

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:** Gene T. Bahlman, William R. Barnes & Eldora M. Barnes Family Trust of 1989,
9 Thomas M. and Julie Bookman, B.J. Calandri, John Calandri, John Calandri as Trustee of the John
10 and B.J. Calandri 2001 Trust, Calmat Land Company, Sal and Connie L. Cardile, Consolidated Rock
11 Products, Del Sur Ranch LLC, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G.
12 Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Gorrindo Family Trust,
13 Leonard and Laura Griffin, Healy Enterprises, Inc., Hines Family Trust, Habod Javadi, Juniper Hills
14 Water Group, Eugene V., Beverly A., & Paul S. Kindig, Paul S. & Sharon R. Kindig, Kootenai
15 Properties, Inc., Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W.
16 Kyle as Trustee of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Malloy Family Partners,
17 Maritorena Living Trust, Jose Richard H. Miner, Barry S. Munz, Terry A. Munz and Kathleen M.
18 Munz, Eugene B. Nebeker, R and M Ranch, Inc., John and Adrienne Reca, Edgar C. Ritter, Paula E.
19 Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Sahara Nursery, Marygrace H. Santoro
20 as Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Mabel Selak, Jeffrey L.
21 & Nancee J. Siebert, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the Stathatos
22 Family Trust, Tierra Bonita Ranch Company, Beverly Tobias, **collectively known as the Antelope
23 Valley Ground Water Agreement Association (“AGWA”)**

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

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

19 Included Actions:

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)

Judicial Council Coordination Proceeding
No. 4408

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

**EX PARTE REQUEST FOR HEARING ON
OBJECTIONS OF ANTELOPE VALLEY
GROUNDWATER AGREEMENT
ASSOCIATION TO PURVEYORS’
REQUEST FOR REMOTE TESTIMONY
OF MR. SCALMANINI**

Ex Parte Hearing
Date: December 31, 2010
Time: 9:00 am

Counsel to appear telephonically

1 On December 29, 2010 the Court issued a minute order describing a process that has
2 occurred over the past week concerning the purveyors' witness Mr. Scalmanini. In response to this
3 minute order, the Wood Class filed an objection on procedural and substantive grounds to the
4 process as it has occurred, including lack of notice to other parties in the case and raising a
5 substantive objection to the proposal to take the testimony of a significant witness in any way other
6 than live testimony in the courtroom.

7 The Antelope Valley Groundwater Agreement Association ("AGWA") was specifically
8 identified in the Court's minute order as a party who has provided comments regarding the purveyor
9 proposal and who has participated in the process regarding Mr. Scalmanini. AGWA files this
10 Objection in order to create a record of its participation to date and to offer a proposal for addressing
11 the situation with notice to all parties.

12 AGWA joins in the objections raised by the Wood Class. In addition to the points raised in
13 the Wood Class filing, AGWA notes that no formal motion has been filed by the purveyors with
14 regard to this situation, and to date no declarations have been filed in order to clarify the health
15 condition of Mr. Scalmanini.

16 AGWA also joins in the objection to the proposed remote testimony of Mr. Scalmanini via
17 video conference. AGWA believes the potential limitations on the ability of parties to cross-
18 examine Mr. Scalmanini create an unacceptable risk of prejudice. AGWA knows of no precedent
19 for such an arrangement, which makes it impossible to formulate protocols in advance of video
20 conference testimony in order to protect opposing parties' rights of cross examination. Since one
21 aspect of the proposal is that Mr. Scalmanini will only be able to testify for three hours per day, and
22 since the purveyors do not intend to reduce the previously identified scope of Mr. Scalmanini's
23 proposed testimony, AGWA is also concerned about the amount of time and attendant increased
24 costs that the proposal entails.¹

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27 ¹ One of AGWA's witnesses, Ms. Julie Kyle, has a surgery scheduled for January 24, 2011 and will
28 be unavailable for testimony for up to three weeks afterward. Under the original time estimates for
the trial, there was no conflict with this scheduled surgery. Under the current situation, a conflict
may arise.

1 AGWA's objection is further predicated on its belief that there are acceptable alternatives to
2 the proposed video conference testimony. In particular, AGWA offers the following proposal,
3 consistent with that offered by the Wood Class, which it believes is supported by the other
4 landowner parties:

5 1. On Tuesday January 4, 2011, the purveyors should begin offering testimony with
6 witnesses other than Mr. Scalmanini. AGWA's understanding of the purveyor's case-in-chief is that
7 these witnesses' testimony was largely intended to be foundational to Mr. Scalmanini's testimony.
8 The Court should encourage the purveyors to have these witnesses cover as much of the material
9 otherwise intended to be covered by Mr. Scalmanini as possible.

10 2. At the end of this testimony the Court should go into recess for a two-week period
11 during which a videotaped deposition will be conducted of Mr. Scalmanini at a location convenient
12 to Mr. Scalmanini. During this deposition, the purveyors may conduct direct testimony of Mr.
13 Scalmanini as to those issues not previously covered by the other purveyor witnesses. Opposing
14 counsel may conduct cross-examination at that time as well.

15 3. This videotaped deposition testimony will then be offered in Court as Mr.
16 Scalmanini's testimony in this matter.

17 This proposal will allow the trial to commence on January 4, 2011 as planned, and will allow
18 for the efficient presentation of Mr. Scalmanini's testimony to the Court without the necessity of
19 abbreviated Court days or the confusion attendant to the presentation of overlapping expert
20 testimony. This proposal is also more protective of Mr. Scalmanini's health, as it will provide the
21 purveyors the opportunity to lessen the burden on Mr. Scalmanini by seeking to have his subject
22 areas covered by the other designated witnesses and it will allow for more flexibility in the conduct
23 of his testimony than would a formal Court setting.


24 Because any other proposal currently under consideration creates an unacceptable risk of
25 prejudice to defending parties, AGWA hereby requests that if the above proposal is not acceptable to
26 the Court, that the Court grant a two-week continuance of the trial in order to allow for further
27 consideration of alternatives.

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Dated: December 30, 2010

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 
MICHAEL T. FIFE
BRADLEY J. HERREMA
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 December 30, 2010, I served the foregoing document described as:

**OBJECTIONS OF ANTELOPE VALLEY GROUNDWATER AGREEMENT
ASSOCIATION TO PURVEYORS' REQUEST FOR REMOTE TESTIMONY OF MR.
SCALMANINI**

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on December 30, 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 December 30, 2010.



MARIA KLACHKO-BLAIR

TYPE OR PRINT NAME

SIGNATURE