

1 MICHAEL T. FIFE (State Bar No. 203025)
STEPHANIE OSLER. HASTINGS (State Bar No.: 186716)
2 BRADLEY J. HERREMA (State Bar No. 228976)
HATCH & PARENT, A LAW CORPORATION
3 21 East Carrillo Street
Santa Barbara, California 93101
4 Telephone No: (805) 963-7000
Facsimile No: (805) 965-4333
5

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

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

17 **ANTELOPE VALLEY**)
GROUNDWATER CASES) Judicial Council Coordination Proceeding
18) No. 4408
19 Included Actions:)
20 Los Angeles County Waterworks District No.)
40 v. Diamond Farming Co. Superior Court of)
21 California County of Los Angeles, Case No. BC)
325 201 Los Angeles County Waterworks)
22 District No. 40 v. Diamond Farming Co.)
Superior Court of California, County of Kern,)
23 Case No. S-1500-CV-254-348Wm. Bolthouse)
Farms, Inc. v. City of Lancaster Diamond)
24 Farming Co. v. City of Lancaster Diamond)
Farming Co. v. Palmdale Water Dist. Superior)
25 Court of California, County of Riverside,)
26 consolidated actions, Case No. RIC 353 840,)
RIC 344 436, RIC 344 668)
27)

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar
OBJECTION TO PROPOSED ORDER
GOVERNING CLASS NOTICE
Hearing Date: October 16, 2007
Time: 9:00 A.M
Department: 1

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) hereby objects to the
2 form of the proposed Notice of Pendency of Class Action (“Notice”) filed on behalf of Rebecca Lee
3 Willis on September 25, 2007. The Notice suffers from two deficiencies. First, the Notice as drafted
4 is inadequate to make clear that the Class certified by the Court is to include only those parties who
5 are not currently, and have not historically, pumped groundwater from their property within the
6 Basin. In connection with this, the proposed Order should be revised to specify the consequence if a
7 pumper does not exclude itself from the class. Second, the date given for the relevant five-year
8 period over which it is to be determined whether a property owner is to be considered a “pumper” is
9 erroneous. Furthermore, the attempt to craft a proper Notice through the use of a specified date
10 period reveals that the use of such a mechanism may not be the best way to define the members of
11 the class.

12 **I. Exclusion of Pumpers from the Class**

13 The current form of the Notice is inadequate because it is not clear that pumpers are excluded
14 from the class. In a very confusing construction, the Notice does *not* list pumpers as those excluded
15 from the class, and rather only mentions pumping in the negative in the paragraph describing who is
16 included in the class. A more straightforward construction of this issue would list groundwater
17 pumping as an activity that excludes a party from the class.

18 As currently drafted, a property owner receiving the Notice might not be able to easily
19 ascertain whether he or she is included in the Class created by the Court. Like other pieces of
20 unexpected mail, the Notice is likely to be given only cursory review by its recipients. Both the
21 Notice’s intended recipients and its list of parties excluded from the class leave ambiguity as to
22 whether a party pumping groundwater is included in the Class or might otherwise wish to protect his
23 or her groundwater rights. A revised notice, which AGWA believe makes more clear the parties
24 included in the Class, is attached here as Exhibit “A.”

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1 **II. Proposed Order**

2 Paragraph 7 of the Proposed Order gives parties 60 days to exclude themselves from the
3 class, but the Proposed Order remains silent as to the consequences if a party does not exclude itself.
4 This ambiguity creates the risk that parties who pump will remain in the class and will later attempt
5 to exert rights based on their historical pumping. It is this very conflict which has motivated the
6 exclusion of pumpers from the class. To eliminate this ambiguity, paragraph 7 should be revised to
7 include the following statement:

8
9 “Any party who does not exclude itself from the class will be estopped from later
10 claiming water rights based on historical pumping, either as an exercise of self-help or otherwise.”
11

12 **III. Period of Pumping Determination**

13 The Notice additionally raises questions as to the period of time for which a party receiving
14 the Notice must have pumped groundwater in order to be excluded in the Class. The Notice
15 provides that the Class should include all owners of property upon which groundwater is not
16 currently being pumped and was not pumped for the five years prior to January 18, 2006. While this
17 is the date that was included in the Order Certifying the Plaintiff Class, it is not clear what is the
18 significance of this date. If it is supposed to mark the time when the first of the adjudication
19 complaints was filed, then the date is erroneous. The first complaint filed by Los Angeles County
20 initiating the adjudication was filed on November 29, 2004. The cover sheet from this complaint is
21 attached here as Exhibit “B.”

22 In addition, and perhaps more importantly, the use of a defined date period creates a number
23 of ambiguities that will confuse landowners attempting to establish whether they should be in the
24 class. For example, the Notice does not make clear whether property owners that have pumped since
25 January 18, 2006, but who did not pump groundwater before that time, should be included in the
26 Class. Nor is it clear whether landowners who may have pumped before the defined five year
27 period, but not since, but still have workable wells on the property, should be included.
28

1 Presumably, the five-year period in the Notice is based on California law regarding the
2 establishment of a self-help defense to a claim of prescription. In order for groundwater pumping to
3 be relevant in that regard, it must occur during the period that will be claimed as the prescriptive
4 period. In defining those property owners to be included in the Class, the Notice utilizes the date
5 from which the five-year period relates back as the filing date of the Los Angeles County
6 Waterworks District No. 40's cross-complaint. Thus, in order that the Notice be relevant, those
7 parties claiming prescriptive rights must identify the five year period over which they claim to have
8 attained prescriptive rights. If the relevant five-year period identified in the Notice is not the five-
9 year period used by the purveyors as the prescriptive period, then there will be a legal disconnect
10 between the defined members of the class and the legal claims available to those members.

11 While the issues related to the potential claims of prescription and self-help may be
12 considered issues related to the definition of the Class, as opposed to the Notice, they have become
13 apparent only through the attempt to ensure that the Notice is properly crafted. It may thus be
14 appropriate to reconsider the definition of the Class. For example, the difficulties identified above
15 could be avoided if the class definition was framed in terms of property owners claiming water rights
16 based on past pumping associated with the property. In other words, rather than attempting to define
17 the relevant pumping activity by a specified date period, define it based on how the party may intend
18 to use historical pumping in the adjudication. If a party intends to claim a water right based on
19 historical pumping, then it should exclude itself from the class. If, on the other hand, the party does
20 not intend to assert such claim, then it could be appropriately included in the class, even if pumping
21 has historically occurred on the property. The proposed revision to the Form of Notice attached here
22 as Exhibit "A" includes language intended to correct this ambiguity.

23 AGWA believes this issue should be further discussed at the combined hearing and case
24 management conference on October 16, 2007.

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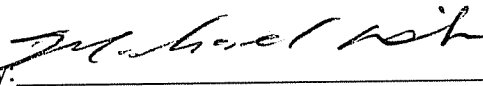
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IV. Proposed Workshop

Ultimately, the process that is being initiated with the Class structure is very confusing and has the potential to impact the property rights of many landowners. In order to help the affected individuals to understand the process that is being thrust upon them, Mr. Zlotnick should be ordered to hold a public workshop timed to occur within ten days after the anticipated date of delivery of the Class Notice for the purpose of explaining the meaning and consequences of the Notice to the affected parties.

Dated: October 8, 2007

HATCH & PARENT, A LAW CORPORATION

By: 
MICHAEL T. FIFE
BRADLEY J. HERREMA
ATTORNEYS FOR AGWA

HATCH AND PARENT
21 East Carrillo Street
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 October 8, 2007, I served the foregoing document described as:

OBJECTION TO PROPOSED ORDER GOVERNING CLASS NOTICE

on the interested parties in this action.

By posting it on the website at 3:00 PM a.m. on October 8, 2007. 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 October 8, 2007.

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

Rachel Robledo
TYPE OR PRINT NAME

[Signature]
SIGNATURE

EXHIBIT A

TO: ALL PRIVATE LANDOWNERS WITHIN THE ANTELOPE VALLEY BASIN WHO DO NOT PUMP GROUNDWATER AND DO NOT RECEIVE WATER FROM PUBLIC WATER SUPPLIERS

NOTICE OF PENDENCY OF CLASS ACTION

1. THIS NOTICE IS TO ADVISE YOU ABOUT A PENDING CLASS ACTION. YOU HAVE BEEN IDENTIFIED AS A POTENTIAL CLASS MEMBER. *PLEASE TAKE THE TIME TO READ THIS IMPORTANT LEGAL NOTICE AS IT MAY AFFECT YOUR PROPERTY RIGHTS. YOU ARE REQUIRED TO RETURN THE ATTACHED RESPONSE FORM WITHIN SIXTY DAYS.*

2. THIS CASE INVOLVES A DISPUTE OVER THE RIGHTS OF VARIOUS PERSONS TO GROUNDWATER UNDERLYING THE ANTELOPE VALLEY BASIN. Rebecca Willis is attempting to protect her right and that of other landowners to pump water on their properties in the future. THERE HAS BEEN NO DETERMINATION BY THE COURT AS TO THE MERITS OF THESE CLAIMS. This Notice is intended simply to inform you of the pendency of this case and your rights with respect thereto. You have been sent this Notice because as a property owner in the Antelope Valley your rights may be affected by this case.

ARE YOU A MEMBER OF THE CLASS?

3. On September 11, 2007, the Court ruled that Ms. Willis may pursue this matter on behalf of a Class consisting of all private (i.e., non-governmental) persons and entities that own real property within the Basin, as defined below, that are **not** presently pumping water on their property and have not done so at any time since January 18, 2001 do not intend to claim a water right in the adjudication on the basis of past pumping. The Class includes that successors-in-interest by way of the purchase, gift, inheritance, or otherwise of such landowners.

4. The Class excludes certain persons. You are **not in the Class** if you fall within one of the below categories:

A. Groundwater is or has been pumped from your property and you intend to claim a water right in the adjudication based upon such pumping; or

— BA. Your property is connected to a municipal water system, public utility, or mutual _____ water company from which you receive or are able to receive water service; **or**

— CB. Your property is within the service area of a Public Water Supplier and you have _____ a water system agreement or water service agreement with that supplier.

5. You are in the Class if you own property within the Basin, as defined in paragraph 7, below, ~~AND did not pump water for the five years preceding January 18, 2006;~~ AND do not fall with any of the excluded groups in paragraphs ~~4A4B-4B4C~~, above.

WHAT IS THE CASE ABOUT?

6. This case concerns the parties rights to pump and use groundwater underlying the Antelope Valley. The naturally available supply of water in the Basin is not adequate to satisfy all persons who want to use that water. Plaintiff Willis contends that she and other landowners have a priority to pump and use the groundwater greater than the rights of the Municipal Water Suppliers. The Water Suppliers contend that they have rights to used that water which may impact the rights of the overlying landowners who are in the Class. The Court has not ruled on the merits of these claims.

WHAT PROPERTIES DOES THE CASE COVER?

7. The case generally covers all properties within the Antelope Valley Groundwater Basin. The precise boundaries and a map are set forth on the attached Exhibit A.

WHAT DO YOU NEED TO DO?

8. **You are required to complete and return the attached RESPONSE FORM WITHIN 60 DAYS.** If you are within the definition of the Class, you must decide whether to remain in the Class or exclude yourself from the Class. You should complete and return the enclosed letter stating whether you wish to (a) remain in the Class or (b) exclude yourself from the Class. If you remain in the Class

- You will be bound by the decision in the case, whether favorable or unfavorable;
- and You will not be permitted to assert a claim to a water right based upon past pumping on the property; and
- Plaintiff Willis and her attorneys will act as your representatives in this case, and you will not personally be obligated to pay any fees or costs out of your pocket.

IF YOU WANT TO REMAIN A MEMBER OF THE CLASS, YOU ARE NOT REQUIRED TO DO ANYTHING. If you remain in the Class, *you may*, but need not, enter an appearance through your own counsel at your own expense.

If you exclude yourself from the Class, you will not be bound by and decision in this lawsuit; an you may pursue any claims you have by filing your own lawsuit. To request exclusion, you must complete and send the enclosed letter requesting exclusion from the Class postmarked no later than _____, 2007 to the following:

XXXXXXXXXXXXXXXXXXXX

P.O. Box _____

Irvine, California 92614

The request for exclusion must state your name and address, as well as the address of the property(ies) you own within the Basin.

PLEASE COMPLETE AND RETURN THE ENCLOSED FORM AS PROMPTLY AS POSSIBLE.

WHERE CAN YOU GET ADDITIONAL INFORMATION?

ALL OF THE DOCUMENTS FILED IN THE CASE ARE AVAILABLE ON-LINE AT <http://www.scefiling.org/cases/casehome.jsp?caseld=19>. The Complaint and certain other documents from the litigation are also available at _____. In addition, that website has a list of answers to certain other questions you may have. That website will be updated from time to time to advise you of the status of this litigation.

In addition, you may contact the following counsel for the parties for further information:

David B. Zlotnick, Esq.
625 Broadway
Suite 635
San Diego, California 92101
(619) 232-0331
(Class Counsel)

Stefanie Hedlund, Esq.
Best, Best & Krieger
5 Park Plaza, Suite 1500
Irvine, California 92614
(949) 263-2600
(Defendant's Counsel)

PLEASE DO NOT CALL OR WRITE THE COURT OR CLERK'S OFFICE. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR OWN COUNSEL OR CONTACT CLASS COUNSEL AT THE ADDRESS ABOVE.

Dated: _____, 2007

BY ORDER OF THE SUPERIOR COURT OF
CALIFORNIA FOR THE COUNTY OF LOS
ANGELES

(Perforation)

EXHIBIT A WILL BE THE DESCRIPTION OF THE ADJUDICATION AREA FROM THE COURT'S ORDER AND A MAP DEPICTING IT.

(Perforation)

ANTELOPE VALLEY GROUNDWATER LITIGATION FORM [SELF MAILER]

PLEASE CHECK THE APPROPRIATE BOXES BELOW. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR COUNSEL OR CLASS COUNSEL LISTED ABOVE. PLEASE CHECK ONLY ONE BOX FOR EACH ITEM. PLEASE THEN SIGN, FOLD, AND RETURN THE FORM.

1. I DO _____ DO NOT _____ OWN PROPERTY WITHIN THE ANTELOPE VALLEY BASIN (AS DESCRIBED ON EXHIBIT A, ABOVE)

*IF YOU ANSWERED NO, PLEASE SIGN AND DATE BELOW AND RETURN THIS FORM. IF YOU ANSWERED YES, PLEASE CHECK **ONE** ANSWER FOR EACH STATEMENT BELOW:*

2. I AM _____ AM NOT _____ PRESENTLY PUMPING WATER ON MY PROPERTY.

3. I ~~DID~~ _____ ~~DID~~ NOT _____ ~~PUMP WATER ON MY PROPERTY DURING THE FIVE YEAR PERIOD FROM JANUARY 18, 2001 THROUGH JANUARY 17, 2006~~ INTEND TO CLAIM A WATER RIGHT IN THE ADJUDICATION BASED UPON MY PAST PUMPING.

4. **PLEASE SELECT ON OF THE FOLLOWING:**

A. I WANT TO REMAIN IN THE CLASS _____

B. I WANT TO EXCLUDE MYSELF FROM THE CLASS _____

(PRINT YOUR NAME)

(SIGNATURE)

(MAILING ADDRESS)

(City, State, Zip Code)

(ADDRESS OF YOUR PROPERTY IN THE BASIN IF DIFFERENT FROM ABOVE)

EXHIBIT B

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BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
JEFFREY V. DUNN, Bar No. 131926
5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614
TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972

OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
RAYMOND G. FORTNER, JR., Bar No. 42230
ASSISTANT COUNTY COUNSEL
FREDERICK W. PFAEFFLE, Bar No. 145742
SENIOR DEPUTY COUNTY COUNSEL
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-1901
TELECOPIER: (213) 458-4020

Attorneys for Plaintiff
LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40,

Plaintiff,

vs.

DIAMOND FARMING COMPANY, a
corporation;
WM. BOLTHOUSE FARMS, INC., a
corporation;
CALIFORNIA WATER SERVICE
COMPANY;
CITY OF LANCASTER;
CITY OF PALMDALE;
LITTLE ROCK CREEK IRRIGATION
DISTRICT;
PALMDALE WATER DISTRICT;
PALM RANCH IRRIGATION
DISTRICT,
QUARTZ HILL WATER DISTRICT;
and DOES 1 through 25,000 inclusive;

Defendants.

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Sup. Court

NOV 29 2004

John A. Clarke, Executive Clerk
By JENNY CHEA Deputy

BC 325201

Case No.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
ADJUDICATION OF WATER RIGHTS