

EXHIBIT “I”

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

- Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201
- Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV0254-348
- Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case Nos. MC 353 840, MC 344 436, MC 344 668
- Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40 Superior Court of California, County of Los Angeles, Case No. BC 364 553
- Richard A. Wood v. Los Angeles County Waterworks District No. 40 Superior Court of California, County of Los Angeles, Case No. BC 391-869

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325201

**STATEMENT OF DECISION RE
PHASE III TRIAL**

Judge: Honorable Jack Komar

1 Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale,
2 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
3 Quartz Hill Water District, California Water Service Company, Rosamond Community Service
4 District, Phelan Piñon Hills Community Services District, Desert Lake Community Services
5 District, North Edwards Water District (collectively, the “Public Water Suppliers”)¹ brought an
6 action for, *inter alia*, declaratory relief, alleging that the Antelope Valley Adjudication Area
7 groundwater aquifer (“Basin”) was in a state of overdraft and required judicial intervention to
8 provide for water resource management within the Basin to prevent depletion of the aquifer and
9 damage to the Basin (“Basin”).

10 Several of the cross-defendant parties (collectively, the “Landowner Group”) also sought
11 declaratory relief in their various independent (now coordinated and consolidated) actions.

12 The first issues to be decided in the declaratory relief cause of action are overdraft and
13 safe yield. The remaining causes of action and issues are to be tried in a subsequent phase or
14 phases.

15 This Phase Three trial commenced on January 4, 2011 and continued thereafter on various
16 days based upon the needs of the parties and the Court's availability. Appearances of counsel are
17 noted in the Court minutes.

18 Upon conclusion of the evidence, the Court offered counsel the opportunity to provide
19 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the
20 Court heard oral argument and the matter was ordered submitted.

21 The Public Water Suppliers (and others) have alleged that the Basin is in a condition of
22 overdraft and have requested that the Court determine a safe yield and consider imposing a
23 physical solution or other remedy to prevent further Basin depletion and degradation.

24 Several parties, in opposition to the requests of the Public Water Suppliers, have
25 contended that while there may have been overdraft in the past, currently, the Basin has recovered

26 ¹ The United States and City of Los Angeles, though not public water suppliers in the Antelope Valley Adjudication
27 Area, joined with the Public Water Suppliers. Rosamond Community Services District, though a public water
28 supplier, did not join the Public Water Suppliers. Instead, Rosamond Community Services District joined the
Landowner Group parties.

1 and is not in overdraft. These same parties contend that it is not possible to establish a single
2 value for the Basin's safe yield; instead they have requested that the Court determine a range of
3 values for safe yield.

4 The Court concludes that the Public Water Suppliers have the burden of proof and that the
5 burden must be satisfied by a preponderance of the evidence. (Evid. Code section 115.) The
6 Court finds that the Public Water Suppliers have met the burden of proof by a preponderance of
7 the evidence as to the safe yield and overdraft of the Basin.

8 The law defines overdraft as groundwater extractions in excess of the "safe yield" of
9 water from an aquifer, which over time will lead to a depletion of the water supply within a
10 groundwater basin as well as other detrimental effects, if the imbalance between pumping and
11 extraction continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 278;
12 *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District*
13 *v. City of Riverside* (1959) 173 Cal.App.2d 137.) "Safe yield" is the annual water extraction from
14 the aquifer over time equal to the amount of water needed to recharge the aquifer and maintain it
15 in equilibrium, plus any temporary surplus. (*City of Los Angeles v. City of San Fernando* (1975)
16 14 Cal.3d 199, 278.) Temporary surplus is defined as that amount of water that may be pumped
17 from an aquifer to make room to store future water that would otherwise be wasted and
18 unavailable for use. (*Id.*, p. 278.)

19 A determination of safe yield and overdraft requires the expert opinions of engineers,
20 hydrologists and geologists.² Experts in the field of hydrogeology routinely base their opinions
21 and conclusions concerning overdraft on evidence of long-term lowering of groundwater levels,
22 loss of groundwater storage, declining water quality, seawater intrusion (not an issue in this case),
23 land subsidence, and the like. Experts also conduct a sophisticated analysis of precipitation and
24 its runoff, stream flow, and infiltration into the aquifer, including such things as
25 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge
26 including return flows from imported water), as well as the nature and quantity of extractions

27 _____
28 ² All the experts offer estimates. The American Heritage College Dictionary, Third Edition, defines an "estimate" as, *inter alia*, "[a] rough calculation, as of size" or "[a] judgment based on one's impressions; an opinion."

1 from the Basin and return flows therefrom.

2 Generally, neither overdraft nor safe yield can be determined by looking at a groundwater
3 basin in a single year but must be determined by evaluating the basin conditions over a sufficient
4 period of time to determine whether pumping rates have or will lead to eventual permanent
5 lowering of the water level in the aquifer and ultimately depletion of the water supply or other
6 harm. Recharge must equal discharge over the long term. (*City of Los Angeles v. City of San*
7 *Fernando, supra*, 14 Cal.3d at pp. 278-279.)

8 The location of the Antelope Valley Adjudication Area boundaries was decided in the
9 Phase I and II trials. The Court defined the boundaries of the Basin's aquifer based upon
10 evidence of hydraulic connectivity within the aquifer. If there was no hydraulic connectivity with
11 the aquifer, an area was excluded from the adjudication. The degree of hydraulic connectivity
12 varies from area to area within the Antelope Valley Adjudication Area. Some areas seemingly
13 have fairly small or nominal hydro-conductivity but must be included in this phase of the
14 adjudication. Pumping in those parts of the Basin may be shown to have *de minimis* effect on
15 other parts of the Basin while pumping in other areas within the Basin appears to have very large
16 impacts on adjacent parts of the Basin. All areas were included within the Adjudication Area
17 because they all have some level of hydraulic connectivity, some more and some less. How to
18 deal with those differences is ultimately a basin management decision that is well beyond the
19 scope of this phase of trial.

20
21 **Overdraft**

22 The preponderance of the evidence presented establishes that the Basin is in a state of
23 overdraft. Reliable estimates of the long-term extractions from the Basin have exceeded reliable
24 estimates of the Basin's recharge by significant margins, and empirical evidence of overdraft in
25 the Basin corroborates that conclusion. The Basin has sustained a significant loss of groundwater
26 storage since 1951. While pumping in recent years has reduced and moderated the margin
27 between pumping and recharge as cultural conditions have changed and precipitation has
28 increased with the appearance of "wetter" parts of the historical cycle, pumping in some areas of

1 the aquifer is continuing to cause harm to the basin. The evidence is persuasive that current
2 extractions continue to exceed recharge and therefore that the Basin continues to be in a state of
3 overdraft, although by a much reduced amount. Since 1951³ there is evidence of substantial
4 pumping (principally agricultural in the early years of the period), with continuous lowering of
5 water levels and subsidence extending to the present time, with intervals of only slight rises in
6 water levels in some areas.

7 In the areas of increased pumping, in particular in the Palmdale and Lancaster areas, there
8 is a continual lowering of water levels such that it may have a serious effect on water rights in
9 other areas, causing cones of depression, altering natural water flow gradients, causing the
10 lowering of water levels in adjacent areas, and causing subsidence and loss of aquifer storage
11 capacity. Given population growth, and land use changes, the Antelope Valley is at risk of an
12 even more serious continuing overdraft in the future.

13 While the lowering of current water levels has slowed, and water levels in some wells in
14 some areas have risen in recent years, significant areas within the Basin continue to show
15 declining levels, some slightly so, but many show a material lowering of water levels. Overall,
16 water levels and storage in the Basin are declining.

17 Thus, the Antelope Valley Adjudication Area has been in a state of overdraft for more
18 than 50 years, and based on estimates of extraction and recharge, corroborated by physical
19 evidence of conditions in the Basin as a whole including loss of groundwater in storage, land
20 subsidence and changes in the amount and direction of groundwater flow to Edwards Air Force
21 Base. While the annual amount of overdraft has lessened in recent years with decreased pumping
22 and increased precipitation and recharge, the effects of overdraft remain and are in danger of
23 being exacerbated with increased pumping and the prospective cyclical precipitation fluctuations
24 shown by the historical record. The physical evidence establishes that there was significant
25 subsidence occurring throughout the Antelope Valley Adjudication Area ranging from two to six
26 feet or more in certain areas caused by such pumping and that measurable water levels fell in a
27 substantial part of the Valley. While some of the ongoing subsidence may be attributable to

28 ³ Precipitation and well records prior to that year are too intermittent to be relied upon.

1 residual subsidence (from earlier periods of shortfall) a preponderance of the evidence establishes
2 that ongoing and continued subsidence is caused, in part, by ongoing groundwater extractions in
3 excess of the Basin's safe yield.
4

5 **Safe Yield**

6 A safe yield calculation is necessary to manage a basin and create a physical solution to a
7 potential or actual continuing overdraft. A determination of safe yield requires an initial
8 determination of average annual natural or native recharge to the aquifer from all sources. The
9 only sources of natural or native recharge for the Antelope Valley are precipitation from the
10 surrounding mountains that recharges the Basin and it is therefore necessary to ascertain average
11 annual precipitation. The calculation of annual average precipitation can only be properly
12 determined by using a baseline study period that covers precipitation in periods of drought and
13 periods of abundant precipitation over a sufficient period of time that a reliable estimate of
14 average future recharge based on precipitation can be made.

15 One Landowner Group expert selected two shorter base periods (the total time span of
16 which was considerably less than the 50 year period used by the Public Water Suppliers' experts
17 which the Court believes are more credible), each having different estimated average natural
18 recharge based upon different precipitation averages from each base period. If the purpose of
19 selecting a base period is to determine average recharge over time based on precipitation,
20 choosing two consecutive periods of time with two different average numbers would not serve
21 that purpose and would preclude estimating a single safe yield. A base period that calculates
22 average precipitation over a representative period of time permits reliable predictions about future
23 natural recharge based on regular recurring precipitation cycles. A period of precipitation
24 fluctuations from 1951 to 2005 satisfies that standard. Shorter periods do not and the Court does
25 not find those shorter base periods to produce accurate results. The Court accepts the base period
26 selected by the Public Water Supplier experts as the more credible and accurate representation of
27 long-term conditions in the Basin.

28 The pumping extractions are not seriously in dispute by any of the experts who testified.

1 All seem to agree that pumping currently is estimated to range from 130,000 to 150,000 acre feet
2 a year. The major area of dispute between the parties is the average annual natural recharge,
3 which also involves disputes concerning return flows, the amount of native vegetation water
4 needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag time,
5 bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the Basin,
6 including artificial recharge-water introduced into the Basin from external sources are not in
7 dispute.

8 Evidence established that during the entire historical period presented, population
9 increased within the Valley and water use changed in a variety of ways. There has been a shift in
10 some areas to urban uses and away from agriculture although in recent years agricultural pumping
11 has also increased. The nature of agricultural water duties has changed as well. The type of
12 irrigation used by farmers has become more efficient and less water is needed per acre (depending
13 on the crops grown) with more efficient uses of water. But there has also been an increase as well
14 as a change in the nature of the type of agriculture in the Valley in material quantities in recent
15 years. Other such changes may occur and it is important to both current and future generations to
16 ensure that the water resources within the Basin are managed prudently.

17 The Court heard from a very large number of experts, some of whom have provided
18 opinion testimony about what constitutes safe yield. All the experts testifying acknowledged that
19 changes in the selection of a base study period, lag time, agricultural water duties
20 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration
21 return flows, playa evaporation relating to run off and bedrock infiltration, chloride
22 measurements, satellite imaging, and agricultural and municipal pumping estimates, among;
23 others, would affect the ultimate opinion of natural recharge and return flows including return
24 flows from State Water Project water.

25 The opinions of all the experts are estimates, based upon their professional opinion. All of
26 the opinions were critiqued by other experts who often had different opinions. The Court
27 recognizes the imprecision of the various estimates and the fact that an estimate by definition is
28 imprecise. But because estimates lack precision does not mean that the Court cannot rely upon

1 such estimates. The scientific community relies upon such estimates in the field of hydrogeology
2 and the Court must do the same.

3 Reasonable experts can differ as to reasonable estimates of natural recharge and virtually
4 all other components of water budgets, computations of change of storage, and the like, all the
5 while using the same formulae and scientific principles to reach their conclusion. For example,
6 all the experts could agree on the definition of "Darcy's Law" and the physics principle of
7 "conservation of mass" but still reach different conclusions.

8 Some of the experts opined that the Basin was not in overdraft and that recharge was in
9 excess of or in balance with extractions so that there was a surplus in the Basin. One Landowner
10 Group expert opined that loss of storage was merely space for temporary storage. The evidence
11 presented and observable conditions in the valley are inconsistent with those conclusions. If there
12 were a surplus, even in the shortened base periods used by the Landowner Group experts, there
13 would not be land subsidence, nor declining water levels. The Basin's physical conditions are
14 inconsistent with those Landowner Group expert estimates that there is and has been a surplus of
15 water in the Basin and the Court finds these opinions unreliable.

16 Selecting a safe yield number for an aquifer the size of the Antelope Valley is made
17 difficult because its size and its geologic complexity. As reflected above, hydraulic connectivity
18 varies considerably between various parts of the Basin. Hydraulic connectivity between some
19 portions of the Basin and other portions is so slight as to be almost (apparently) nonexistent.
20 Pumping in those areas may have little or no effect on other areas of the Basin. The Basin is not
21 like a bathtub where lowering and raising of water levels is equal in all parts of the "tub."

22 Therefore, different areas of the Basin may require different levels of pumping in order to
23 maintain equilibrium. No attempt has been made in this phase of trial to define geological
24 differences in the Basin that would justify different pumping regimes for different parts of
25 Antelope Valley as a result of the decision in Phase Two regarding hydraulic connectivity.

26 Weighing the various opinions, however, the Court finds by a preponderance of the
27 evidence that setting a total safe yield at a conservative 110,000 acre feet per year will permit
28 management of the Basin in such a way as to preserve the rights of all parties in accordance with

1 the Constitution and laws of the State of California. Some Basin areas receive more recharge
2 than others and pumping requirements vary. These differences require management decisions
3 that respect the differences in both the geology and the cultural needs of the diverse parts of the
4 valley. However, the amount of hydro-conductivity between Basin areas was beyond the scope
5 of the Phase III trial.

6 Out of the total safe yield of 110,000 acre feet annually, the Court finds, by a
7 preponderance of the evidence, the native safe yield is 82,000 acre feet per year and the
8 supplemental safe yield is 28,000 acre feet annually. The native safe yield is the amount of
9 precipitation that recharges the Basin. The native safe yield is the total of the long-term average
10 annual natural recharge to the Basin in the amount of 60,000 acre feet, and the long-term average
11 annual return flows attributable to pumping the native recharge in the amount of 22,000 acre feet.

12 Supplemental safe yield is the amount of imported water (i.e., State Water Project water)
13 that recharges the Basin, plus the return flows from such water after it is pumped and re-applied
14 to municipal and industrial or agricultural use. (See Scalmanini Exhibits 94 and 95.) The Court
15 finds that the supplemental safe yield of the Basin is 28,000 acre feet annually, based on
16 estimated return flow percentages of 28.1% for municipal and industrial use, and 25% for
17 agricultural use. (See Scalmanini Exhibits 94 and 95.) The Court finds that all subsequent
18 pumping of return flows are subject to these respective percentages as shown by Scalmanini
19 Exhibit 95.

20 The Court makes the findings herein based on a preponderance of the evidence presented
21 by the Public Water Suppliers, the City of Los Angeles and the United States. The Court finds
22 that the opinion testimony and evidence presented by the Public Water Suppliers⁴, the City of Los
23 Angeles and the United States to be credible and that the opinion testimony and evidence
24 presented by the Landowner Group parties to not be as credible as to the safe yield and overdraft
25 issues.

26 It should not be assumed that the safe yield management number may not change as

27 ⁴ As previously noted, Rosamond Community Services District is a public water producer but it did not align itself
28 with the Public Water Producers. Instead, Rosamond Community Services District and the City of Lancaster aligned
themselves and supported the Landowner Group parties.

1 climate circumstances and pumping may change, or as the empirical evidence based on
2 experience in managing the Basin suggests it is either too high or too low, that is why the Court
3 will retain jurisdiction over any physical solution to the Basin's overdraft

4

5 Dated: _____

Hon. Jack Komar
Judge of the Superior Court

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LAW OFFICES OF
BEST BEST & KRIEGER LLP
5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On June 6, 2011, I served the within document(s):

STATEMENT OF DECISION RE PHASE III TRIAL

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on June 6, 2011, at Irvine, California.

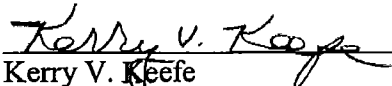

Kerry V. Keefe

EXHIBIT “J”

1 RICHARD G. ZIMMER - SBN 107263
T. MARK SMITH - SBN 162370
2 CLIFFORD & BROWN
A Professional Corporation
3 Attorneys at Law
Bank of America Building
4 1430 Truxtun Avenue, Suite 900
Bakersfield, CA 93301-5230
5 (661) 322-6023

6 Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 * * *

11 COORDINATION PROCEEDING
SPECIAL TITLE (Rule 1550(b))

) Judicial Council Coordination Proceeding No.
4408

12 ANTELOPE VALLEY GROUNDWATER
CASES

) CASE NO. 1-05-CV-049053

13 INCLUDED ACTIONS:

14 LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40 v.
15 DIAMOND FARMING COMPANY, et al.,
Los Angeles Superior Court Case No.
16 BC325201

) BOLTHOUSE PROPERTIES, LLC'S
AND WM. BOLTHOUSE FARMS, INC.'S
OBJECTION TO STATEMENT OF
DECISION RE PHASE III TRIAL
SUBMITTED BY LOS ANGELES
COUNTY AND OTHER WATER
PURVEYORS

17 LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40 v.
18 DIAMOND FARMING COMPANY, et al.,
Kern County Superior Court Case No. S-
19 1500-CV-254348

) [C.C.P. §632, 634]

20 DIAMOND FARMING COMPANY, and
W.M. BOLTHOUSE FARMS, INC., v.
21 CITY OF LANCASTER, et al.,
Riverside Superior Court
22 Case No. RIC 344436 [c/w case no. RIC
344668 and 353840]

) Phase 3 Trial Date:
January 4, 2011

23 ROSAMOND COMMUNITY SERVICES
DISTRICT,

24 CROSS-COMPLAINANT,
25

26 \\\

27 \\\

28 \\\

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to California *Code of Civil Procedure*, Sections
3 632 and 634, BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.
4 (hereinafter "Bolthouse"), hereby object to the Statement of Decision Re Phase III Trial
5 submitted by Los Angeles County and other Water Purveyors on June 6, 2011, on the grounds
6 that the Purveyors' Statement of Decision fails to set forth the "factual and legal basis for its
7 decision as to each of the principal controverted issues at trial" and omits material and
8 subsidiary issues of fact and evidence as requested in Bolthouse's Proposal Re: Content of
9 Statement of Decision filed on May 24, 2011, incorporated herein by reference, and as clarified
10 on "Exhibit A" attached hereto, and on the grounds that the Purveyors' Statement of Decision
11 is ambiguous as to the scope of the Phase III Trial and makes findings on issues not set for trial
12 as set forth in the Order After Hearing Held on November 18, 2010.

13 **PURVEYORS' STATEMENT OF DECISION FAILS TO SET FORTH THE FACTUAL**
14 **AND LEGAL BASIS FOR THE DECISION**

15 *Code of Civil Procedure*, Section 632 requires that the Court issue a "Statement of
16 Decision explaining the factual and legal basis for its decision as to each of the principal
17 controverted issues at trial." "The Trial Court must make findings on material subsidiary
18 issues of fact." *Midwest Television, Inc. v. Scott, Lancaster Mills and Atha, Inc.* (1988) 205
19 Cal.App.3d 442, 457. The Court in *Midwest*, stated the following:

20 "A material issue of fact is one which is relevant and essential to
21 the judgment and closely and directly related to the trial court's
22 determination of the ultimate issue in the case." *Midwest, supra*,
at p. 457

23 The Purveyors' Statement of Decision contains for the most part conclusions of law and
24 summary conclusions of facts without setting forth the factual and legal basis for findings on
25 material factual subsidiary issues as requested in the Proposal Re: Content of Statement of
26 Decision filed by Bolthouse on May 24, 2011, clarified in Exhibit A attached hereto.

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1 THE PURVEYORS' STATEMENT OF DECISION IS AMBIGUOUS AND INCLUDES
2 MATTERS OR ISSUES NOT TRIED BY THE COURT IN PHASE III

3 "A Statement of Decision is limited to the issues litigated in the case." *Colony Ins. Co.*
4 *v. Crusader Ins. Co.* (2010) 188 Cal.App.4th 743, 750-751. Accordingly, it would be
5 fundamentally unfair to include in the Statement of Decision, matters not designated for trial,
6 after the trial is completed. The Phase III Trial was limited to safe yield and current overdraft.
7 Including any other issues in the Statement of Decision would be inappropriate and
8 fundamentally unfair to the parties.

9 The Court and counsel had numerous discussions regarding the scope of the Phase III
10 Trial. Bolthouse, Tejon and Diamond Farming, were among the parties specifically engaged in
11 this discussion. These parties expressed concerns regarding the scope of the Phase III Trial.
12 Bolthouse agrees with Tejon as set forth in its Objections of Tejon Ranchcorp to Proposed
13 Statement of Decision Re Phase III Trial that "the only issues to be decided in the Phase III
14 Trial are (a) current *safe yield*, (b) whether the aquifer is currently in *overdraft*. To resolve this
15 discussion and ambiguity regarding the scope of the Phase III Trial, the Court issued its Order
16 After Hearings Held on November 18, 2010, setting forth the scope of the Phase III Trial as
17 follows:

18 "The trial will commence on January 4, 2011 at 9:00 a.m. in
19 Department 1 of the Los Angeles County Superior Court to hear
20 evidence of the **safe yield** of the Antelope Valley aquifer and to
21 further hear evidence as to **whether the aquifer is in a state of**
overdraft such that the court should exercise equitable powers to
protect the aquifer from detriment caused by any such overdraft."
(Emphasis added.)

22 The Tentative Decision Phase Three Trial ("Tentative Decision") sets forth the proper
23 scope of the Phase III Trial as follows:

24 "The first issues to be decided in the declaratory relief cause of
25 action are the issues of overdraft and safe yield. The remaining
26 causes of action and issues are to be tried in a subsequent phase
or phases."

27 Bolthouse agrees with Tejon as set forth in its objections, that so-called "native safe
28 yield", "supplemental safe yield" and "return flows" are beyond the scope of the Phase III

1 Trial. The description of the issues tried in Phase III set forth above, combined with other
2 language in the Purveyors' Statement of Decision, are ambiguous and suggest that issues
3 beyond current safe yield and current overdraft were tried. As such, the Purveyors' Statement
4 of Decision should be clarified to make clear that the only issues tried in Phase III were the
5 current safe yield of the Antelope Valley aquifer and whether the aquifer is currently in a state
6 of overdraft such that the Court should exercise equitable powers to protect the aquifer.

7 **A. No Evidence To Support Factual Finding Of 50 Year Overdraft.**

8 Bolthouse incorporates by reference the argument by Tejon that the evidence does not
9 support a finding of overdraft for the last fifty (50) years. Further, as noted above, historical
10 overdraft was not an issue for determination in the Phase III Trial and should not be reflected in
11 the Statement of Decision.

12 **B. Evaluation Of Management Areas Was Not At Issue In The Phase III Trial.**

13 The discussion between Bolthouse, Tejon and Diamond Farming at the November 18th
14 hearing regarding the scope of the Phase III Trial related to whether the Phase III Trial would
15 involve evidence of differences in pumping and hydrologic effect in various areas of the
16 Antelope Valley and aquifer for purposes of prescription or management of the basin. The
17 Court confirmed that differences in pumping and effect in various areas of the Antelope Valley
18 aquifer for purposes of prescription and or management of the basin was not an issue for the
19 Phase 3 trial and issued its November 18, 2010 Order limiting the Phase III issues to safe yield
20 and current overdraft.

21 Based upon the comments of the Court at the hearing, and the November 18th Order,
22 experts were not called by Bolthouse, Diamond, the Purveyor parties and others to testify
23 regarding the affects of pumping in one area versus pumping in other areas. The expert
24 testimony was for the most part directed to safe yield and overdraft. Making findings as to
25 potential affect of pumping in one area or another, or a to the effect of pumping in one area or
26 another is inappropriate since this issue has not been litigated and since parties specifically did
27 not call experts at trial regarding these issues based upon the court's comments and orders.
28 Accordingly, all references to the effect of pumping in one area of the basin versus other areas

1 of the basin should be excluded from the Statement of Decision, including but not limited to the
2 following statements:

3 "Some areas seemingly have fairly small or nominal hydro-
4 conductivity but must be included in this phase of the
5 adjudication. Pumping in those parts of the Basin may be shown
6 to have *de minimis* effect on other parts of the Basin while
7 pumping in other areas within the basin appears to have very
8 large impacts on adjacent parts of the Basin. All areas were
9 included within the Adjudication Area because they all have
10 some level of hydraulic connectivity, some more and some less."
11 (Page 3, Lines 12 through 17.)

12 And

13 "Hydraulic connectivity between some portions of the Basin and
14 other portions is so slight as to be almost (apparently)
15 nonexistent. Pumping in those areas may have little or no effect
16 on other areas of the Basin." (Page 7, Lines 18 through 20)

17 **C. The So Called Native Safe Yield, Supplemental Safe Yield And Return Flows Were**
18 **Not Litigated And Have Been Improperly Added By Los Angeles County And The**
19 **Purveyors To The Statement Of Decision.**

20 As noted above, the issues identified by the Court for the Phase III Trial included
21 current safe yield and current overdraft. So called native safe yield, supplemental safe yield
22 and return flows were not identified as issues to be tried in Phase III and were not litigated by
23 the parties for the purposes of Phase III. The parties did not call experts on these issues nor
24 were these concepts or findings identified by the Court as Phase III issues. The Tentative
25 Decision Phase III Trial prepared by the Court correctly limits the scope of Phase III to safe
26 yield and overdraft.

27 In its Tentative Decision, consistent with its prior Order regarding the issues to be tried
28 in Phase III, the Court made no findings regarding so called native safe yield, supplemental
safe yield and return flows, and the parties never agreed to the meaning of these terms added to
the Purveyors' Statement of Decision. The Court heard testimony by numerous different
experts, using different terminology, in order to determine the safe yield of the basin and to
evaluate current overdraft in the basin based upon the definition of safe yield and overdraft set
forth in *San Fernando*. *San Fernando* does not use the terms native safe yield and/or

1 supplemental safe yield, and return flows are part of the safe yield as defined by *San Fernando*.
2 Accordingly, the Purveyors' Statement of Decision should be limited to this Court's finding as
3 to the safe yield of the basin and whether the basin is currently in overdraft. Accordingly, Page
4 8, Lines 6 through 19 should be excluded from the Purveyors' Statement of Decision.

5 **D. Vague And Argumentative References To Findings Regarding The Expert**
6 **Testimony Of The Purveyor Experts Should Be Excluded.**

7 On Page 8, Lines 20 through 25, the Purveyor Parties request language be included that
8 "The Court finds that the opinion testimony and evidence presented by the Public Water
9 Suppliers⁴, the City of Los Angeles and the United States to be credible and that the opinion
10 testimony and evidence presented by the Landowner Group parties to not be as credible as to
11 the safe yield and overdraft issues.", is vague and non-specific. Based upon this language, it is
12 impossible to tell what testimony the Court found to be credible and what testimony the Court
13 found not credible as between Purveyor and Landowner experts. The argumentative
14 conclusion also assumes that all testimony by all Purveyor experts was more credible than all
15 testimony by all Landowner experts. Finally, the introductory comment stating that the
16 findings are based upon a preponderance of the evidence, is vague since the reference to a
17 finding by a preponderance of the evidence is non specific to any particular finding.
18 Accordingly, Page 8, lines 20 through 25 should be excluded from the Purveyors' Statement of
19 Decision.

20 **CONCLUSION**

21 The Statement of Decision should include explanation of the factual and legal basis for
22 the decision, including all material and subsidiary issues of fact supporting the decision as
23 requested on Exhibit "A.". The Statement of Decision should be limited to issues identified by
24 the Court before trial, which would be tried in Phase III, including the current safe yield and
25

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27
28 ⁴ As previously noted, Rosamond Community services District is a public water producer but it did not align itself with the Public Water Producers. Instead, Rosamond Community Services District and the City of Lancaster aligned themselves and supported the Landowner Group parties.

1 whether the basin is currently in overdraft. Other discussion and arguments should be
2 eliminated from the Statement of Decision as discussed herein.

3 DATED: June 21, 2011

Respectfully submitted.

4 CLIFFORD & BROWN

5
6
7 By:

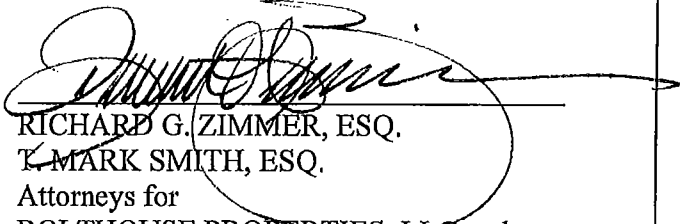

8 RICHARD G. ZIMMER, ESQ.
9 T. MARK SMITH, ESQ.
10 Attorneys for
11 BOLTHOUSE PROPERTIES, LLC and
12 WM. BOLTHOUSE FARMS, INC.

EXHIBIT “A”

1 *Antelope Valley Groundwater Cases*
2 *Judicial Counsel Coordination Proceeding No. 4408*
3 *Santa Clara County Superior Court Case No. 1-05-CV-049053*

4 **EXHIBIT "A"**

5 It is requested that the Statement of Decision include the factual and legal basis for all
6 findings of the Court, including all material and subsidiary issues of fact, upon which the Phase
7 3 Statement of Decision is based, including but not limited to the following:

- 8 1. That the Statement of Decision be limited to "the safe yield of the Antelope
9 Valley Aquifer" and "whether the Aquifer is in a state of overdraft such that the
10 Court should exercise equitable powers to protect the Aquifer from detriment
11 caused by any such overdraft" as set forth in the Order After Hearing Held on
12 November 18, 2010 setting forth the scope of the Phase 3 Trial.
- 13 2. The legal definition of safe yield relied upon by the Court to determine the existence
14 of current overdraft of the Antelope Valley Aquifer.
- 15 3. The legal definition of overdraft relied upon by the Court to determine the
16 existence of current overdraft of the Antelope Valley Aquifer.
- 17 4. All material and subsidiary issues of fact relied upon by the Court to determine
18 safe yield.
- 19 5. All material and subsidiary issues of fact relied upon by the Court to determine
20 that the Antelope Valley Aquifer is currently in overdraft.
- 21 6. The legal definition the Court used to determine whether the Aquifer is in a state
22 of temporary surplus.
- 23 7. All material and subsidiary issues of fact relied upon by the Court to determine
24 whether the Aquifer is in a state of temporary surplus.
- 25 8. The testimony of each testifying expert which the Court relied upon to establish
26 all material and subsidiary issues of fact relied upon by the Court to determine
27 the safe yield of the Antelope Valley Aquifer.

1 9. The testimony of each testifying expert which the Court relied upon to establish
2 all material and subsidiary issues of fact relied upon by the Court to determine
3 that the Antelope Valley Aquifer is currently in overdraft.

4 10. The testimony of each testifying expert which the Court relied upon to establish
5 all material and subsidiary issues of fact relied upon by the Court to make its
6 findings regarding temporary surplus.

7 11. All material and subsidiary issues of fact relied upon by the Court to determine
8 that "Reliable estimates of long-term extractions from the basin have exceeded
9 reliable estimates of the Basin's recharge by significant margins, and empirical
10 evidence of overdraft in the basin corroborates that conclusion," as set forth on
11 Page 3, Lines 23-25.

12 13. The testimony of each testifying expert which the Court relied upon to establish
13 all material and subsidiary issues of fact relied upon by the Court to determine
14 "Reliable estimates of long-term extractions from the basin have exceeded
15 reliable estimates of the basin's recharge by significant margins, and empirical
16 evidence of overdraft in the basin corroborates that conclusion," as set forth on
17 Page 3, Lines 23-25.

18 14. All material and subsidiary issues of fact relied upon by the Court to determine
19 that "The Basin has sustained has sustained a significant loss of groundwater
20 storage since 1951," as set forth on Page 3, Lines 25-26.

21 15. The testimony of each testifying expert which the Court relied upon to establish
22 all material and subsidiary issues of fact relied upon by the Court to determine
23 that "The Basin has sustained has sustained a significant loss of groundwater
24 storage since 1951," as set forth on Page 3, Lines 25-26.

25 16. All material and subsidiary issues of fact relied upon by the Court to determine
26 that "While pumping in recent years has reduced and moderated the margin
27 between pumping and recharge as cultural conditions have changed and
28 precipitation has increased with the appearance of "wetter" parts of the historical

1 cycle, pumping in some areas of the aquifer is continuing to cause harm to the
2 basin,” as set forth on Page 3, Line 26 to Page 4, Line 1.

3 17. The testimony of each testifying expert which the Court relied upon to establish
4 all material and subsidiary issues of fact relied upon by the Court to determine
5 that “While pumping in recent years has reduced and moderated the margin
6 between pumping and recharge as cultural conditions have changed and
7 precipitation has increased with the appearance of “wetter” parts of the historical
8 cycle, pumping in some areas of the aquifer is continuing to cause harm to the
9 basin,” as set forth on Page 3, Line 26 to Page 4, Line 1.

10 18. All material and subsidiary issues of fact facts relied upon by the Court to
11 determine that “The evidence is persuasive that current extractions continue to
12 exceed recharge and therefore that the Basin continues to be in a state of
13 overdraft, although by a much reduced amount,” as set forth on Page 4, Lines 1-
14 3.

15 19. The testimony of each testifying expert which the Court relied upon to establish
16 all material and subsidiary issues of fact relied upon by the Court to determine
17 that “The evidence is persuasive that current extractions continue to exceed
18 recharge and therefore that the Basin continues to be in a state of overdraft,
19 although by a much reduced amount,” as set forth on Page 4, Lines 1-3.

20 20. All material and subsidiary issues of fact relied upon by the Court to determine
21 that “Since 1951³, there is evidence of substantial pumping (principally
22 agricultural in the early years of the period), with continuous lowering of water
23 levels and subsidence extending to the present time, with intervals of only slight
24 rises in water levels in some areas,” as set forth on Page 4, Lines 3-6.

25 21. The testimony of each testifying expert which the Court relied upon to establish
26 all material and subsidiary issues of fact relied upon by the Court to determine

27
28 ³ Precipitation and well records prior to that year are to intermittent to be relied upon.
BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S EXHIBIT "A" TO OBJECTION TO STATEMENT OF
DECISION RE PHASE III TRIAL SUBMITTED BY LOS ANGELES COUNTY AND OTHER WATER PURVEYORS

1 that "Since 1951, there is evidence of substantial pumping (principally
2 agricultural in the early years of the period), with continuous lowering of water
3 levels and subsidence extending to the present time, with intervals of only slight
4 rises in water levels in some areas," as set forth on Page 5, Lines 8 through 12.

5 22. All material and subsidiary issues of fact relied upon by the Court to determine
6 that "In the areas of increased pumping, in particular in the Palmdale and
7 Lancaster areas, there is a continual lowering of water levels such that it may
8 have a serious effect on water rights in other areas, causing cones of depression,
9 altering natural water flow gradients, causing the lowering of water levels in
10 adjacent areas, and causing subsidence and loss of aquifer storage capacity," as
11 set forth on Page 4, Line 7-11.

12 23. The testimony of each testifying expert which the Court relied upon to establish
13 all material and subsidiary issues of fact relied upon by the Court to determine
14 that "In the areas of increased pumping, in particular in the Palmdale and
15 Lancaster areas, there is a continual lowering of water levels such that it may
16 have a serious effect on water rights in other areas, causing cones of depression,
17 altering natural water flow gradients, causing the lowering of water levels in
18 adjacent areas, and causing subsidence and loss of aquifer storage capacity," as
19 set forth on Page 4, Line 7-11.

20 24. All material and subsidiary issues of fact relied upon by the Court to determine
21 that "Given population growth, and land use changes, the Antelope Valley is at
22 risk of an even more serious continuing overdraft in the future," as set forth on
23 Page 4, Lines 11-12.

24 25. The testimony of each testifying expert which the Court relied upon to establish
25 all material and subsidiary issues of fact relied upon by the Court to determine
26 that "Given population growth, and land use changes, the Antelope Valley is at
27 risk of an even more serious continuing overdraft in the future," as set forth on
28 Page 4, Lines 11-12.

1 26. All material and subsidiary issues of fact relied upon by the Court to determine
2 that "While the lowering of current water levels has slowed, and water levels in
3 some wells in some areas have risen in recent years, significant areas within the
4 Basin continue to show declining levels, some slightly so, but many show a
5 material lowering of water levels," as set forth on Page 4, Lines 13-15.

6 27. The testimony of each testifying expert which the Court relied upon to establish
7 all material and subsidiary issues of fact relied upon by the Court to determine
8 that "While the lowering of current water levels has slowed, and water levels in
9 some wells in some areas have risen in recent years, significant areas within the
10 Basin continue to show declining levels, some slightly so, but many show a
11 material lowering of water levels," as set forth on Page 4, Lines 13-15.

12 28. All material and subsidiary issues of fact relied upon by the Court to determine
13 that "Thus, the Antelope Valley Adjudication Area has been in a state of
14 overdraft for more than 50 years, and based on estimates of extraction and
15 recharge, corroborated by physical evidence of conditions in the Basin as a
16 whole including loss of groundwater in storage, land subsidence and changes in
17 the amount and direction of groundwater flow to Edwards Air Force Base.
18 While the annual amount of overdraft has lessened in recent years with
19 decreased pumping and increased precipitation and recharge, the effects of
20 overdraft remain and are in danger of being exacerbated with increased pumping
21 and the prospective cyclical precipitation fluctuations shown by the historical
22 record," as set forth on Page 4, Lines 17-24.

23 29. The testimony of each testifying expert which the Court relied upon to establish
24 all material and subsidiary issues of fact relied upon by the Court to determine
25 that "Thus, the Antelope Valley Adjudication Area has been in a state of
26 overdraft for more than 50 years, and based on estimates of extraction and
27 recharge, corroborated by physical evidence of conditions in the Basin as a
28 whole including loss of groundwater in storage, land subsidence and changes in

1 the amount and direction of groundwater flow to Edwards Air Force Base.
2 While the annual amount of overdraft has lessened in recent years with
3 decreased pumping and increased precipitation and recharge, the effects of
4 overdraft remain and are in danger of being exacerbated with increased pumping
5 and the prospective cyclical precipitation fluctuations shown by the historical
6 record,” as set forth on Page 4, Lines 17-24.

7 30. All material and subsidiary issues of fact relied upon by the Court to determine
8 that “The physical evidence establishes that there was significant subsidence
9 occurring throughout the Antelope Valley Adjudication Area ranging from two
10 to six feet or more in certain areas caused by such pumping and that measurable
11 water levels fell in a substantial part of the Valley,” as set forth on Page 4, Lines
12 24-27.

13 31. The testimony of each testifying expert which the Court relied upon to establish
14 all material and subsidiary issues of fact relied upon by the Court to determine
15 that “The physical evidence establishes that there was significant subsidence
16 occurring throughout the Antelope Valley Adjudication Area ranging from two
17 to six feet or more in certain areas caused by such pumping and that measurable
18 water levels fell in a substantial part of the Valley,” as set forth on Page 4, Lines
19 24-27.

20 32. All material and subsidiary issues of fact relied upon by the Court to determine
21 that “While some of the ongoing subsidence may be attributable to residual
22 subsidence (from earlier periods of shortfall) a preponderance of the evidence
23 establishes that ongoing and continued subsidence is caused, in part, by ongoing
24 groundwater extractions in excess of the Basin’s safe yield,” as set forth on Page
25 4, Line 27 through Page 5, Line 3.

26 33. The testimony of each testifying expert which the Court relied upon to establish
27 all material and subsidiary issues of fact relied upon by the Court to determine
28 that “While some of the ongoing subsidence may be attributable to residual

1 subsidence (from earlier periods of shortfall) a preponderance of the evidence
2 establishes that ongoing and continued subsidence is caused, in part, by ongoing
3 groundwater extractions in excess of the Basin's safe yield," as set forth on Page
4 4, Line 27 through Page 5, Line 3.

5 34. All material and subsidiary issues of fact relied upon by the Court to determine
6 that "One Landowner Group expert selected two shorter base periods (the total
7 time span of which was considerably less than the 50 year period used by the
8 Public Water Suppliers' experts which the Court believes is more credible), each
9 having different estimated average natural recharge based upon different
10 precipitation averages from each base period," as set forth on Page 5, Lines 15-
11 18.

12 35. The testimony of each testifying expert which the Court relied upon to establish
13 all material and subsidiary issues of fact relied upon by the Court to determine
14 that "One Landowner Group expert selected two shorter base periods (the total
15 time span of which was considerably less than the 50 year period used by the
16 Public Water Suppliers' experts which the Court believes is more credible), each
17 having different estimated average natural recharge based upon different
18 precipitation averages from each base period," as set forth on Page 5, Lines 15-
19 18.

20 36. All material and subsidiary issues of fact relied upon by the Court to determine
21 that "A period of precipitation fluctuations from 1951 to 2005 satisfies that
22 standard. Shorter periods do not and the Court does not find those shorter base
23 periods to produce accurate results. The Court accepts the base period selected
24 by the Public Water Supplier experts as the more credible and accurate
25 representation of long-term conditions in the Basin," as set forth on Page 5,
26 Lines 23-27.

27 37. The testimony of each testifying expert which the Court relied upon to establish
28 all material and subsidiary issues of fact relied upon by the Court to determine

1 that "A period of precipitation fluctuations from 1951 to 2005 satisfies that
2 standard. Shorter periods do not and the Court does not find those shorter base
3 periods to produce accurate results. The Court accepts the base period selected
4 by the Public Water Supplier experts as the more credible and accurate
5 representation of long-term conditions in the Basin," as set forth on Page 5,
6 Lines 23-27.

7 38. All material and subsidiary issues of fact relied upon by the Court to determine
8 that "The pumping extractions are not seriously in dispute by any of the experts
9 who testified. All seem to agree that pumping currently is estimated to range
10 from 130,000 to 150,000 acre feet a year," as set forth on Page 5, Line 28
11 through Page 6, Line 2.

12 39. The testimony of each testifying expert which the Court relied upon to establish
13 all material and subsidiary issues of fact relied upon by the Court to determine
14 that "The pumping extractions are not seriously in dispute by any of the experts
15 who testified. All seem to agree that pumping currently is estimated to range
16 from 130,000 to 150,000 acre feet a year," as set forth on Page 5, Line 28
17 through Page 6, Line 2.

18 40. All material and subsidiary issues of fact relied upon by the Court to determine
19 that "Other sources of recharge to the Basin, including artificial recharge-water
20 introduced into the Basin from external sources are not in dispute," as set forth
21 on Page 6, Lines 5-7.

22 41. The testimony of each testifying expert which the Court relied upon to establish
23 all material and subsidiary issues of fact relied upon by the Court to determine
24 that "Other sources of recharge to the Basin, including artificial recharge-water
25 introduced into the Basin from external sources are not in dispute," as set forth
26 on Page 6, Lines 5-7.

1 42. All material and subsidiary issues of fact relied upon by the Court to determine
2 that "The nature of the agricultural duties has changed as well," as set forth on
3 Page 6, Line 11.

4 43. The testimony of each testifying expert which the Court relied upon to establish
5 all material and subsidiary issues of fact relied upon by the Court to determine
6 that "The nature of the agricultural duties has changed as well," as set forth on
7 Page 6, Line 11.

8 44. All material and subsidiary issues of fact relied upon by the Court to determine
9 that "The type of irrigation used by farmers has become more efficient and less
10 water is needed per acre (depending on the crops grown) with more efficient
11 uses of water," as set forth on Page 6, Lines 11-13.

12 45. The testimony of each testifying expert which the Court relied upon to establish
13 all material and subsidiary issues of fact relied upon by the Court to determine
14 that "The type of irrigation used by farmers has become more efficient and less
15 water is needed per acre (depending on the crops grown) with more efficient
16 uses of water," as set forth on Page 6, Lines 11-13.

17 46. All material and subsidiary issues of fact relied upon by the Court to determine
18 that "But there has also been an increase as well as a change in the nature of the
19 type of agriculture in the Valley in material quantities in recent years," as set
20 forth on Page 6, Lines 13-15.

21 47. The testimony of each testifying expert which the Court relied upon to establish
22 all material and subsidiary issues of fact relied upon by the Court to determine
23 that "But there has also been an increase as well as a change in the nature of the
24 type of agriculture in the Valley in material quantities in recent years," as set
25 forth on Page 6, Lines 13-15.

26 48. All material and subsidiary issues of fact relied upon by the Court to determine
27 that "The evidence presented and observable conditions in the valley are
28 inconsistent with those conclusions" as set forth on Page 7, Lines 11-12.

1 49. The testimony of each testifying expert which the Court relied upon to establish
2 all material and subsidiary issues of fact relied upon by the Court to determine
3 that "The evidence presented and observable conditions in the valley are
4 inconsistent with those conclusions" as set forth on Page 7, Lines 11-12.

5 50. All material and subsidiary issues of fact relied upon by the Court to determine
6 that "If there were a surplus, even in the shortened base periods used by the
7 Landowner Group experts, there would not be land subsidence, nor declining
8 water levels" as set forth on Page 7, Lines 11-13.

9 51. The testimony of each testifying expert which the Court relied upon to establish
10 all material and subsidiary issues of fact relied upon by the Court to determine
11 that "If there were a surplus, even in the shortened base periods used by the
12 Landowner Group experts, there would not be land subsidence, nor declining
13 water levels" as set forth on Page 7, Lines 11-13.

14 52. All material and subsidiary issues of fact relied upon by the Court to determine
15 that "The Basin's physical conditions are inconsistent with those Landowner
16 Group estimates that there is and has been a surplus of water in the Basin and
17 the Court finds these opinions unreliable" as set forth on Page 7, Lines 13-15.

18 53. The testimony of each testifying expert which the Court relied upon to establish
19 all material and subsidiary issues of fact relied upon by the Court to determine
20 that "The Basin's physical conditions are inconsistent with those Landowner
21 Group estimates that there is and has been a surplus of water in the Basin and
22 the Court finds these opinions unreliable" as set forth on Page 7, Lines 13-15.

23 54. All material and subsidiary issues of fact relied upon by the Court to determine
24 that "Weighing the various opinions, however, the Court finds by a
25 preponderance of the evidence that setting a total safe yield at a conservative
26 110,000 acre feet per year will permit management of the Basin in such a way as
27 to preserve the rights of all parties in accordance with the Constitution and laws
28

1 of the State of California” as set forth on Page 7, Line 26 through Page 8, Line
2 1.

3 55. The testimony of each testifying expert which the Court relied upon to establish
4 all material and subsidiary issues of fact relied upon by the Court to determine
5 that “Weighing the various opinions, however, the Court finds by a
6 preponderance of the evidence that setting a total safe yield at a conservative
7 110,000 acre feet per year will permit management of the Basin in such a way as
8 to preserve the rights of all parties in accordance with the Constitution and laws
9 of the State of California” as set forth on Page 7, Line 26 through Page 8, Line
10 1.

11 56. All material and subsidiary issues of fact relied upon by the Court to determine
12 that “It should not be assumed that the safe yield management number may not
13 change as climate circumstances and pumping may change, or as the empirical
14 evidence based on experience in managing the Basin suggests it is either too
15 high or too low” as set forth on Page 8, Line 27 through Page 9, Line 2.

16 57. The testimony of each testifying expert which the Court relied upon to establish
17 all material and subsidiary issues of fact relied upon by the Court to determine
18 that “It should not be assumed that the safe yield management number may not
19 change as climate circumstances and pumping may change, or as the empirical
20 evidence based on experience in managing the Basin suggests it is either too
21 high or too low” as set forth on Page 8, Line 27 through Page 9, Line 2.

22 58. If over Landowner objections, the Court includes in the Statement of Decision
23 the “Native Safe Yield” issue added by the Purveyor parties on page 8, starting
24 on line 6, all material and subsidiary issues of fact relied upon by the Court to
25 determine “Native Safe Yield.”

26 59. If over Landowner objections, the Court includes in the Statement of Decision
27 the “Native Safe Yield” issue added by the Purveyor parties on page 8, starting
28 on line 6, the testimony of each testifying expert which the Court relied upon to

1 establish all material and subsidiary issues of fact relied upon by the Court to
2 determine "Native Safe Yield."

3 60. If over Landowner objections, the Court includes in the Statement of Decision
4 the "Supplemental Safe Yield" issue added by the Purveyor parties on page 8,
5 starting on line 6, all material and subsidiary issues of fact relied upon by the
6 Court to determine "Supplemental Safe Yield."

7 61. If over Landowner objections, the Court includes in the Statement of Decision
8 the "Supplemental Safe Yield" issue added by the Purveyor parties on page 8,
9 starting on line 6, the testimony of each testifying expert which the Court relied
10 upon to establish all material and subsidiary issues of fact relied upon by the
11 Court to determine "Supplemental Safe Yield."

12 62. If over Landowner objections, the Court includes in the Statement of Decision
13 the "Return Flows" issue added by the Purveyor parties on page 8, starting on
14 line 6, all material and subsidiary issues of fact relied upon by the Court to
15 determine "Return Flows."

16 63. If over Landowner objections, the Court includes in the Statement of Decision
17 the "Return Flows" issue added by the Purveyor parties on page 8, starting on
18 line 6, the testimony of each testifying expert which the Court relied upon to
19 establish all material and subsidiary issues of fact relied upon by the Court to
20 determine "Return Flows."

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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

On June 21, 2011, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S
OBJECTION TO STATEMENT OF DECISION RE PHASE III TRIAL SUBMITTED BY
LOS ANGELES COUNTY AND OTHER WATER PURVEYORS**

— by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

X BY SANTA CLARA SUPERIOR COURT E-FILED IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

Executed on June 21, 2011, at Bakersfield, California.

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

— (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.



NANETTE MAXEY
2455-2

EXHIBIT “K”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 4

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING)
SPECIAL TITLE (RULE 1550B))
ANTELOPE VALLEY GROUNDWATER CASES)

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

PALMDALE WATER DISTRICT AND)
QUARTZ HILL WATER DISTRICT,)

SANTA CLARA CASE NO.
1-05-CV-049053

CROSS-COMPLAINANTS,)

VS.)

LOS ANGELES COUNTY WATERWORKS,)
DISTRICT NO. 40, ET AL,)

CROSS-DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JULY 11, 2011

APPEARANCES:

(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585
OFFICIAL REPORTER

1 CASE NUMBER: JCCP 4408
2 CASE NAME: ANTELOPE VALLEY
3 LOS ANGELES, CALIFORNIA, MONDAY, JULY 11, 2011
4 DEPARTMENT NO. 316 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 11:00 A.M.
7 APPEARANCES: (SEE TITLE PAGE)

8
9 THE COURT: GOOD MORNING. HAVE WE TAKEN ROLL CALL
10 ON THE APPEARANCES BY PHONE ALREADY?

11 THE CLERK: YES, YOUR HONOR, ON COURT CALL.

12 THE COURT: ALL RIGHT. LET'S JUST HAVE COUNSEL
13 WHO ARE PRESENT IN THE COURTROOM STATE THEIR
14 APPEARANCES.

15 MR. WEEKS: GOOD MORNING, YOUR HONOR, BRAD WEEKS
16 FOR QUARTZ HILL.

17 MR. ORR: GOOD MORNING, YOUR HONOR, STEVEN ORR FOR
18 THE CITY OF PALMDALE.

19 MR. DUNN: GOOD MORNING, YOUR HONOR, JEFFREY DUNN
20 FOR LA COUNTY WATERWORKS DISTRICT NO. 40.

21 MR. BUNN: GOOD MORNING, YOUR HONOR, THOMAS BUNN
22 FOR PALMDALE WATER DISTRICT.

23 MR. WELLEN: GOOD MORNING, YOUR HONOR, WARREN
24 WELLEN ON BEHALF OF THE LOS ANGELES WATER DISTRICT NO.
25 40.

26 MR FIFE: GOOD MORNING, YOUR HONOR, MICHAEL FIFE
27 FOR ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

28 MR. ZIMMER: GOOD MORNING, YOUR HONOR, RICHARD

1 YOUR HONOR. THAT DESCRIBED SAFE YIELD AND OVERDRAFT.
2 TO GO BACK NOW AND ADD IN THINGS THAT WE WERE NOT TRYING
3 RAISES BOTH LEGAL ISSUES IN TERMS OF THE PROPRIETY OF
4 THE TERMS NATIVE AND SAFE YIELD, SUPPLEMENTAL SAFE
5 YIELD, RETURN FLOWS, AND INTRODUCES NEW ISSUE INTO THE
6 CASE WHICH WE WERE NOT TRYING. ALTHOUGH ITS DIFFERENT
7 TERMS SUCH AS NATIVE RECHARGE MAY HAVE BEEN TALKED ABOUT
8 IN TERMS OF ULTIMATE NUMBER OF OVERDRAFT OR SAFE YIELD,
9 CERTAINLY WE WERE NOT TRYING THESE OTHER TERMS
10 SUPPLEMENTAL SAFE YIELD, ET CETERA.

11 SO TO -- SINCE WE HAD THE ISSUES CLEARLY
12 DEFINED BEFORE WE WENT TO TRIAL, I THINK THOSE ARE THE
13 ISSUES THAT THE COURT SHOULD BE DECIDING AND IN WHICH
14 THE COURT DID PROPERLY DECIDE IN THE PROPOSED -- OR IN
15 THE TENTATIVE STATEMENT OF DECISION.

16 THE OTHER THING IS THAT I THINK SOME OF
17 THESE OTHER ISSUES THAT ARE BEING RAISED AND -- OR WERE
18 RAISED IN TERMS OF RETURN FLOWS AND WHAT OTHERS MAY
19 ARGUE IN TERMS OF NATIVE RECHARGE, THE LEGAL RIGHT TO
20 RETURN FLOWS, THE AMOUNT OF RETURN FLOWS, IF THERE'S A
21 LEGAL RIGHT TO IT, THOSE ARE ALL THINGS THAT I THINK WE
22 CAN PROPERLY TACKLE IN A RIGHTS PHASE OF THE TRIAL WHEN
23 PARTICULAR PARTIES ARE CLAIMING RIGHTS, FOR EXAMPLE,
24 IMPORTED WATER OR TO OTHER ASPECTS OF THE SAFE YIELD.

25 THE BOTTOM LINE IS WE TRIED SAFE YIELD FOR
26 PURPOSES OF OVERDRAFT, AND THAT WAS IT. AND THE COURT
27 HAS MADE A DECISION ON THAT.

28 AND I THINK THAT THESE OTHER ISSUES -- I

1 AGREE WITH MR. DUNN THAT THESE OTHER ISSUES WILL BE --
2 AND ARE BEING DISCUSSED IN TERMS OF SETTLEMENT
3 NEGOTIATIONS WHICH I THINK ARE PROCEEDING BETTER THAN
4 EXPECTED. AND I THINK THAT THE COURT'S DECISION AS IT
5 STANDS ON OVERDRAFT AND SAFE YIELD IS WHAT IT IS, BUT I
6 WOULDN'T WANT TO INJECT OTHER ISSUES INTO IT AFTER THE
7 FACT SINCE VARIOUS PARTIES ON OUR SIDE OF IT CERTAINLY
8 DID NOT INTEND TO -- TRYING THOSE ISSUES AND TRIED TO
9 MAKE IT VERY CLEAR WHAT WE WERE TRYING.

10 THE COURT: MR. FIFE.

11 MR FIFE: I WOULD BE AGREEABLE TO WHAT MR. ZIMMER
12 SAID. THE ISSUE OF THE SPECIFIC NUMBER OR EVEN THE
13 SPECIFIC PERCENTAGE THAT ONE WOULD PUT ON THE RETURN
14 FLOWS, PARTICULARLY FROM IMPORTED WATER, THAT IS
15 SOMETHING THAT CAN BE DETERMINED EXPERIMENTALLY BY THE
16 WATER MASTER GOING FORWARD. IT WAS AN ISSUE THAT WAS
17 CONTESTED IN THE PHASE III TRIAL.

18 THE EXPERTS GAVE DIFFERENT NUMBERS FOR ALL
19 OF THOSE. AND IT REALLY ONLY HAS BEARING IN AN
20 ALLOCATION PHASE. AND I WOULD PERSONALLY THINK THAT IT
21 WOULD INTERFERE WITH THE SETTLEMENT DISCUSSIONS THAT ARE
22 UNDER WAY BECAUSE IT WOULD LOCK THINGS IN PLACE WHEN
23 WE'RE CURRENTLY NEGOTIATING AND INAPPROPRIATE TO PUT
24 INTO A STATEMENT OF DECISION.

25 MR. ZIMMER: ONE LAST POINT I WOULD MAKE, YOUR
26 HONOR, IS THE REASON THAT DURING THE TRIAL WE OBJECTED
27 ON HEARSAY GROUNDS TO A LOT OF THE INFORMATION THAT WAS
28 BEING EMPLOYED BY THE EXPERTS FOR PRECISELY THIS REASON.

1 AND THE COURT, I BELIEVE, ON SEVERAL OCCASIONS SAID THAT
2 THE -- ALL THIS INFORMATION AND DATA WAS BEING OFFERED
3 NOT FOR THE TRUTH OF THE MATTER ASSERTED, BUT FOR SIMPLY
4 AS A BASIS FOR AN EXPERT'S OPINION AS TO SAFE YIELD OR
5 OVERDRAFT.

6 THE COURT: ALL RIGHT.

7 MR. BUNN: JUST BRIEFLY IN RESPONSE, YOUR HONOR,
8 MR. ZIMMER TALKED ABOUT THE USE OF THE DEFINITIONS IN
9 THE CASE LAW AND HOW WE WERE ONLY USING THE DEFINITIONS
10 OF SAFE YIELD AND OVERDRAFT AS PROVIDED IN THE CASE LAW.
11 AND THEN IN HIS WRITTEN OPPOSITION, HE WENT FURTHER AND
12 SAID SAN FERNANDO CASE NEVER USED THE TERMS OF NATIVE
13 SAFE YIELD AND SUPPLEMENTAL SAFE YIELD.

14 YOUR HONOR, I JUST WANT TO POINT OUT THAT
15 THE SAN FERNANDO CASE DID IN FACT USE THOSE CONCEPTS AND
16 ORDERED THE TRIAL COURT TO USE THOSE CONCEPTS. JUST TO
17 READ ONE QUICK SENTENCE FROM THE SAN FERNANDO CASE ON
18 PAGE 288, "ON REMAND THE BASE SAFE YIELD SHOULD BE
19 APPORTIONED BETWEEN AMOUNTS ATTRIBUTABLE TO (1) NATIVE
20 WATERS PRODUCED BY PRECIPITATION WITHIN THE ULARA."
21 THAT IS THE UPPER LA RIVER THAT -- IN ISSUE IN THAT CASE
22 AND IN (2) WATER IMPORTED FROM OUTSIDE THE ULARA.

23 THE REPORTER: ARE YOU SAYING ULARA?

24 MR. BUNN: U-L-A-R-A.

25 THE REPORTER: THANK YOU.

26 THE COURT: ALL RIGHT. THANK YOU.

27 MR. BEZERRA: YOUR HONOR, RYAN BEZERRA FOR COPA DE
28 ORO.

1 THE COURT: GO AHEAD.

2 MR. BEZERRA: I BELIEVE WHAT YOU HAVE HERE ARE TWO
3 SEPARATE ISSUES: ONE IS THAT THE CALCULATION OF THE
4 SAFE YIELD INCLUDED SOME CALCULATION OF RECHARGE FROM
5 IMPORTS APPLIED OVER THE BASE PERIOD. WHAT YOU HAVE
6 HERE, HOWEVER, IS THE STATEMENT -- THE PROPOSED
7 STATEMENT THAT THE COURT DECLARED THAT THE CURRENT
8 AMOUNT OF RECHARGE FROM IMPORTS APPLIED IS A DESIGNATED
9 NUMBER IS A DIFFERENT ISSUE.

10 IF THE INTENTION OF THE STATE IS THAT THE
11 COURT HAS TO HAVE FOUND SOME AMOUNT OF RECHARGE IMPORT
12 APPLIES IN ORDER TO BE ABLE TO DETERMINE A SAFE YIELD,
13 IT SHOULD SAY THAT, AND IT SHOULD NOT SAY THAT THE COURT
14 FINDS THAT THE SAFE YIELD -- OR THAT THE YIELD FROM
15 IMPORT SUPPLIES IS A PARTICULAR NUMBER WHICH IS AN
16 AMOUNT THAT WOULD CARRY FORWARD.

17 THE AMOUNT SHOULD NOT CARRY FORTH. IT
18 SHOULD BE COMPLETELY RETROSPECTIVE AS TO WHAT THE COURT
19 FOUND AS PART OF ITS CALCULATION OF THE SAFE YIELD AS
20 STATED IN THE STATEMENT OF DECISION.

21 THE COURT: ALL RIGHT. MR. MCLACHLAN, DID YOU
22 WANT TO SAY SOMETHING?

23 MR. MCLACHLAN: YES, YOUR HONOR, MICHAEL MCLACHLAN
24 FOR THE WOOD CLASS. I JUST WANTED TO ADD ONE POINT
25 RELATIVE TO THIS QUESTION OF RETURN FLOWS, AND I THINK
26 IT IS IMPORTANT IN THIS CONTEXT BECAUSE THIS IS A RATHER
27 UNUSUAL PROCEEDING WHEREIN WE ARE NOT HAVING A TRIAL OF
28 ALL THE CAUSES OF ACTION.

1 IN FACT, THE LAST TRIAL DIDN'T REALLY
2 RESOLVE ANY PARTICULAR CAUSE OF ACTION. IT JUST
3 RESOLVED AN ISSUE TO MANY OF THE VARIOUS CAUSES OF
4 ACTION.

5 BECAUSE OF THAT, I THINK THAT THE ISSUE OF
6 NOTICE IN ADVANCE OF, LET'S SAY, THE PHASE III TRIAL AND
7 ANY FUTURE PHASES REALLY HAS TO BE PRETTY CLEAR. AND I
8 DON'T THINK THERE IS MUCH ARGUMENT THAT IN THOSE NOTICES
9 THERE WAS NO REFERENCE TO DETERMINATION SPECIFICALLY BY
10 THE COURT IN THIS PHASE III OF THE RETURN FLOWS. AND
11 WITHOUT THE NOTICE, THEN YOU HAVE LIMITATIONS IN
12 DISCOVERY AND THE ABSENT PARTIES AND ON AND ON.

13 AND I THINK THAT IS A BIT PROBLEMATIC, AND I
14 THINK IT PERHAPS UNNECESSARILY INVITES AN APPEALABLE
15 ISSUE WHEN, IN FACT, WE DON'T NEED TO REACH THAT POINT
16 UNTIL A SUBSEQUENT PHASE.

17 THE COURT: ALL RIGHT. THANK YOU.

18 LET ME MAKE AN OBSERVATION. I'M GOING TO
19 GIVE YOU A WRITTEN STATEMENT OF DECISION THAT WILL
20 ENCOMPASS MY FINAL RULINGS ON THESE OBJECTIONS. BUT I
21 THINK THAT IS IT IS IMPORTANT TO NOTE THAT THE PHASE III
22 TRIAL -- THE PURPOSE WAS TO DETERMINE WHETHER OR NOT
23 THERE WAS A STATUS OF OVERDRAFT WITHIN THE BASIN AND THE
24 ADJUDICATION AREA SUCH THAT IT WAS NECESSARY FOR THE
25 COURT TO SEEK A PHYSICAL SOLUTION TO THAT PROBLEM.

26 SO THE PRINCIPAL ISSUE WAS OVERDRAFT. YOU
27 CANNOT DETERMINE OVERDRAFT WITHOUT AT LEAST AN ESTIMATE
28 OF THE AMOUNT OF RECHARGE FROM ALL SOURCES THAT ARE PUT

1 INTO THE AQUIFER.

2 AND IN THIS CASE, OBVIOUSLY, THE COURT FOUND
3 BASED UPON THE OPINIONS OF EXPERTS THAT AS I INDICATED
4 IN THE TENTATIVE DECISION THE AMOUNT OF RECHARGE WAS
5 EXCEEDED BY THE AMOUNT OF PUMPING OVER A LONG PERIOD OF
6 TIME. IT DOESN'T MEAN EVERY YEAR, BUT OVER A LONG
7 PERIOD OF TIME USING THE TIMELINE OF 50 YEARS, WHICH I
8 THOUGHT WAS THE APPROPRIATE ONE BECAUSE IT MANIFESTED
9 ALL CYCLES OF PRECIPITATION, DROUGHT AND THE LIKE.

10 THAT IS TO MY MIND THE MOST IMPORTANT THING
11 THAT WE DECIDED IN PHASE III.

12 I DID NOT MAKE AND COULD NOT MAKE INDIVIDUAL
13 DETERMINATIONS AS TO PUMPING IN VARIOUS AREAS, TOTAL
14 SOURCES OF WATER THAT WENT INTO VARIOUS PORTIONS OF THE
15 AQUIFER, THE AMOUNT OF SUBSIDENCE IN VARIANCE AREAS OR
16 LACK THEREOF.

17 NONE OF THOSE THINGS WERE ADJUDICATED. IT
18 WAS ADJUDICATED ON A VERY GENERAL BASIS WITH THE INTENT
19 OF DETERMINING WHETHER OR NOT THERE WAS A SUFFICIENT
20 OVERDRAFT PROBLEM IN THE ADJUDICATION AREA SUCH THAT THE
21 COURT WOULD BE IN THE POSITION OF MAKING DETERMINATIONS
22 CONCERNING PHYSICAL SOLUTIONS AND HOW THAT MIGHT BE
23 BROUGHT ABOUT.

24 SO THAT WHEN -- WHEN YOU ARE ASKING FOR A
25 LOT OF DETAILED FINDINGS, I DON'T THINK YOU ARE ENTITLED
26 TO THEM. AND I DON'T THINK YOU ARE ENTITLED TO
27 FINDINGS -- AND I WOULDN'T BE COMFORTABLE MAKING
28 FINDINGS AS TO WHAT FOR EXAMPLE PUBLIC WATER --

1 CALIFORNIA WATER PROJECT WATER IS GENERATED AND PRODUCED
2 INTO THE AQUIFER. I CAN'T MAKE THAT DETERMINATION.

3 I CAN TELL YOU WHAT IT MIGHT HAVE BEEN IN
4 ONE YEAR OR TWO YEARS BASED UPON THE TESTIMONY THAT WAS
5 PROVIDED. BUT THAT CERTAINLY IS NOT A SUFFICIENT BASIS
6 FOR MAKING A FINDING WHICH WOULD GIVE CERTAIN RIGHTS TO
7 PARTIES WHO PRODUCED -- OBTAINED THAT WATER. THAT'S
8 BEYOND THE SCOPE OF THIS THIRD PHASE OF THE TRIAL.

9 SO I'M NOT INCLINED TO DO THAT. AND I THINK
10 THAT THERE IS A POSSIBILITY FOR A GREAT DEAL OF ARGUMENT
11 AND DISCUSSION CONCERNING WATER THAT IS INTRODUCED INTO
12 THE VALLEY FROM OTHER AREAS AS WELL AS WITH THE RETURN
13 FLOWS MIGHT BE FOR AGRICULTURAL AND FOR MUNICIPAL AND
14 INDUSTRIAL, FOR SALVAGED WATER FOR ANY NUMBER OF OTHER
15 SOURCES OF WATER OR WHATEVER THEY MAY BE.

16 SO, ESSENTIALLY, WHAT I'M SAYING IS I'M
17 GOING TO SUSTAIN THE OBJECTION. AND WHAT I'M ULTIMATELY
18 GOING TO DO HERE WITH REGARD TO EACH ONE OF THESE ISSUES
19 IS DEAL WITH IT IN TERMS OF THE STATEMENT OF DECISION,
20 AND I'LL DRAFT IT MYSELF. ALL RIGHT.

21 ALL RIGHT. LET'S GO ONTO BOLTHOUSE'S MORE
22 SPECIFIC OBJECTION. IS THERE AN OBJECTION FINDING THERE
23 HAS BEEN A 50-YEAR OLD OVERDRAFT WITHIN THE VALLEY? I
24 DON'T THINK THAT IS WHAT I INTENDED BY MY TENTATIVE
25 DECISION. VERY CLEARLY THERE WERE YEARS WHERE THE
26 INFLOW WAS SUBSTANTIALLY EQUAL TO OUTFLOW. BUT YOU
27 CAN'T DECIDE OVERDRAFT ON THE BASIS OF ONE YEAR OR TWO
28 YEARS. IT HAS GOT TO BE DECIDED ON A LONG-TERM BASIS.

EXHIBIT “L”

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OF ORIGINAL FILED
Los Angeles Superior Court**

JUL 18 2011

John A. Clarke, Executive Officer/Clerk

By  Dept
RAUL SANCHEZ

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**STATEMENT OF DECISION
PHASE THREE TRIAL**

Judge: Honorable Jack Komar

2
3 The standard for a statement of decision as set forth in Code of Civil Procedure section
4 632 requires a court to explain “. . . the legal and factual basis for its decision as to each of the
5 principal controverted issues at trial. . . .” Case law is clear that a court must provide the factual
6 and legal basis for the decision on those issues only closely related to the ultimate issues on the
7 case. (See *People v. Casa Blanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.)
8 It is also clear that a court need not respond to requests that are in the nature of “interrogatories.”
9 (See *id.* at pp. 525-526.)

10 The only issues at this phase of the trial were simply to determine whether the
11 adjudication area aquifer is in a current state of overdraft and as part of that adjudication to
12 determine the safe yield. This Statement of Decision focuses solely on those issues.

13 Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale,
14 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
15 Quartz Hill Water District, California Water Service Company, Rosamond Community Service
16 District, Phelan Pifon Hills Community Services District, Desert Lake Community Services
17 District, North Edwards Water District (collectively, the “Public Water Producers”)¹ brought an
18 action for, *inter alia*, declaratory relief, alleging that the Antelope Valley adjudication area
19 groundwater aquifer was in a state of overdraft and required judicial intervention to provide for
20 management of the water resources within the aquifer to prevent depletion of the aquifer and
21 damage to the Antelope Valley basin.

22 Several of the cross-defendant parties (collectively, the “Land Owner Group”) also
23 sought declaratory relief in their various independent (now coordinated and consolidated)
24 actions.

25
26
27 ¹ The United States and the City of Los Angeles, though not water suppliers in the Antelope Valley adjudication
28 area, joined with the Public Water Producers. Rosamond Community Services District joined with the Land Owner
Group.

1 The first issues to be decided in the declaratory relief cause of action are the issues of
2 overdraft and safe yield. The remaining causes of action and issues are to be tried in a
3 subsequent phase or phases.

4 This Phase Three trial commenced on January 4, 2011 and continued thereafter on
5 various days based upon the needs of the various parties and the Court's availability.
6 Appearances of counsel are noted in the minutes of the Court.

7 At the conclusion of the evidence, the Court offered counsel the opportunity to provide
8 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the
9 Court heard oral argument and the matter was ordered submitted.

10 The Public Water Producers (and others) have alleged that the basin is in a condition of
11 overdraft and have requested that the Court determine a safe yield and consider imposition of a
12 physical solution or other remedy to prevent further depletion of the water resource and
13 degradation of the condition of the aquifer.

14 Several parties in opposition to the request of the Public Water Producers have
15 contended that while there may have been overdraft in the past, currently the aquifer has
16 recovered and is not in overdraft. These same parties contend that it is not possible to establish
17 a single value for safe yield; instead they have requested that the Court determine a range of
18 values for safe yield.

19 The Court concludes that the Public Water Producers have the burden of proof and that
20 the burden must be satisfied for this phase and purpose by a preponderance of the evidence.
21 This burden of proof may or may not be appropriate to other phases of this trial. And since the
22 findings here have no application to other phases, such as prescription or rights of appropriators,
23 and the parties have not briefed those or other issues, the Court makes no conclusions as to what
24 standard of proof might be applicable to such other issues or phases of trial.

25 The law defines overdraft as extractions in excess of the "safe yield" of water from an
26 aquifer, which over time will lead to a depletion of the water supply within a groundwater basin
27 as well as other detrimental effects, if the imbalance between pumping and extraction
28 continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199; *City of*

1 *Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District v.*
2 *City of Riverside* (1959) 173 Cal. App. 2d 137.) “Safe yield” is the amount of annual
3 extractions of water from the aquifer over time equal to the amount of water needed to recharge
4 the groundwater aquifer and maintain it in equilibrium, plus any temporary surplus. Temporary
5 surplus is defined as that amount of water that may be pumped from an aquifer to make room to
6 store future water that would otherwise be wasted and unavailable for use.

7 Determination of safe yield and overdraft requires the expert opinions of hydrologists and
8 geologists.² Experts in the field of hydrogeology routinely base their opinions and conclusions
9 concerning groundwater basin overdraft on evidence of long-term lowering of groundwater
10 levels, loss of groundwater storage, declining water quality, seawater intrusion (not an issue in
11 this case), land subsidence, and the like. Experts also conduct a sophisticated analysis of
12 precipitation and its runoff, stream flow, and infiltration into the aquifer, including such things as
13 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge), as
14 well as the nature and quantity of extractions from the aquifer and return flows therefrom.
15

16 Generally, neither overdraft nor safe yield can be determined by looking at a
17 groundwater basin in a single year but must be determined by evaluating the basin conditions
18 over a sufficient period of time to determine whether pumping rates have or will lead to
19 eventual permanent lowering of the water level in the aquifer and ultimately depletion of the
20 water supply or other harm. Recharge must equal discharge over the long term. (*City of Los*
21 *Angeles v. City of San Fernando, supra*, 14 Cal. 3rd at pp. 278-279.) But having heard
22 evidence about the aquifer as a whole, the Court is not making historical findings that would be
23 applicable to specific areas of the aquifer or that could be used in a specific way to determine
24 water rights in particular areas of the aquifer.
25
26

27
28 ² All the experts offer estimates. The American Heritage College Dictionary, Third Edition, defines an “estimate”
as, *inter alia*, “[a] rough calculation, as of size” or “[a] judgment based on one’s impressions; an opinion.”

1 The location of the Antelope Valley adjudication area boundaries was the subject of the
2 Phase One and Two trials in this matter. The Court defined the boundaries of the valley aquifer
3 based upon evidence of hydro-connection within the aquifer. If there was no hydro-connectivity
4 with the aquifer, an area was excluded from the adjudication. The degree of hydro-connectivity
5 within the Antelope Valley adjudication area varies from area to area. Some areas seemingly
6 have fairly small or nominal hydro-connectivity but must be included in this phase of the
7 adjudication unless the connection is *de minimis*.³ Pumping in those parts of the aquifer may be
8 shown to have *de minimis* effect on other parts of the aquifer while pumping in other areas
9 within the basin appear to have material impacts on adjacent parts of the basin. All areas were
10 included within the adjudication area because they all have some level of hydro-connection,
11 some more and some less. How to deal with those differences is ultimately a basin management
12 decision that is well beyond the scope of this phase of trial.
13

14 Overdraft

15
16
17 The preponderance of the evidence presented establishes that the adjudication area
18 aquifer is in a state of overdraft. Reliable estimates of the long-term extractions from the basin
19 have exceeded reliable estimates of the basin's recharge by significant margins, and empirical
20 evidence of overdraft in the basin corroborates that conclusion. Portions of the aquifer have
21 sustained a significant loss of groundwater storage since 1951. While pumping in recent years
22 has reduced and moderated, the margin between pumping and recharge as cultural conditions
23 have changed and precipitation has increased (with the appearance of wetter parts of the
24 historical cycle), pumping in some areas of the aquifer is continuing to cause harm to the basin.
25 The evidence is persuasive that current extractions exceed recharge and therefore that the basin is
26

27 ³ The court may exclude truly *de minimis* connectivity areas based upon evidence in later phases of the trial if
28 shown to have virtually no impact on the aquifer.

1 in a state of overdraft. Since 1951⁴ there is evidence of periods of substantial pumping
2 (principally agricultural in the early years of the period) coinciding with periods of drought, with
3 almost continuous lowering of water levels and severe subsidence in some areas extending to the
4 present time, with intervals of slight rises in water levels in some areas.

5 Areas of increased pumping, with concomitant lowering of water levels, can have a
6 serious effect on water rights in other areas, caused by cones of depression, which alter natural
7 water flow gradients, causing the lowering of water levels in adjacent areas, with resulting
8 subsidence and loss of aquifer storage capacity. Given population growth, and agricultural and
9 industrial changes, the valley is at risk of being in an even more serious continuing overdraft in
10 the future unless pumping is controlled.

11 While the lowering of current water levels has slowed, and some levels in wells in some
12 areas have risen in recent years, significant areas within the aquifer continue to show declining
13 levels, some slightly so, but many with material lowering of water levels.

14 Thus, the Antelope Valley adjudication area is in a state of overdraft based on estimates
15 of extraction and recharge, corroborated by physical evidence of conditions in the basin, and
16 while the annual amount of overdraft has lessened in recent years with increased precipitation
17 and recharge, the effects of overdraft remain and are in danger of being exacerbated with
18 increased pumping and the prospective cyclical precipitation fluctuations shown by the historical
19 record. The physical evidence establishes that there was significant subsidence occurring in
20 parts of the adjudication area ranging from two to six feet or more in certain areas of the valley
21 caused by such pumping and that measurable water levels fell in a substantial part of the valley.
22 While some of the ongoing subsidence may be attributable to residual subsidence (from earlier
23 periods of shortfall) that would not seem to be an explanation for the extent of continued
24 subsidence. The evidence establishes that ground water extractions in excess of recharge are a
25 cause as well.
26
27

28 ⁴ Precipitation and well records prior to that year are too sketchy to be relied upon.

1 **Safe Yield**

2
3 A calculation of safe yield is necessary to manage the basin or create a physical solution
4 to a potential or actual continuing overdraft. A determination of safe yield requires an initial
5 determination of average annual natural or native recharge to the aquifer from all sources. The
6 only source of natural or native recharge for the Antelope Valley is precipitation that recharges
7 the aquifer and it is therefore necessary to ascertain average annual precipitation. The
8 calculation of annual average precipitation can only be determined by using a baseline study
9 period that covers precipitation in periods of drought and periods of abundant precipitation over
10 a sufficient period of time that a reliable estimate of average future recharge based on
11 precipitation can be made.

12 It has been suggested that safe yield could be based on using shorter base periods or more
13 than one base period, (the total time span of which was considerably less than the 50 year period
14 the Court believes is more credible). If the purpose of selecting a base period is to determine
15 average recharge over time based on precipitation, choosing two consecutive periods of time
16 with two different average numbers would not serve that purpose and would preclude estimating
17 a single safe yield. Likewise, selecting a base period that does not have completely representative
18 precipitation cycles over time would not provide an accurate evaluation of conditions in the
19 valley. A base period that calculates average precipitation over a representative period of time
20 permits reliable predictions about future natural recharge based on regular recurring precipitation
21 cycles. A period of precipitation fluctuations from 1951 to 2005 satisfies that standard. Shorter
22 periods do not.

23
24 The Court finds that current extraction of water from the aquifer by all pumping ranges
25 from 130,000 to 150,000 acre feet a year, but in any event, is in excess of average annual
26 recharge. The major area of dispute between the parties is the average amount of natural
27 recharge, which also involves disputes concerning return flows, the amount of native vegetation
28 water needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag

1 time, bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the
2 basin, including artificial recharge-water pumped into the aquifer from external sources are not
3 in dispute.

4 Evidence established that during the entire historical period presented, populations
5 increased within the valley and water use changed in a variety of ways. There has been a shift in
6 some areas to urban uses and away from agriculture although in recent years agricultural
7 pumping has also increased. The nature of agricultural duties has changed as well. The type of
8 irrigation used by farmers has become more efficient and less water is needed per acre
9 (depending on the crops grown) with more efficient uses of water. But there has also been an
10 increase as well as a change in the nature of the type of agriculture in the valley in material
11 quantities in recent years. More of such changes may occur and it is important to both current
12 and future generations to ensure that the water resources within the basin are managed prudently.

13
14 The Court heard from a very large number of experts, some of whom have provided
15 opinion testimony of what constitutes safe yield. All the experts testifying acknowledged that
16 changes in the selection of a base study period, lag time, agricultural water duties,
17 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration,
18 return flows, playa evaporation relating to run off and bedrock infiltration, chloride
19 measurements, satellite imaging, and agricultural and municipal pumping estimates, among
20 others, would affect the ultimate opinion of natural recharge and return flows.

21 The opinions of all the experts are estimates, based upon their professional opinion. All
22 of the opinions were critiqued by other experts who often had different opinions. The Court
23 recognizes the imprecision of the various estimates and the fact that an estimate by definition is
24 imprecise. But the fact that estimates lack precision does not mean that the Court cannot rely
25 upon such estimates. The scientific community relies upon such estimates in the field of
26 hydrogeology and the Court must do the same.

27 Reasonable experts can differ as to reasonable estimates of natural recharge and
28 virtually all other components of water budgets, computations of change of storage, and the

1 like, all the while using the same formulae and scientific principles to reach their conclusion.
2 For example, all the experts could agree on the definition of "Darcy's Law" and the physics
3 principle of "conservation of mass" but still reach different conclusions.

4 Some of the experts opined that the basin was not in overdraft and that recharge was in
5 excess of or in balance with extractions so that there was a surplus in the aquifer. One expert
6 opined that loss of storage was merely space for temporary storage. Observable conditions in the
7 valley are inconsistent with those conclusions. If there were a surplus, even in the shortened
8 base periods used by the some experts, there should not be subsidence of land, nor the need to
9 drill for water at deeper and deeper levels in those parts of the aquifer most affected by the
10 overdraft. The physical condition of the valley is inconsistent with those estimates that there is
11 and has been a surplus of water in the aquifer.

12 The selection of a safe yield number for an aquifer the size of the Antelope Valley is
13 made difficult because of not only its size but because of the complexity of its geology. As
14 reflected above, hydro-connectivity and conductivity varies considerably between various parts
15 of the aquifer. The hydro-connectivity between some portions of the adjudication area aquifer
16 and others is so slight as to be almost (apparently) nonexistent. Pumping in those areas may
17 have little or no effect on other areas of the aquifer. The Antelope Valley basin is not like a
18 bathtub where lowering and raising of water levels is equal in all parts of the "tub."
19

20 Therefore, assigning a safe yield number (what quantity of pumping from the basin will
21 maintain equilibrium in the aquifer) may require different numbers for different parts of the
22 aquifer (and clearly may also provide for some level of separate management). No attempt has
23 been made in this phase of trial to define geological differences in the valley that would justify
24 different safe yield numbers for different parts of the valley in light of the decision in Phase Two
25 regarding connectivity (the Phase Two trial focused on hydro-connectivity for purposes of
26 determining necessary parties to the action).

27 Weighing the various opinions of the experts, however, the Court finds by a
28 preponderance of the evidence that conservatively setting a safe yield at 110,000 acre feet a

1 year will permit management of the valley in such a way as to preserve the rights of all parties
2 in accordance with the Constitution and laws of the State of California. Some portions of the
3 aquifer receive more recharge than others and pumping requirements vary. These differences
4 require management decisions that respect the differences in both the geology and the cultural
5 needs of the diverse parts of the valley.

6 It should not be assumed that the safe yield management number may not change as
7 climate circumstances and pumping may change, or as the empirical evidence based on
8 experience in managing the basin suggests it is either too high or too low.
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11 **JUL 13 2011**

12 Dated: _____


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14 Hon. Jack Komar
15 Judge of the Superior Court
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EXHIBIT “M”

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**CASE MANAGEMENT ORDER
FOR PHASE 4 TRIAL**

Hearing Date(s): December 11, 2012
Time: 9:00 a.m.
Location: Department 1
Santa Clara County
Superior Court

Judge: Honorable Jack Komar

1 Richard A. Wood v. Los Angeles County
2 Waterworks District No. 40
3 Superior Court of California, County of Los
4 Angeles, Case No. BC 391 869

5
6 IT IS HEREBY ORDERED:

7 1. The Phase 4 trial will commence at 9:00 a.m. on February 11, 2013, in
8 Department 1 of the Superior Court of the County of Los Angeles, located at 111 North Hill
9 Street, Los Angeles, California or such other location pursuant to court order upon notice.

10 2. The Phase 4 trial will address the issue of current groundwater production of all
11 parties for the calendar year 2011 and January 1 through November 30, 2012, proof of claimed
12 reasonable and beneficial use of water for each parcel to be adjudicated, claimed return flows
13 from imported water, and federal reserved rights. Claims of prescription will be tried following
14 the decision in Phase 4.

15 3. Expert witness disclosure shall take place on January 4, 2013. Designation of
16 supplemental experts shall take place on January 11, 2013. Said designations shall meet the
17 requirements of Code of Civil Procedure section 2034.010, *et seq.*, and include a statement as
18 to availability for deposition during January 14-31, 2013. In addition, any expert designation
19 shall produce a copy of any reports prepared concurrently with his or her designation.

20 A party intending to call a non-expert witness shall post the name(s) of such witness(es)
21 on the Court's website on January 4, 2013, which shall include a statement as to availability for
22 deposition during January 10-31, 2013.

23 The parties who have designated expert or non-expert witnesses are directed to meet
24 and confer in person and/or by telephone at 10:00 a.m. on January 7, 2013, to develop a
25 schedule for the taking of depositions of witnesses for the Phase 4 trial who have been
26 designated. Counsel for the Los Angeles County Waterworks District No. 40 is directed to
27 provide telephone conference information to the parties by posting the same to the Court's
28 website by 12:00 p.m. on January 4, 2013. The purpose of the telephone conference is to

1 develop a schedule for the taking of depositions, such that such taking is concluded by January
2 31, 2013, which is the expert witness, percipient witness and written discovery cut-off. A
3 similar telephone conference shall take place in the same manner on January 14, 2013 for the
4 supplemental expert witnesses designated on January 11, 2013.

5 Any party failing to participate in the telephone scheduling conferences or who refuses
6 to schedule their witnesses for deposition shall be deemed to have waived the right to
7 coordinate, and may thereafter have their witness' deposition set at the convenience of the
8 participating parties on 5 court days notice given pursuant to the Court's Electronic Filing and
9 Service Order. To the extent that parties are unable to reach agreement as to any deposition,
10 the Court will conduct a telephonic meet and confer to be scheduled at the earliest convenient
11 to the Court.

12
13 4. The parties are directed to conduct a telephone conference at 10:00 a.m. on
14 December 14, 2012 to discuss a coordinating or liaison committee for purposes of the Phase 4
15 trial. Counsel for the Los Angeles County Waterworks District No. 40 is directed to provide
16 telephone conference information to the parties by posting the same to the Court's website by
17 noon on December 13, 2012. The purpose of the committee is to create a means of attempting
18 to resolve issues quickly and informally, and to streamline the presentations at trial. The
19 existence of this committee, however, shall not deprive any other party from raising issues or
20 concerns to the other parties.

21 5. Any expert or other witnesses designated by the parties on January 4, 2013 shall
22 be available and prepared to provide deposition testimony, absent other agreement, beginning
23 on January 14, 2013. Any expert designated by the parties on January 11, 2013 shall be
24 available and prepared to provide deposition testimony beginning on January 23, 2013. The
25 parties shall make every effort to complete the depositions of the initially designated experts in
26 time for the depositions of the supplemental experts to take place before the discovery cut-off
27 directed above. More than one deposition may be scheduled to take place on the same day.

28 6. Any expert or other witness who is not prepared to testify on the date agreed or

1 noticed for deposition is subject to exclusion at the time of trial.

2 7. All deponents are directed to produce their file on this matter, and any other
3 requested materials for inspection at least three business days before the date set for the
4 deposition at the expert's place of business or such location as the parties may agree. Such
5 materials may be produced in electronic format.

6 8. Other than materials requested through a notice of deposition, the only written
7 discovery allowed is the Court-ordered discovery dated December __, 2012.

8 9. The parties are directed to meet and confer concerning any discovery dispute
9 before contacting the Court and before filing any discovery motion. If such attempts prove
10 unsuccessful, the Court will conduct a further meet and confer, either by telephone or in person
11 as the Court may direct. The parties will provide the Court with a letter in advance setting forth
12 the text of any written discovery requests and responses thereto that are in dispute, or other
13 information that will assist the Court in conducting the meet and confer. The parties should
14 contact the Court's clerk to schedule any such meet and confer. The Court expects that all
15 discovery disputes will be resolved through the meet and confer process. Any party may
16 thereafter apply *ex parte* for an order shortening time and specially setting a motion to compel
17 for hearing by providing notice thereof pursuant to the Electronic Filing and Service Order.

18 10. Any party intending to participate in the Phase 4 trial must post a Notice of
19 Intention to Participate in the Phase 4 Trial on the Court's website by December 18, 2012.
20 Excuse from this requirement may be given upon a showing of good cause.

21 11. The parties shall post their witness and exhibit lists on February 1, 2013. The
22 witness lists shall provide the name of the witness(es), a short summary of testimony expected
23 to be elicited, and a time estimate. The exhibit lists shall be sufficiently specific as to enable
24 the other parties to identify the exhibit prior to trial. Exhibits shall be sequentially numbered,
25 starting with the Arabic number 1. The parties shall agree through the Liaison Committee as to
26 the division of exhibit numbers by January 27, 2013.

27 12. The parties shall coordinate with one another to determine the actual date and
28

1 time of the witnesses' testimony at trial. The parties shall make their best efforts to produce all
2 documents relevant to that witnesses' testimony prior to the witness' deposition. Any other
3 documents not previously produced, but which are intended to be used at trial, shall be made
4 available as soon as practicable.

5 13. Upon request, the parties shall provide one another with electronic copies of
6 their exhibits, except those exhibits that are not practical to provide in electronic format.

7 14. Trial briefs shall be filed and posted on or before January 29, 2013. Responding
8 trial briefs, *if any*, shall be filed at posted on or before February 5, 2013. Allied parties are
9 encouraged to file joint briefs.

10 15. Any motion to exclude witnesses or exhibits, or other motions *in limine*, will be
11 heard at the commencement of the trial on February 11, 2013. Any such moving papers shall
12 be filed and posted on February 4, 2013. Any opposition papers, including evidentiary
13 objections, shall be filed and posted on February 7, 2013. Evidentiary objections to evidence
14 submitted in opposition shall be filed and posted on February 7, 2013. No other reply papers
15 are allowed.

16 16. Should any party elect to use a third party provider to assist in the projection or
17 presentation of evidence, that party shall permit said third party provider to contract with any
18 other party for the use the same services provided. Third party providers, in any event, shall
19 work together to coordinate the use of equipment.

20 17. Any party desiring to monitor the Phase 4 trial by telephone may do so through
21 CourtCall, but will not be allowed to question witnesses or participate in oral argument absent
22 prior arrangement with the Court.

23 18. The Court shall be provided with courtesy copies of all exhibits, except those
24 pertaining to impeachment, preferably in three ring notebooks with numbered dividers, on or
25 before February 6, 2013. Counsel are directed to coordinate this project with one another.

26 19. Prior to the commencement of each day of trial, counsel shall confer as to the
27 order of the next day's witnesses, and shall advise the Court of the same at the commencement
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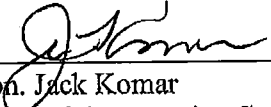
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of that day of trial.

20. The Court will consider whether to request closing trial briefs as the Phase 4 proceeds.

DEC 18 2014

Dated: _____



Hon. Jack Komar
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 4

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING)
SPECIAL TITLE (RULE 1550B))

ANTELOPE VALLEY GROUNDWATER CASES))

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

-----)
PALMDALE WATER DISTRICT AND)
QUARTZ HILL WATER DISTRICT,)

SANTA CLARA CASE NO.
1-05-CV-049053

CROSS-COMPLAINANTS,)

VS.)

LOS ANGELES COUNTY WATERWORKS,)
DISTRICT NO. 40, ET AL,)

CROSS-DEFENDANTS.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, FEBRUARY 1, 2011

APPEARANCES:

(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585
OFFICIAL REPORTER

1 CASE NUMBER: JCCP 4408
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER
3 LOS ANGELES, CALIFORNIA, TUESDAY, FEBRUARY 1, 2011
4 DEPARTMENT NO. 4 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 9:00 A.M.
7 APPEARANCES: (SEE TITLE PAGE)

8
9 THE COURT: GOOD MORNING, MR. WILDERMUTH. WELCOME
10 BACK.

11 THE WITNESS: GOOD MORNING.

12 THE COURT: MR. KUHS.

13 MR. WILLIAM KUHS: THANK YOU, YOUR HONOR.

14

15 MARK J. WILDERMUTH,
16 CALLED BY THE PALMDALE WATER DISTRICT AS A WITNESS,
17 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

18

19 CROSS-EXAMINATION (CONTINUED)

20 BY MR. WILLIAM KUHS:

21 Q GOOD MORNING, MR. WILDERMUTH.

22 A GOOD MORNING, MR. KUHS.

23 Q MR. WILDERMUTH, WOULD YOU TURN TO S101 AND
24 PAGE ROMAN 3-24.

25 MR. BUNN: THAT'S THE SUMMARY EXPERT REPORT.

26 THE WITNESS: COULD YOU TELL ME --

27 BY MR. WILLIAM KUHS:

28 Q PAGE ROMAN 3-24 IN THE TEXT OF THE SUMMARY

1 OBJECTION TO 62 --

2 MR. JOYCE: I WOULD JOIN.

3 MR. SLOAN: -- 64, 65, AND I BELIEVE THAT IS.

4 THE COURT: 62, 64 AND 65.

5 MR. JOYCE: AND I WOULD JOIN IN THAT, YOUR HONOR.

6 MR. ZIMMER: I WOULD JOIN AS WELL, AS WELL. JUST
7 FOR CLARIFICATION, YOUR HONOR, IT IS MY UNDERSTANDING
8 THAT TO THE EXTENT THAT THERE IS HEARSAY IN ANY OF THESE
9 EXHIBITS THAT THESE EXHIBITS ARE NOT BEING ACCEPTED FOR
10 THE TRUTH OF THE MATTER, BUT MERELY AS THE BASIS FOR THE
11 EXPERT OPINION.

12 THE COURT: EVERYONE OF THEM.

13 MR. ZIMMER: THANK YOU, YOUR HONOR.

14 THE COURT: OKAY.

15 MR. JOYCE: YOUR HONOR, I WOULD MOVE INTO EVIDENCE
16 B4 THROUGH B12, AND I WOULD ALSO MOVE INTO EVIDENCE MY
17 COLLECTIVE EXHIBITS WHICH WAS MARKED AS B13(A-R). THAT
18 ARE IS THE ONES THAT WE HAD MR. WILDERMUTH --

19 THE CLERK: PREVIOUSLY ADMITTED.

20 MR. BUNN: RIGHT. 13 WAS ADMITTED.

21 MR. JOYCE: THEN IT WOULD BE B4 THROUGH B12.

22 THE COURT: ALL RIGHT.

23 MR. JOYCE: THANK YOU, YOUR HONOR.

24 THE COURT: IT'S IN EVIDENCE.

25

26 (DIAMOND FARMING EXHIBIT B4 THROUGH

27 B12 RECEIVED IN EVIDENCE.)

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EXHIBIT “O”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 316

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING)
SPECIAL TITLE (RULE 1550B))

ANTELOPE VALLEY GROUNDWATER CASES)

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

PALMDALE WATER DISTRICT AND)
QUARTZ HILL WATER DISTRICT,)

SANTA CLARA CASE NO.
1-05-CV-049053

CROSS-COMPLAINANTS,)

VS.)

LOS ANGELES COUNTY WATERWORKS,)
DISTRICT NO. 40, ET AL,)

CROSS-DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, FEBRUARY 17, 2011

APPEARANCES:

(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585
OFFICIAL REPORTER

1 CASE NUMBER: JCCP 4408
2 CASE NAME: ANTELOPE VALLEY
3 LOS ANGELES, CALIFORNIA, THURSDAY, FEBRUARY 17, 2011
4 DEPARTMENT NO. 316 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 8:30 A.M.
7 APPEARANCES: (SEE TITLE PAGE)
8

9 THE COURT: GOOD MORNING, EVERYONE. WE ARE ON THE
10 RECORD. MR. LEININGER.

11 MR. LEININGER: YES, YOUR HONOR. GOOD MORNING,
12 YOUR HONOR. I WANT TO BEGIN JUST BY APOLOGIZING FOR MY
13 ABSENCE FOR THE LAST FEW DAYS. IT HAS BEEN
14 EXTRAORDINARY EVENTS RECENTLY WITH REGARD TO OUR BUDGET
15 AND OUR TRAVEL RESTRICTIONS. SOMETHING I HAVEN'T
16 WITNESSED SINCE SHUT DOWN OF THE GOVERNMENT IN 1995 WHEN
17 I WAS WORKING FOR THE JUSTICE DEPARTMENT. I APOLOGIZE
18 FOR MY ABSENCE.

19 THE COURT: I UNDERSTAND THE PROBLEM. I WORKED IN
20 THE DEPARTMENT OF JUSTICE. I WOULD LOVE TO SAY IT
21 PROBABLY WON'T HAPPEN AGAIN, BUT I REALLY AM NOT ABLE TO
22 PREDICT.

23 MR. LEININGER: AND, YOUR HONOR, I -- FOR TODAY'S
24 TESTIMONY, I DO HAVE ONE WITNESS, DR. JUNE OBERDORFER.
25 SHE HAS TESTIFIED IN THE TWO PREVIOUS PHASES OF TRIAL IN
26 THIS CASE. TODAY SHE IS AVAILABLE TO TESTIFY AND HAS A
27 BRIEF DIRECT TESTIMONY WHICH I BELIEVE WE SHOULD BE ABLE
28 TO ACCOMPLISH WITHIN AN HOUR OR A LITTLE OVER AN HOUR

1 A NO, IT DOESN'T.

2 MR. LEININGER: I HAVE NO OTHER QUESTIONS.

3 THE COURT: ALL RIGHT. THANK YOU.

4 MR. LEININGER: YOUR HONOR, AT THIS TIME, I WOULD
5 MOVE FOR ENTRIES OF EXHIBITS MARKED I-1 THROUGH 18 AND
6 I-20 OF HER TESTIMONY.

7 THE COURT: NOW I UNDERSTAND THAT THERE ARE
8 OBJECTIONS TO THE COURT ACCEPTING THE INFORMATION FOR
9 THE TRUTH OF THE MATTERS. THAT OBJECTION HAS BEEN
10 SUSTAINED. I'LL PERMIT THEM TO COME IN EXEMPLIFYING HER
11 TESTIMONY WITH THE UNDERSTANDING THAT HEARSAY IS
12 HEARSAY.

13 MR. JOYCE: WITH THAT, YOUR HONOR, I WILL WITHHOLD
14 MY OBJECTION.

15 MR. BUNN: YOUR HONOR, A CLARIFICATION AS TO THE
16 NUMBERS. COULD YOU GIVE THE NUMBERS AGAIN.

17 MR. LEININGER: YES, I'M SORRY. I SAID I-1
18 THROUGH 18, BUT EXHIBIT I-10 HAD BEEN REDACTED. SO IT
19 IS 1 THROUGH 9, 11 THROUGH 18 AND I-20.

20 MR. BUNN: 20? DO YOU MEAN 21?

21 MR. LEININGER: I'M SORRY, 21. THANK YOU.

22 MR. ZIMMER: THE ONLY COMMENT I HAVE IS, YOUR
23 HONOR, WITH SOME OF THOSE EXHIBITS AS WE RAISED AS THEY
24 WERE BEING PRESENTED INVOLVED EXHIBITS THAT ARE
25 CURRENTLY SUBJECT TO A MOTION TO STRIKE. I APPRECIATE
26 THE FACT THAT THE COURT HAS IDENTIFIED DOWN ON THE
27 RECORD THAT THESE EXHIBITS ARE NOT ADMITTED FOR ANY --

28 THE COURT: TO ESTABLISH THE DATA -- NOT ADMITTED

1 TO ESTABLISH THE DATA.

2 MR. ZIMMER: THANK YOU, YOUR HONOR.

3 THE COURT: AND LET ME JUST OBSERVE. IRRESPECTIVE
4 OF WHAT THE COURT'S RULING ON THE MOTION TO STRIKE
5 EXHIBITS MIGHT BE, THAT IS -- HER TESTIMONY IS
6 INDEPENDENT OF THE ISSUES THAT YOU RAISED IN YOUR MOTION
7 TO STRIKE IN TERMS OF PREPARATION BECAUSE CERTAINLY
8 SOMETHING THAT SHE HAS LOOKED AT AND CONSIDERED, AND SHE
9 HAS OPINED ABOUT THAT.

10 AND SO BEAR THAT IN MIND WHEN YOU ARE MAKING
11 YOUR RENEWED ARGUMENTS AS I'M SURE YOU WILL ON THE 14TH.

12 MR. ZIMMER: MY COMMENT WAS TO THE EXTENT THAT IT
13 INCORPORATES DATA THAT IS ULTIMATELY SHOWN TO BE
14 INCORRECT OR FALSE. IT IS --

15 THE COURT: THAT WAS NOT THE BASIS FOR THE MOTION
16 TO STRIKE. THE MOTION TO STRIKE WAS PREDICATED UPON
17 NONDISCLOSURE AND RELATED TYPES OF OBJECTIONS IF I
18 REMEMBER CORRECTLY.

19 MR. ZIMMER: THAT IS TRUE, BUT I THINK WHAT THE
20 COURT SAID WAS THAT YOU WOULD TAKE A LOOK AT IT AGAIN TO
21 SEE IF THE CONTOUR LINES ACTUALLY MATCHED UP WITH THE
22 DATA. SO WHAT I'M SAYING HERE IS TO THE EXTEND THAT THE
23 CONTOUR LINES DON'T MATCH UP WITH THE DATA, NOT ONLY IS
24 THERE A BASIS FOR STRIKING THE EXHIBITS WHICH WOULD HAVE
25 THIS EXPERT RELYING ON SOMETHING WHICH IS NOT IN
26 EVIDENCE AND NOT PROPERLY -- NOT A PROPER ...

27 THE COURT: WELL, SHE IS NOT BASING HER OPINION
28 WHAT IS IN EVIDENCE. SHE IS BASING HER OPINION ON WHAT

1 HER OBSERVATIONS WERE. IT IS A TOTALLY DIFFERENT BASIS.

2 SO THEY ARE ADMITTED WITH THE LIMITATIONS
3 THAT I HAVE EXPRESSED IN THIS -- AS PART OF HER
4 TESTIMONY. WHETHER THEY ARE ALSO GOING TO BE ADMITTED
5 WITH REGARD TO -- OR STRICKEN WITH REGARD THE OTHER
6 WITNESS'S TESTIMONY IS A TOTALLY DIFFERENT ISSUE. SO --
7 BUT YOUR COMMENTS ARE NOTED.

8 MR. ZIMMER: THANK YOU.

9 THE COURT: THEY ARE ADMITTED AS I INDICATED.

10

11 (EDWARDS AIR FORCE BASE EXHIBITS 1-9,
12 11-18, AND 21 RECEIVED IN EVIDENCE
13 WITH THE COURT'S STATED LIMITATIONS.)

14

15 THE COURT: YOU MAY STEP DOWN, DOCTOR. THANK YOU
16 VERY MUCH FOR COMING.

17 MR. JOYCE: YOUR HONOR?

18 THE COURT: YES.

19 MR. JOYCE: BOTH MR. KUHS AND I HAD AN ISSUE THAT
20 WE THOUGHT MAYBE IT WOULD BE APPROPRIATE TO CLEAR UP
21 WITH THE COURT NOW SO THAT WE CAN PLAN WHAT WE ARE GOING
22 TO BE DOING FOR THE NEXT FEW WEEKS. AS THE COURT WILL
23 RECALL, THERE HAS BEEN A LOT OF DISCUSSION ABOUT THE
24 SCOPE OF WHAT ISSUES WE WERE GOING TO ENTERTAIN IN THIS
25 PHASE OF THE TRIAL. AND, SPECIFICALLY, AS IT PERTAINS
26 TO THE EFFECTS OF PUMPING IN ONE AREA VERSUS ANOTHER
27 AREA.

28

I THINK WE ALL HAD A LITTLE BIT OF A PREVIEW