

1 **MICHAEL T. FIFE (State Bar No. 203025)**
2 **BRADLEY J. HERREMA (State Bar No. 228976)**
3 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**
4 **21 East Carrillo Street**
5 **Santa Barbara, California 93101**
6 **Telephone No: (805) 963-7000**
7 **Facsimile No: (805) 965-4333**

8 **Attorneys for:** B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri
9 2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence
10 A. Godde, Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen
11 Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family
12 Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Inc., Edgar C. Ritter Paula
13 E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, Hines Family Trust , Malloy
14 Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as
15 Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas
16 Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Dennis L. & Marjorie E.
17 Groven Trust, Scott S. & Kay B. Harter, Habod Javadi, Eugene V., Beverly A., & Paul S. Kindig,
18 Paul S. & Sharon R. Kindig, Jose Maritorea Living Trust, Richard H. Miner, Jeffrey L. & Nancee J.
19 Siebert, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Beverly Tobias, Leo L. Simi, White
20 Fence Farms Mutual Water Co. No. 3., William R. Barnes & Eldora M. Barnes Family Trust of
21 1989, Healy Enterprises, Inc., John and Adrienne Reca, Sahara Nursery, Sal and Connie L. Cardile,
22 Gene T. Bahlman, **collectively known as the Antelope Valley Ground Water Agreement**
23 **Association ("AGWA")**

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **FOR THE COUNTY OF SANTA CLARA**

26 **ANTELOPE VALLEY**
27 **GROUNDWATER CASES**

) Judicial Council Coordination Proceeding
) No. 4408

28 Included Actions:

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

29 Los Angeles County Waterworks District No.
30 40 v. Diamond Farming Co. Superior Court of
31 California County of Los Angeles, Case No. BC
32 325 201 Los Angeles County Waterworks
33 District No. 40 v. Diamond Farming Co.
34 Superior Court of California, County of Kern,
35 Case No. S-1500-CV-254-348Wm. Bolthouse
36 Farms, Inc. v. City of Lancaster Diamond
37 Farming Co. v. City of Lancaster Diamond
38 Farming Co. v. Palmdale Water Dist. Superior
39 Court of California, County of Riverside,
40 consolidated actions, Case No. RIC 353 840,
41 RIC 344 436, RIC 344 668

) **DECLARATION OF MICHAEL T. FIFE IN**
) **SUPPORT OF EX PARTE APPLICATION**
) **FOR RELIEF FROM EXPERT**
) **DISCLOSURE DEADLINE**

) **Date: June 11, 2008**
) **Time: 8:15 a.m.**
) **Department: 17**

1 I, Michael T. Fife, declare as follows:
2

3 1. I am an attorney licensed to practice law before the courts of the State of California. I
4 am employed by the law firm of Brownstein Hyatt Farber Schreck, LLP, counsel of record for the
5 Antelope Valley Groundwater Agreement Association (AGWA) in the above-entitled matter. I have
6 personal knowledge of the following, and, if called as a witness, I would and could testify
7 competently to the following:

8 2. At present, AGWA is the only group of local landowners actively participating in this
9 litigation.

10 3. On behalf of AGWA, I actively participated in the Court's process certifying the
11 Non-Pumpers Class. AGWA will similarly participate in the court's proceedings for the certification
12 of a Small Pumpers Class, as the landowners that will make up this proposed class are similar to and
13 will be aligned with the members of AGWA.

14 4. As in all groundwater basin adjudications, I expect that the private landowners in this
15 litigation will band together to counter the purveyors' claims of prescription.

16 5. The Court's May 23 Amended Order After Case Management Conference sets a
17 hearing for the certification of the Small Pumpers Class for August 11, 2008 and a Phase 2 trial date
18 of October 6, 2008. I do not believe there will be time, in the less than two months between these
19 two dates, to provide notice to the members of Small Pumpers Class and to have named and served
20 those private landowners that fall outside the Class definition.

21 6. The private landowners in this litigation are prejudiced by the Court's setting of an
22 October Phase 2 trial date less than two months after the date for the certification of a Small
23 Pumpers Class, as it will preclude a significant number of additional private landowners, whose
24 interests are aligned with AGWA, from meaningfully participating – if they are able to participate at
25 all – in the Phase 2 trial, the most crucial phase of trial in this litigation. The private landowners in
26 this case will be irreparably harmed should this occur.

27
28 DECLARATION OF MICHAEL T. FIFE IN SUPPORT OF EX PARTE APPLICATION

1 7. AGWA has waited to retain an expert consultant for analysis of the matters at issue in
2 the Phase 2 trial, as it did not want to expend its limited resources if such hiring were to prove
3 unnecessary. The purveyors ceased service of aligned private landowners, it was unclear whether a
4 Small Pumpers Class would be formed and whether any additional private landowners would be
5 individually named and served, and counsel for the prospective Small Pumpers Class has indicated
6 that he will petition the court to appoint an expert consultant for the benefit of the class.

7 8. At its core, this case is about prescriptive rights allegations by the purveyors against
8 the landowners. Until very recently, the Court's discovery stay precluded AGWA from
9 investigation of the purveyor's claims as to overdraft, other than speculation through the retention of
10 its own expert consultant. AGWA could not reasonably expend the money necessary for such an
11 analysis and then later find out, as a result of discovery as to the purveyors' position, that it had been
12 unnecessary.

13 9. While it was reasonable for AGWA to delay in retaining an expert pending the
14 resolution of the issues of class certification and party service and the lifting of the Court's discovery
15 stay, the Court's setting of Phase 2 trial for October necessitates the retaining and disclosure or an
16 expert witness in such a short time so as to harm AGWA.

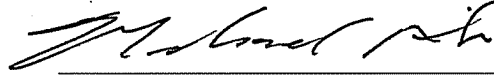
17 10. AGWA and many of the other parties have participated in settlement negotiations.
18 AGWA believes that the settlement process has been positive and productive, and it looked forward
19 to continued participation in that process. However, the Court's designation of an October Phase 2
20 trial date causes the parties advantaged by the short time until trial to prefer trial over continued
21 settlement negotiations. Additionally, the time between now and trial is so short that it is not
22 possible that the parties could reach settlement in that time, leaving the parties with no choice but to
23 prepare for trial.

24 11. Based on the short time between now and an October Phase 2 trial date, AGWA
25 believes that the settlement process is now at risk, and that the scheduling of the Phase 2 trial in
26 October has accordingly caused harm to all parties in the case.

27
28 DECLARATION OF MICHAEL T. FIFE IN SUPPORT OF EX PARTE APPLICATION

1 I declare under a penalty of perjury under the laws of the State of California that the
2 forgoing is true and correct, and that this declaration is executed this 6th day of June, 2008 at Santa
3 Barbara, California.

4
5 Dated: June 6, 2008



6 MICHAEL T. FIFE

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Santa Barbara, CA 93101

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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 June 6, 2008, I served the foregoing document described as:

**DECLARATION OF MICHAEL T. FIFE IN SUPPORT OF EX PARTE APPLICATION
FOR RELIEF FROM DISCLOSURE DEADLINE**

on the interested parties in this action.

By posting it on the website at 3:00 p.m./a.m. on June 6, 2008. This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on June 6, 2008.

Rachel Roberto

TYPE OR PRINT NAME

Michael T. Fife

SIGNATURE

DECLARATION OF MICHAEL T. FIFE IN SUPPORT OF EX PARTE APPLICATION