmers.

10 The significance of this description is to highlight the fact that the core of the adjudication
11 of the Antelope Groundwater Basin will be the attempt by the public entity appropriators to limit
12 the property rights of the landowners. The litigation will thus primarily be constituted by the public
13 entity appropriators on one side, and the overlying landowners on the other side. That is, even
14 though most of the public agencies in this case are defendants, their substantive interest in the case
15 is closely aligned with the plaintiff. Any decision regarding the ultimate venue of the adjudication
16 that provides an advantage to the public agency appropriators will thus provide a litigation
17 advantage to a distinct side in this case.

18 Petitioner has indicated its belief that there may be “hundreds, if not thousands” of
19 landowner defendants named in the coordinated case. (*Petition for Coordination* 11:2) But it has so
20 far refrained from naming any overlying landowners except the two plaintiffs in the Riverside
21 County action. Aside from these two parties, the Petitioner is attempting to coordinate these cases
22 with the participation only of parties aligned with its own interests. This creates the danger that a
23 small portion of the parties representing a distinct side in the litigation will receive a considerable
24 strategic and financial advantage through this venue determination.

25
26 _____
27 ² The complaints make additional contentions such as a claim of municipal priority under the Water Code (4th COA),
28 Like the prescription claim, each of these causes of action is focused on the subversion of the priority rights of the
overlying landowners.

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 B. Coordination in Orange County will Provide a Significant Litigation Advantage to the
2 Appropriators

3 The office of the lead counsel for the Petitioner is located 9.9 miles from the courthouse to
4 which it hopes to locate the coordinated case. (See Exhibit A.) This particular choice of venue by the
5 Petitioner thus seems a very convenient coincidence.

6 While this fact should receive due attention by this Court, it is also important for the Court
7 to take note of the relative inconvenience to the other parties of venue in Orange County.

8 As described above, this case will primarily be composed of public entities on one side,
9 against private landowners on the other side. These private landowners are mostly family-owned
10 farming operations, some of which have been in the Antelope Valley for generations. They are not
11 large entities with a significant tax base to pay for their defense in this litigation: Nebeker Ranch is
12 owned and operated by Mr. Eugene Nebeker, Calandri Farms is owned and operated by Mr. John
13 Calandri, Kyle & Kyle Farms is owned and operated by Mr. Gailen Kyle. And so on through the
14 entire population of the many landowner defendants that will be brought in to this case.

15 These individuals will be named as defendants and they will pay out of their own bank
16 accounts to defend their property rights against claims of prescription from this collection of public
17 entities. These entities will be led in this litigation by the County of Los Angeles – an entity capable
18 of financing litigation in a manner out of all proportion to the capabilities of the landowner
19 defendants.

20 A groundwater adjudication represents an attempt by public entities to take property rights
21 away from a large segment of the public without payment of compensation. It is a large scale re-
22 alignment of property rights away from private owners and into the hands of the public agencies.
23 Clearly, from a political point of view, these public entities would prefer to limit the participation of
24 these individuals in the process. If it is possible to locate the case in a far away venue, then the
25 ability of these private landowners to be involved in the process will be severely curtailed. The
26 landowner parties will not themselves be able to attend the hearings to understand what is
27 happening, and the costs of sending their attorneys to the hearings will escalate rapidly. Even the
28

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 local newspapers will be limited in their ability to provide coverage of the case.

2 For the most part, the landowner defendants will be limited by the economics of the
3 litigation to monitor the Court process only through their attorneys, and their attorneys will likely be
4 limited primarily to telephonic appearances. The public agency appropriators, on the other hand,
5 will personally appear at every hearing and will be much more willing to hold hearings – especially
6 if the case is located in Orange County, where the plaintiff will incur no travel costs whatsoever.

7 Establishing venue for this case in Orange County will provide an *incentive* for the public
8 entities to engage in abusive litigation tactics in order to stress the economic resources of their
9 private landowner adversaries.

10 **III. VENUE FOR THE ADJUDICATION SHOULD BE IN THE ANTELOPE VALLEY**
11 **USING A NEUTRAL JUDGE**

12 A. The Factors to be Considered in Deciding the Site for the Coordinated Proceedings
13 Favor a Local Site.

14 The factors to be considered by the Coordination Motion Judge in deciding the site or sites
15 for the coordinated case are articulated in Code of Civil Procedure § 404.1 and in the California
16 Rules of Court, Rule 1530. Both of these sources emphasize the convenience of everyone in the
17 case, not just the convenience of Petitioner’s counsel.

18 The Code of Civil Procedure lists seven factors to consider:

19 Coordination of civil actions sharing a common question of fact or law is appropriate if [1]
20 one judge hearing all of the actions for all purposes in a selected site or sites will promote
21 the ends of justice taking into account whether the common question of fact or law is
22 predominating and significant to the litigation; [2] **the convenience of parties, witnesses,**
23 **and counsel;** [3] the relative development of the actions and the work product of counsel;
24 [4] **the efficient utilization of judicial facilities and manpower;** [5] the calendar of the
25 courts; [6] the disadvantages of duplicative and inconsistent rulings, orders, or judgments;
26 and [7] the likelihood of settlement of the actions without further litigation should
27 coordination be denied.

28

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 (Code of Civil Procedure § 404.1 (emphasis added).)

2 Similarly, the California Rules of Court emphasize the logistics of travel by the whole of the
3 parties to the case:

4 The coordination motion judge may consider any relevant factors in making a
5 recommendation for the site of the coordination proceedings, including the following:

- 6 (1) The number of included actions in particular locations;
- 7 (2) Whether the litigation is at an advanced stage in a particular court;
- 8 **(3) The efficient use of court facilities and judicial resources;**
- 9 **(4) The location of witnesses and evidence;**
- 10 **(5) The convenience of parties and witnesses;**
- 11 **(6) The parties' principal places of business;**
- 12 **(7) The office locations of counsel for the parties; and**
- 13 **(8) The ease of travel to and availability of accommodations in particular**
14 **locations.**

15 (California Rules of Court, Rule 1530 (emphasis added).)

16 These factors place considerable emphasis on the location and logistics of travel for all of
17 the parties in the case. The factors demonstrate a sensitivity to the physical location of the parties
18 and witnesses, and to the office locations of all counsel involved in the case. As described below,
19 every one of these factors argues against placing the venue for this case in Orange County, and
20 argues instead in favor of placing the case in a local venue.

21 B. Orange County Superior Court is Unfairly Inconvenient for Opposing Counsel and
22 for Parties and Witnesses from the Antelope Valley

23 Petitioner has indicated that there may ultimately be hundreds, if not thousands, of parties in
24 this case. These parties primarily live and work in the Antelope Valley. The location of the
25 witnesses and the evidence in this case is the Antelope Valley. The principal place of business of
26 the vast majority of the parties will be the Antelope Valley. The property in question is in the
27 Antelope Valley. All of the impacts on the community from this case will be experienced in the
28

Hatch & Parent, A Law Corporation
 21 East Carrillo Street
 Santa Barbara, CA 93101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Antelope Valley.

The only people for whom Orange County will be a convenient venue is the lead council for Petitioner and lead counsel for other of the appropriators. The office of the lead council for Petitioner is 9.9 miles from the Orange County Courthouse. (See Exhibit A.) In contrast, all of the attorneys for the landowners currently involved in the case are located over 100 miles from the Orange County Courthouse. In addition, all of the parties from the Antelope Valley will be required to travel over 100 miles to the courthouse. In other words, for every hearing, plaintiff and other appropriator counsel aligned with the plaintiff will travel to the courthouse without even being required to get on the freeway, and the rest of the parties will be required to travel more than 100 miles through the worst traffic in Southern California. If the adjudication is located in Orange County, it will be the landowner parties and their attorneys as a group who will be required to travel the furthest.

Landowner Defendant	Counsel	One Way Travel Distance to Orange County Superior Court (in miles)
Diamond Farming	Mr. Joyce	144.5
Wm. Bolthouse Farms, Inc.	Mr. Zimmer	145.3
AGWA	Mr. Fife	131.2
Selected Public Agency Appropriators	Counsel	One Way Travel Distance to Orange County Superior Court (in miles)
Los Angeles County (Plaintiff)	Mr. Dunn	9.9
City of Palmdale	Mr. Markman	13.1
City of Lancaster	Mr. Evertz	13.7

B. Venue for the Antelope Valley Adjudication Should be in the Antelope Valley

There is no more important issue for an agricultural community such as the Antelope Valley than the issue of water. This case will not only determine how the rights to the groundwater basin are divided, it will also establish a management regime over the use of water in the Valley that will

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 impact the community for generations. Decisions such as those that will be made in the adjudication
2 should involve the people who will live with those decisions. This case should be heard in the
3 Antelope Valley.

4 Fortuitously, little more than a year ago, construction was completed on the new Michael D.
5 Antonovich Antelope Valley Courthouse. Information about this facility is attached to this pleading
6 as Exhibit B. This is a new facility which opened on October 16, 2003, and which is suited to
7 accommodate a case of this nature. In addition, one of the features of this courthouse is that it was
8 built in anticipation of the increased growth in the Antelope Valley in future years. Thus, it is
9 equipped with more courtrooms than are currently in use. It is possible that one of these empty
10 courtrooms could be dedicated to the hearing of this case with a neutral judge from another county.
11 Conveniently, the entity with the administrative authority to make this possible is the County of Los
12 Angeles.

13 The proposal to place the adjudication in a local venue is not a novel concept. The
14 adjudication of the Seaside Groundwater Basin is currently underway on the Monterey Peninsula.
15 That case is being heard in Monterey by a neutral judge from Kern County.³

16 Such an arrangement is fully authorized by the Code of Civil Procedure:
17 When the action or proceeding is one in which a jury is not of right, or in case a jury is
18 waived, then in lieu of transferring the cause, the court in the original county may request the
19 chairperson of the Judicial Council to assign a disinterested judge from a neutral county to
20 hear that cause and all proceedings in connection therewith.

21 (Code of Civil Procedure § 394.)

22 By locating the case in the Antelope Valley the Court will avoid providing a significant
23 litigation advantage to one side, and will allow the public access to the proceedings that will have
24 such a large impact on the future of the community. One of the factors that should be considered in
25 establishing venue for this case is the post-judgment proceedings. An established feature of a
26 groundwater adjudication is the retention of continuing jurisdiction by the Court and the

27 ³ *California American Water Co. v. City of Seaside*, Monterey County Superior Court Case No. M66343. Assigned to
28 the Honorable Roger D. Randall.

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 appointment of a Watermaster to administer the terms of the judgment – these two features have
2 been the end result of every single groundwater adjudication in California. While the actual
3 litigation of the case seems on its face to be the most significant court involvement in the
4 adjudication, it is actually this post-judgment continuing jurisdiction, which will last in perpetuity,
5 that will constitute the most significant aspect of the Court’s role. It is most appropriate that the
6 Court maintaining continuing jurisdiction be locally based, as is the case in most adjudicated basins.

7 C. Orange County Superior Court is Not the Only Venue Option

8 For all of the many reasons described above, the most appropriate venue for this case is in
9 the Michael D. Antonovich Antelope Valley Courthouse, to be heard by a neutral judge. In the
10 alternative, however, there are other appropriate locations for the case other than Orange County.

11 Petitioner has requested that the three cases be coordinated in Orange County Superior
12 Court. Petitioner’s reasoning is that both Kern County and Los Angeles County are not options
13 because venue in those counties would be subject to mandatory removal upon motion under section
14 394 of the Code of Civil Procedure, and because Orange County is therefore, “. . . the Superior
15 Court with Complex Litigation Departments nearest to Riverside, Los Angeles and Kern Counties.”
16 (*Petition for Coordination* 10:7.) Petitioner’s meaning here is that Orange County is the closest
17 county that was included within the Judicial Council’s Complex Litigation Pilot Program initiated
18 in 2000. The inclusion of the Orange County Superior Court in the Complex Litigation Pilot
19 Program seems to be Petitioner’s sole stated justification for locating the case in Orange County.
20 Petitioner hopes to present the illusion to this Court that Orange County is somehow a convenient
21 venue for the other parties in this case, and that there is no other option except to locate the case in
22 Orange County.

23 But there are other courts capable of handling complex water cases. For many years the San
24 Bernardino County Superior Court has done an excellent job managing the adjudication of the
25 Chino Basin in *Chino Basin Water Conservation District v. City of Chino* San Bernardino Superior
26 Court Case No. RCV 51010. Ventura County also would be an appropriate neutral county, which
27 would be relatively convenient for parties and witnesses from the Antelope Valley.

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 However, if the Court believes that the inclusion of the Orange County Superior Court in the
2 Judicial Council Complex Litigation Pilot Project justifies locating this case in Orange County, the
3 members of AGWA respectfully urge the Court to consider still designating the Michael D.
4 Antonovich Courthouse as the assigned location for the hearings in the case – in this way the
5 adjudication will have the benefit of the administrative capabilities of the Orange County Complex
6 Litigation Center, while avoiding the unfairness that will result from requiring the parties to travel
7 to Orange County.

8 **IV. CONCLUSION**

9 The factors to be considered in determining the location for this case strongly favor locating
10 the case at the newly constricted Michael D. Antonovich Antelope Valley Courthouse to be heard
11 by a neutral judge. This type of arrangement is similar to that currently being used in another
12 groundwater adjudication and is specifically authorized by the Code of Civil Procedure. Such a
13 decision would respect the needs of the vast majority of the parties to the litigation and would
14 prevent giving an unjust litigation advantage to one side in the case. Such a venue decision would
15 also acknowledge the reality that the Court will become a permanent part of the ongoing
16 management of the Antelope Valley Groundwater Basin through the exercise of its continuing
17 jurisdiction, and that this function will be best performed from a local site.

18
19 DATED: March_7, 2005

Respectfully submitted,
HATCH & PARENT, A LAW CORPORATION

20
21
22 By: _____
MICHAEL T. FIFE
23 Attorney for Eugene B. Nebeker, Robert A. Jones ,
24 Forrest G. Godde and Steven F. Godde, Gailen W.
25 Kyle, and John A. Calandri, collectively known as the
26 Antelope Valley Ground Water Agreement
27 Association (“AGWA”)
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40
v,
DIAMOND FARMING COMPANY
Judicial Council Coordination Proceeding No. 4408

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On March ____, 2005, I served the foregoing document described as
RESPONSE TO PETITION FOR COORDINATION
on the interested parties in this action.

X By sending an electronic copy to the party's e-mail address listed on the attached service list at ____ p.m./a.m. on March ____, 2005. This electronic transmission was reported as complete and without error.

X by U.S. Mail to the three courts listed on the attached service list. I am readily familiar with the firm's practice of collection and processing correspondence on the same day with postage thereon fully prepaid at Santa Barbara, California, in the ordinary course of business.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at Santa Barbara, California, on March ____, 2005.

TYPE OR PRINT NAME

SIGNATURE

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Eric Garner, Esq. Attorneys for Los Angeles County Waterworks
Jeffrey Dunn, Esq. District No. 40 and for Rosamond Community
BEST BEST & KREIGER Services District

3750 University Avenue, Suite 400
Riverside, CA 92502-1028
(951) 686-1450, 301; Fax (951) 682-4612

Addresses for electronic service:
ELGarner@bbklaw.com,
Lynda.Serwy@bbklaw.com,
JVDunn@bbklaw.com, kkeefe@bbklaw.com

Douglas J. Evertz, Esq. Attorneys for City of Lancaster

STRADLING, YOCCA, CARLSON & RAUTH
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6522
(949) 725-4000; Fax (949) 725-4100

Address for electronic service:
devertz@sycr.com

John Tootle, Esq. Attorneys for Antelope Valley
CALIFORNIA WATER SERVICE COMPANY Water Company

3625 Del Amo Boulevard, Suite 350
Torrance, CA 90503
(310) 257-1488; Fax (310) 257-4654

Address for electronic service:
itootle@calwater.com

Thomas Bunn, Esq. Attorneys for Palmdale Water District and
LAGERLOF, SENEAL, BRADLEY, Quartz Hill Water District
GOSNEY & KRUSE

310 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
(626) 793-9400; Fax (626) 793-5900

Address for electronic service:
TomBunn@lagerlof.com

Richard Zimmer, Esq. Attorneys for WM Bolthouse Farms

CLIFFORD & BROWN
1430 Truxton Avenue, #900
Bakersfield, CA 93301
(661) 322-6023; Fax (661) 322-3508

Address for electronic service:
rzimmer@clifford-brownlaw.com

Robert H. Joyce, Esq. Attorneys for Diamond Farming

LEBEAU, THELEN, LAMPE, MCINTOSH
& CREAR, LLP
5001 East Commercenter Drive, Ste 300
Bakersfield, CA 93389-2092
Fax (661) 325-1127

Addresses for electronic service:
bjoyce@lebeauthelen.com,
DLuis@Lebeauthelen.com

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 James L. Markman, Esq.
Steve Orr, Esq.
2 RICHARDS, WATSON & GERSHON
P.O. Box 1059
3 Brea, CA 92822-1059
(714) 990-0901; FAX (714) 990-2308
4 Addresses for electronic service:
jmarkman@rwglaw.com, sorr@rwglaw.com

Attorneys for City of Palmdale

5 Janet Goldsmith, Esq.
KRONICK, MOSKOWITZ, TIEDEMANN &
6 GIRARD
400 Capital Mall, 27th Floor
7 Sacramento, CA 95814-4417
FAX: (916) 321-4555
8 Address for electronic service:
jgoldsmith@kmtg.com

Attorneys for City of Los Angeles

9 John Slezak, Esq.
10 NORDMAN, CORMANY, HAIR &
COMPTON
11 1000 Town Center Drive, 6th Floor
Oxnard, CA 93030
12 (805) 988-8362; FAX: (805) 988-8387
Address for electronic service:
13 jslezak@nchc.com

Attorneys for Los Angeles Department of Water
and Power

14 Julie A. Conboy
Deputy City Attorney
Department of Water and Power
15 111 North Hope Street
P.O. Box 111
16 Los Angeles, CA 90012
213-367-4513; FAX: (213) 241-1416
17 Address for electronic service:
18 Julie.Conboy@ladwp.com

Attorneys for Los Angeles Department of Water
and Power

19 Henry Weinstock, Esq.
Fred Fudacz, Esq.
20 NOSSAMAN, GUTHNER, KNOX, ELLIOTT LLP
445 South Figueroa Street, 31st Floor
21 Los Angeles, CA 90071
(213) 612-7839; FAX (213) 612-7801
22 Addresses for electronic service:
23 hweinstock@nossaman.com,
ffudacz@nossaman.com

Attorneys for Tejon Ranch

Hatch & Parent, A Law Corporation
21 East Carrillo Street
Santa Barbara, CA 93101

1 Michael T. Fife, Esq.
HATCH & PARENT, A LAW CORPORATION
2 21 East Carrillo Stret
Santa Barbara, CA 93101
3 (805) 963-7000; Fax (805) 965-4333
Address for electronic service:
4 Mfife@HatchParent.com,
Karce@HatchParent.com

Attorneys for Eugene B. Nebeker, Robert A. Jones, Forrest G. Godde and Steve Godde, Gailen W. Kyle, and John A. Calandri, collectively known as the Antelope Valley Ground Water Agreement Association (“AGWA”)

5 Hon. Ralph W. Dau – Dept. 57
Los Angeles County Superior Court
6 111 North Hill Street
Los Angeles, CA 90012

7 Hon. Louis P. Etcheverry
8 Department 14
Kern County Superior Court
9 Metropolitan Division
1215 Truxtun Avenue
10 Bakersfield, CA 93301-4698

11 Hon. Gary B. Tranbarger – Dept. 07
Riverside County Superior Court
12 4050 Main Street
Riverside, CA 92502-0431

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28