

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, Habod Javadi, Eugene V., Beverly A., & Paul S. Kindig, Paul S. & Sharon R. Kindig,  
18 Jose Maritorena Living Trust, Richard H. Miner, Jeffrey L. & Nancee J. Siebert, Barry S. Munz,  
19 Terry A. Munz and Kathleen M. Munz, Beverly Tobias, Leo L. Simi, White Fence Farms Mutual  
20 Water Co. No. 3., William R. Barnes & Eldora M. Barnes Family Trust of 1989, Del Sur Ranch,  
21 LLC, Healy Enterprises, Inc., John and Adrienne Recca, Sahara Nursery, Sal and Connie L. Cardile,  
22 Gene T. Bahlman, **collectively known as the Antelope Valley Ground Water Agreement**  
23 **Association ("AGWA")**

14  
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SANTA CLARA**

17 **ANTELOPE VALLEY**  
18 **GROUNDWATER CASES**

) Judicial Council Coordination Proceeding  
) No. 4408

19 Included Actions:

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

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

) **AGWA'S EX PARTE APPLICATION FOR**  
) **AN ORDER SHORTENING TIME FOR**  
) **HEARING ON AGWA'S MOTION TO**  
) **DECERTIFY THE SMALL PUMPERS**  
) **CLASS**

) **Date: May 6, 2009**  
) **Time: 9:00 AM**  
) **Department: Santa Clara Superior Court,**  
) **Dept. 17C**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 6, 2009 at 9:00 a.m., AGWA will appear by  
3 teleconference before the Honorable Jack Komar in Department 17C, located at 191 North First  
4 Street, San Jose, California, seeking an order shortening time for a hearing on AGWA's Motion to  
5 Decertify the Small Pumpers Class.

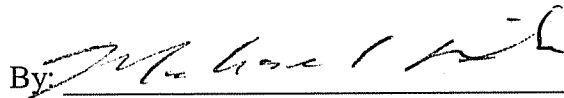
6 The Court has ordered that the Small Pumpers Class notice be sent out by May 15. (See  
7 Order Approving Revised Class Notice for Small Pumper Class Action, signed by Judge Jack  
8 Komar filed March 13, 2009.) Since AGWA's Motion to Decertify the Small Pumpers Class  
9 challenges the propriety of that class and if granted, would halt or modify the class notice, this  
10 Application became necessary.

11 AGWA seeks to have this motion heard on May 6, 2009, at 9:00 a.m. or as soon thereafter  
12 as is convenient for the Court. AGWA seeks that said Motion to be deemed filed and served on  
13 April 30, 2009. Should the Court require further briefing on AGWA's Motion to Decertify the  
14 Small Pumpers Class, AGWA requests that the Court order that the Small Pumpers Class notice not  
15 be sent out and that the Court subsequently establish a briefing schedule.

16 This application is based on this Application, the Memorandum of Points and Authorities,  
17 AGWA's Motion to Decertify the Small Pumpers Class and the Declaration of Michael T. Fife in  
18 support of this Application, all filed concurrently herewith.

19  
20 Dated: April 30, 2009

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP

21  
22  
23 By: 

24 MICHAEL T. FIFE  
25 BRADLEY J. HERREMA  
26 ATTORNEYS FOR AGWA  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The class notice for the Small Pumpers Class is scheduled by the court to be sent out by  
4 May 15, 2009. In its Motion to Decertify the Small Pumpers Class, AGWA alleges that there is no  
5 adequate community of interest and therefore the class is improperly defined and must be  
6 decertified. Should the class notice be sent out by May 15, 2009 as ordered by the Court, and the  
7 Court decertifies or redefines the class, this will add unnecessary costs and confusion to an already  
8 complex case and confound the class structure even further.

9 **II. LEGAL ARGUMENT**

10 An applicant for an Ex Parte Order must make a factual showing by declaration of the  
11 irreparable harm, immediate danger or other statutory basis for granting ex parte relief. (Cal. Rules  
12 of Court, Rule 3.1202(c).) Here, the class notice is set to be sent out by May 15, 2009. In order to  
13 have a motion to decertify the Small Pumpers Class heard prior to the notice being sent out by May  
14 15, 2009, an ex parte order shortening time must be granted to avoid irreparable harm to all parties  
15 to this case, based on the increased costs and confusion that would result. (See Declaration of  
16 Michael T. Fife ¶ 5, filed concurrently with this Application (hereafter “Fife Decl.”).)

17 At the time of class certification, AGWA did not realize the extent to which the Small  
18 Pumpers Class Counsel believed that agricultural interests were adverse to the Small Pumpers  
19 Class. (Fife Decl. ¶ 4.) In light of the fact that it is now apparent that there is no proper community  
20 of interest amongst the Small Pumpers Class, as explained in AGWA’s Motion to Decertify the  
21 Small Pumpers Class, this Ex Parte Application is necessary at this time before the class notice is  
22 sent out.

23 If AGWA’s Ex Parte Application is not granted, and the class notice is sent out, it would be  
24 practically very difficult to go back and change the class structure for being improperly defined.  
25 (Fife Decl. ¶ 5.) Furthermore, this would result in increased costs in the litigation and through the  
26 service of the notice, to the Public Water Suppliers. The undue hardship that would fall upon the  
27 parties if this application is not granted, and the class is later decertified after the notice has been  
28 sent out, far outweighs any prejudice to any of the other parties involved in this action.

1 **III. THERE IS PROPER NOTICE FOR THIS EX PARTE APPLICATION**

2 AGWA notified all parties of this ex parte proceeding on April 30, 2009, by posting on the  
3 Court's website. (Fife Decl. ¶ 6.) Since AGWA is required to notify all parties no later than 10:00  
4 a.m. the Court day before the ex parte appearance, (Cal. Rules of Court, Rule 3.1203(a)), AGWA  
5 has satisfied the notice requirements. The notice included the nature of the relief requested, the  
6 date, time and place the application is to be made, and whether parties will appear to oppose the  
7 application. (Cal. Rules of Court, Rule 3.1204(a).)

8 Since this office gave notice to all parties of this Ex Parte Application immediately after  
9 being notified by this Court that this Ex Parte Application had been placed on calendar, (Fife Decl.  
10 ¶ 6.), the parties to this adjudication are not prejudiced in any way.

11 **IV. CONCLUSION**

12 For the foregoing reasons, AGWA respectfully requests this Court grant its Ex Parte  
13 Application for an Order Shortening Time on a Motion to Decertify the Small Pumpers Class

14  
15 Dated: April 30, 2009

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP

16  
17  
18 By: 

19 MICHAEL T. FIFE  
20 BRADLEY J. HERREMA  
21 ATTORNEYS FOR AGWA

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
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

**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 April 30, 2009, I served the foregoing document described as:

**AGWA'S EX PARTE APPLICATION FOR AN ORDER SHORTENING  
TIME FOR HEARING ON AGWA'S MOTION TO DECERTIFY THE  
SMALL PUMPERS CLASS**

on the interested parties in this action.

By posting it on the website at 4:00 p.m. on April 30, 2009.  
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 April 30, 2009.

MARIA KLACHKO-BLAIR  
TYPE OR PRINT NAME

  
SIGNATURE