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12 Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Inc., Edgar C. Ritter Paula
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14 Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as
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21 Eldora M. Barnes Family Trust of 1989, Healy Enterprises, Inc., John and Adrienne Reca, Sahara
22 Nursery, Sal and Connie L. Cardile, Gene T. Bahlman, **collectively known as the Antelope Valley**
23 **Ground Water Agreement Association ("AGWA")**

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **FOR THE COUNTY OF LOS ANGELES**

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

) **ANTELOPE VALLEY GROUNDWATER**
) **AGREEMENT ASSOCIATION'S CASE**
) **MANAGEMENT CONFERENCE**
) **STATEMENT RE ISSUES TO BE TRIED**

) Date: March 8, 2010
) Time: 10:00 AM
) Dept: 1

1 Pursuant to the Court’s February 19, 2010 *Order Resetting Case Management Conference*,
2 the Antelope Valley Groundwater Agreement Association (“AGWA”) respectfully submits this Case
3 Management Statement. AGWA is concerned that too many issues in this case have been addressed
4 in an ad hoc manner without a coherent vision of how each issue will lead to an ultimate resolution.
5 The Phase III trial should not be such an issue. It is unreasonable to simply choose a random point
6 in time and schedule a trial on that date. Instead, a reasonable schedule should be formulated that
7 includes all of the necessary steps that will be required to get to the Phase III trial, and this schedule
8 should be reflected in a pre-trial order. That pre-trial order should also describe how Phase III will fit
9 in to subsequent phases with reference to how all of these phases will lead to resolution of the causes
10 of action that have been pled.

11 If the schedule demonstrates that an August 2010 Phase III trial is feasible, then such a date
12 can be scheduled. But to attempt to schedule a trial date independent of a reasonable consideration
13 of all the necessary steps that will be required to get to that date, and independent of a detailed
14 discussion of how Phase III fits in to subsequent phases, is incoherent and perpetuates the lack of
15 vision and leadership that has caused this case to be in its 10th year without yet even being at issue.

16 **I. ORDER OF CONSOLIDATION**

17 Preliminarily, AGWA highlights two issues arising out of the recent *Order Transferring and*
18 *Consolidating Actions for all Purposes*, filed February 19, 2010 (“Order of Consolidation”), that the
19 Court should address before scheduling trial. First, the Order of Consolidation erroneously states
20 that: “In a single aquifer, all water rights are said to be correlative to all other water rights in the
21 aquifer.” (*Order of Consolidation*, p. 2:18-22.)

22 Only overlying rights are correlative. (See *City of Barstow v. Mojave Water Agency* (2000)
23 23 Cal.4th 1224, 1240-41; *California Water II* (1995) *Littleworth & Garner*, pp. 75-76.)
24 Appropriate rights are junior to overlying rights and are prioritized inter se on a temporal basis.
25 (*City of Barstow*, *supra*, 23 Cal.4th at 1240-41.)

26 Second, the Order of Consolidation is internally inconsistent because it states that all rights
27 will be adjudicated vis-à-vis all parties (*Order of Consolidation*, pp. 3:15-19, 4:4-6), but also says

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1 that if and when the classes settle with the Purveyors, then there can be a “final” judgment as to the
2 classes. (*Order of Consolidation*, pp. 4:25-5:4.) If the Court does not adjudicate rights as between
3 landowners, the adjudication will not be a “comprehensive” adjudication that would satisfy the
4 McCarran Act jurisdictional requirements. (43 U.S.C. § 666.) AGWA thus respectfully requests
5 that the Court clarify how the consolidation will comprehensively adjudicate all rights, when the
6 Court has said that it will approve separate class settlements that will result in final judgments as to
7 the classes.

8 **II. SUBJECT MATTER OF NEXT PHASE OF TRIAL**

9 The next phase of trial should include all elements necessary for the determination of the
10 Purveyors’ claims of prescription. In its February 19, 2010 *Order of Consolidation*, the Court stated
11 that it intends to first schedule trial on the common issues relating to declaratory relief which will
12 include safe yield and overdraft. (*Order of Consolidation*, p. 6:8-14.) The Court noted that
13 determination of rights to withdraw groundwater, claims to prescription, and issues affecting
14 appropriation may follow. (*Order of Consolidation*, p. 6:15-19.) The issues of historical safe yield
15 and overdraft, however, are relevant only in the context of the Purveyors’ alleged prescriptive
16 groundwater rights. That is, the relevance of safe yield to the issue of a physical solution is entirely
17 forward looking – establishing what is the safe yield currently and whether it is anticipated to
18 increase or decrease over time. What the safe yield was in the past and whether pumping relative to
19 that safe yield resulted in overdraft has no relevance to future management of the Basin – it is
20 relevant only to the adversity element of the question of whether prescriptive rights were established.
21 Phasing the trial according to Causes of Action, rather than abstract issues such as safe yield and
22 overdraft, is the most straightforward approach to structuring trial in this case in order to avoid
23 ambiguities about the issues and their relevance to the case. At the very least, the Court should
24 provide a mechanism to define the concepts of safe yield and overdraft before proceeding to trial.

25 **III. DEMAND FOR JURY TRIAL**

26 AGWA, along with other overlying landowners, has demanded a jury trial on the claim of
27 prescription. The right to a jury trial on the claim of prescription is a fundamental constitutional

1 right under the California State constitution. (*Arciero Ranches v. Mesa* (1993) 17 Cal.App.4th 114,
2 124-25.) AGWA maintains its demand a jury trial on any claim of prescription, which will
3 necessarily include factual findings that establish safe yield and overdraft, since these elements can
4 only function as the adversity element of the Purveyors' prescriptive claim. If a right to a jury exists
5 on a cause of action like prescription, then it must also exist for the necessary elements of that cause
6 of action. Otherwise, the right is meaningless.

7 The Court has previously indicated that the issue of a jury trial would be addressed at the
8 time trial is set. At the February 14, 2007 hearing, the Court stated, "Well, when we set it for trial,
9 you will be able to indicate jury or non-jury as to appropriate issues to the extent there are
10 appropriate issues. Contrary to the Federal Rules, we don't require you to state it at the outset."
11 (February 14, 2007 Hearing Transcript, p. 17:16-25.) Before any factual issues bearing on the
12 prescriptive claims may proceed, the Court must address AGWA's and other landowners' demands
13 for a jury trial.

14 **IV. TIMING OF THE TRIAL**

15 Rather than picking a seemingly random date in the near future, AGWA believes the parties
16 need to work with the Court to schedule realistic milestones that culminate in a final trial date. For
17 example, the Federal Defendants previously submitted a proposed litigation schedule with a roughly
18 seven-month timeframe, which included necessary deadlines for discovery, expert testimony, and
19 submittal of pleadings. (*Federal Defendants' Case Management Statement*, filed August 13, 2009,
20 pp. 3:12-4:6.) AGWA proposes that the Court schedule a trial date according to the following
21 timeframe:

22 1. Order Completion of Service of Process

23 The Court should order that service of process be completed by the Purveyors on all
24 necessary parties now before the court. Otherwise, there can be no joinder of indispensable parties.
25 For example, it must be confirmed that all parties that opted out of the classes have been named and
26 served to be made party to this litigation. Now that the coordinated proceedings have been
27 consolidated, there must be a reliable written record of all parties to each of the remaining actions,

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1 confirmation of service on all parties to each of the actions, and confirmation of the filing of
2 responsive pleadings by all parties in each of the actions followed by the defaults of all parties that
3 fail to file responsive pleadings. The Court should not move forward setting a trial date until there
4 has been clear affirmation from the purveyor parties that the case is at issue. AGWA is not in a
5 position to estimate the time necessary to complete this task.

6 2. Resolve Pleading Issues

7 The Court should allow for proper legal challenge to the sufficiency of the various pleadings,
8 now that the case has been consolidated. It is currently unclear exactly what causes of action are
9 being asserted by each party as against each other. Without knowing the specific allegations being
10 made by each party as against the other parties in this consolidated proceeding, the significance of
11 issues like safe yield and overdraft remains unclear. As AGWA stated in its January 15, 2010 Joint
12 Case Management Conference Statement, proper pleading requires specifically identified causes of
13 action which are being tried by a specific party against other parties. (See *Joint Case Management*
14 *Conference Statement*, filed January 15, 2010, p. 7:26-8:3.) Simply trying a general issue of safe
15 yield or overdraft is neither sufficient nor legally proper. The parties also have no way of
16 determining the significance of the issues being tried without being able to relate them to a cause of
17 action and cannot determine which party will bear the burden of proof at trial. This task could be
18 completed within 30 days.

19 3. Clarify Class Definitions

20 The definitions of the classes have changed over time, and even now the specific definitions
21 of the classes are unclear. In light of the recent consolidation, the Court should allow sufficient time
22 to resolve the definitions of the classes and how they relate to other parties such as AGWA. This
23 task can be completed simultaneous with 2.

24 4. Verify that the McCarran Amendment is Satisfied

25 Before proceeding, the Court should elicit confirmation from the Federal Defendants that
26 they are satisfied that the consolidation has satisfied McCarran Act jurisdictional requirements. (43
27 U.S.C. § 666.) This task can be completed simultaneous with 2.

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5. Completion of Discovery

AGWA urges this court to defer setting a trial date until after all the parties have had a sufficient opportunity to complete the discovery process. Discovery has stalled. For example, after years of litigation, the parties still do not know what the claimed prescriptive period is. AGWA does not believe that the issues subject to discovery in this case are unique or in any way more complicated than the issues that have existed in other water rights cases. AGWA supports standardized discovery before any setting of trial to allow discovery to proceed efficiently, minimize costs, and give the parties a better idea of what will be asserted on each side in any upcoming phase of trial. This task can be completed within 30 to 60 days.

6. Set Deadline for Expert Reports and Rebuttal

Any phase of trial focused on claims of prescriptive rights will be heavily focused on expert testimony and evidence. Experts must be disclosed, and their findings made available. This will not be an insignificant process, and adequate time for this process must be given so that each side can properly prepare for trial. The Court should schedule a deadline for the filing of experts' reports on the issues identified for litigation. Next, the Court should set a deadline for the filing of experts' rebuttals to the initial reports of the experts. This task can be completed within 60 days.

7. Set Timeframe for Expert Depositions

After expert witness reports are provided and the parties complete rebuttal, the Court should allow at a minimum a month for oral or written depositions of experts, considering the complexity of this adjudication. Given the number of experts in the case, expert depositions will require at least 30 days.

8. Opening Trial Briefs Due

The trial schedule should include a defined date for submittal of opening briefs after the parties have reviewed all of the expert testimony and reports, along with discovery materials. Opening briefs should not be due any earlier than two to three weeks after experts have given their depositions.

9. Exchange of Exhibits Used at Trial

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1 The parties will also require adequate time to exchange exhibits used at trial so that they may
2 be reviewed to prepare responsive briefs. This task will require approximately two weeks.

3 10. Responsive Briefs Due

4 The Court should set the due date for responsive briefs at least two weeks out from the
5 exchange of exhibits to be used at trial.

6 11. Allow Sufficient Time for Settlement Conferences

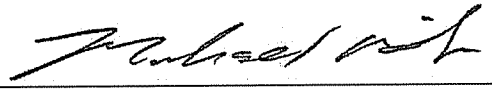
7 In a complex case such as this, the Court should allow ample time for the settlement
8 conference process to play out. Although the last day to file and serve a Settlement Conference
9 Statement is five days before hearing pursuant to California Rules of Court Rule 3.1380, the Court
10 should schedule settlement conferences in the court's discretion. Settlement conferences can be
11 completed within two to three weeks.

12 12. Trial Commences

13 According to this schedule, trial will commence sometime in late October. While this date is
14 three months later than the date the Court has previously indicated it prefers, there has been no
15 showing by any party that an extra three months is material in a case that has already gone on for ten
16 years. There is simply no good reason to risk due process objections for the sake of three months.

17
18 Dated: March 2, 2010

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

19
20
21 By: 
22 MICHAEL T. FIFE
23 BRADLEY J. HERREMA
24 ATTORNEYS FOR AGWA
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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 March 2, 2010, I served the foregoing document described as:

**ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION'S CASE
MANAGEMENT CONFERENCE STATEMENT RE ISSUES TO BE TRIED**

on the interested parties in this action.

By posting it on the website at 3:00 p.m. on March 2, 2010.
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 March 2, 2009.

MARIA KLACHKO-BLAIR
TYPE OR PRINT NAME



SIGNATURE