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11 Connie L. Cardile, Efren and Luz Chavez, Consolidated Rock Products, Del Sur Ranch LLC,
12 Steven Godde as Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde
13 and Godde Trust, Robert and Phillip Gorrindo, Gorrindo Family Trust, Laura Griffin, Healy Farms,
14 Healy Enterprises, Inc., Habod Javadi, Juniper Hills Water Group, Eugene V., Beverly A., & Paul
15 S. Kindig, Paul S. & Sharon R. Kindig, Kootenai Properties, Inc., Gailen Kyle, Gailen Kyle as
16 Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family Trust,
17 Julia Kyle, Wanda E. Kyle, Maritorena Living Trust, Jose and Marie Maritorena, Richard H. Miner,
18 Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Eugene B. Nebeker, R and M Ranch, Inc.,
19 Richard and Michael Nelson, Robert Jones, John and Adrienne Reca, Edgar C. Ritter, Paula E.
20 Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Sahara Nursery, Mabel Selak, Jeffrey
21 L. & Nancee J. Siebert, Dr. Samuel Kremen, Tierra Bonita Ranch Company, Beverly Tobias, Triple
22 M Property FKA and 3M Property Investment Co., Vulcan Materials Co. and Vulcan Lands Inc.,
23 Willow Springs Company, Donna and Nina Wilson, Ramin Zomorodi, Genz Development and
24 Castle Ranch Estate, **collectively known as the Antelope Valley Ground Water Agreement**
25 **Association ("AGWA")**

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

18 ANTELOPE VALLEY	)	Judicial Council Coordination Proceeding
19 GROUNDWATER CASES	)	No. 4408
20 Included Actions:)	
21 Los Angeles County Waterworks District No.	)	Santa Clara Case No. 1-05-CV-049053
22 40 v. Diamond Farming Co. Superior Court of	)	Assigned to The Honorable Jack Komar
23 California County of Los Angeles, Case No. BC)	
24 325 201 Los Angeles County Waterworks	)	TRIAL SETTING CONFERENCE
25 District No. 40 v. Diamond Farming Co.	)	STATEMENT OF THE ANTELOPE
26 Superior Court of California, County of Kern,	)	VALLEY GROUNDWATER AGREEMENT
27 Case No. S-1500-CV-254-348 Wm. Bolthouse	)	ASSOCIATION (AGWA)
28 Farms, Inc. v. City of Lancaster Diamond)	
Farming Co. v. City of Lancaster Diamond	)	Date: July 9, 2012
Farming Co. v. Palmdale Water Dist. Superior	)	Time: 9:00 a.m.
Court of California, County of Riverside,	)	Dept: Department 1, Room 534
consolidated actions, Case No. RIC 353 840,)	
RIC 344 436, RIC 344 668)	

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) submits the
2 following Trial Setting Statement.

3 **I. JOINDER: AGWA JOINS IN THE STATEMENTS FILED BY AVEK, THE**
4 **STATE OF CALIFORNIA, AND BOLTHOUSE**

5 If the adjudication is to proceed through litigation rather than settlement, then it is most
6 logical that the primary legal contentions between the purveyors and the landowners –
7 prescription and return flows – should be the next set for resolution. However, settlement
8 discussions are ongoing and another mediation is scheduled for September 11. United States
9 Geological Survey water level data shows that water levels in the Basin have been largely stable
10 for the past five years, and, with the downturn in the economy, demands for water are not
11 increasing. There is simply no reason to rush to trial on matters of this magnitude when
12 settlement discussions are ongoing and the Basin is not suffering harm.

13 **II. AGWA PROPOSAL REGARDING NEXT PHASE**

14 AGWA notes that of the two proposed topics for the next phase of trial – prescription and
15 return flows (LA County Waterworks’ First Amended Complaint 1st and 6th Causes of Action) –
16 prescription is by far the more difficult of the two to try, particularly in light of the landowners’
17 demand for a jury trial. The issues regarding return flows on the other hand are relatively narrow.
18 These issues include: (1) legal resolution of ownership of return flow from imported water; (2)
19 legal resolution of whether return flows that degrade the Basin can satisfy the legal requirement
20 that such flows augment the water supply; and (3) technical resolution of amount of return flow
21 from imported water.

22 There are good reasons to try the issue of return flows prior to prescription. A prerequisite
23 to determining whether the purveyors have established prescriptive claims is to establish how
24 much of their pumping during any prescriptive period was return flows from imported water
25 versus native yield. If they were only pumping return flows, then they will have no pumping that
26 will support a claim for prescription. Furthermore, as indicated by their Phase III trial testimony,
27 the purveyors claim that return flows from imported water constitute nearly a quarter of the safe
28 yield. Landowners contest this claim and believe that the actual amount of such imported water

1 return flows is much smaller. Resolution of this dispute may be a major step toward facilitation
2 of settlement. For these reasons, AGWA recommends that if a next phase of trial is to be
3 scheduled, that it should pertain to LA County Waterworks' 6th Cause of Action regarding return
4 flows from imported water.

5 **III. PROVE-UP OF PUMPING**

6 At the June 19, 2012 Case Management Conference, the Court discussed the possibility of
7 scheduling some type of "prove-up" hearing as the next phase of trial. While resolution of certain
8 issues may require the Court to establish the amount of pumping by specific parties during given
9 time periods, such issues are intimately tied to discrete legal claims and only have relevance in
10 the context of those claims. For example, in the context of the prescription claim, a prove up of
11 individual landowner pumping is only relevant to establish self-help in the case that prescription
12 has already been established. Such analysis for periods outside of the prescriptive period will be
13 irrelevant, and if no prescription is shown, such an analysis will be irrelevant. While an analysis
14 of specific parties' pumping may be necessary, it would be a waste of resources to conduct such
15 analysis in a vacuum.

16 **IV. FURTHER ISSUES FOR RESOLUTION**

17 AGWA notes two additional issues requiring the Court's resolution – claims of the Willis
18 Class and the priority of any Federal Reserved Right.

19 In its Case Management Statement for the June 19 hearing, the Willis Class indicated that
20 it intends to object to any settlement proposal that contains specific allocations of water rights. In
21 effect, the Willis Class asserts that because of its approved settlement with the purveyors, the
22 purveyors now lack the authority to settle with the other landowners in the manner that has been
23 under discussion with Justice Robie for the past year. This is a major issue that is inhibiting
24 settlement discussions. Before the landowners devote further resources to mediation of a
25 settlement, it is appropriate for the Court to provide guidance as to whether the purveyors have
26 the ability to agree to that settlement.

27 A similar issue inhibiting settlement discussions is the priority of any Federal Reserved
28 Right held by federal defendants vis-à-vis the water rights of other landowners in the Basin. This

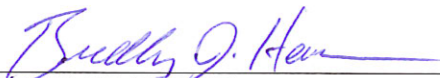
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issue is explained in detail in AGWA's January 18, 2012 Motion for Legal Findings Regarding Scope of Rights of Federal Defendants.

AGWA believes that of all the issues discussed herein, these two are currently the most significant impediment to settlement and in need of Court resolution. Both of these issues are primarily legal in nature and could be resolved by the Court with a minimum of discovery and briefing. AGWA believes that both could be set for hearing in September or October.

Dated: July 6, 2012

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: 
MICHAEL T. FIFE
BRADLEY J. HERREMA
Attorneys for AGWA

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PROOF OF SERVICE

I, Linda E. Minky, declare:

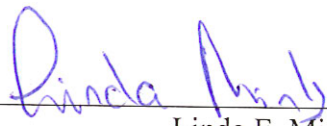
I am a citizen of the United States and employed in Santa Barbara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Brownstein Hyatt Farber Schreck, LLP, 21 East Carrillo Street, Santa Barbara, California 93101-2706. On July 6, 2012, I served a copy of the within document(s):

TRIAL SETTING CONFERENCE STATEMENT OF THE ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION (AGWA)

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- BY ELECTRONIC MAIL: By posting the document listed above to the Santa Clara Superior Court website: www.scefiling.org regarding the ANTELOPE VALLEY GROUNDWATER matter.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.

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

Executed on July 6, 2012, at Santa Barbara, California.



Linda E. Minky