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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16
17 **ANTELOPE VALLEY
GROUNDWATER CASES**

18 Included Actions:
19 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
20 Court of California, County of Los
Angeles, Case No. BC 325201;

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

24 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
25 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
26 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
27

Judicial Council Coordination No. 4408

CLASS ACTION

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

**PUBLIC WATER SUPPLIERS' CASE
MANAGEMENT STATEMENT**

28

1 This Court directed the parties in its August 30, 2011 order to submit a case management
2 statement regarding the next trial phase. The Public Water Suppliers (“PWS”)¹ hereby submit the
3 following recommendation.

4 The PWS waited to file their CMC statement until the United States filed its CMC
5 statement because the PWS know that the issues involved in this CMC are of particular
6 importance to the United States. The PWS understand the Court’s desire for the next trial phase
7 to focus on a physical solution. While the PWS agree with the Court that it is critical to develop a
8 physical solution to alleviate overdraft in the Antelope Valley Groundwater Basin (“Basin”) as
9 soon as possible, the PWS share the United States’ concern with the next trial phase being
10 focused solely on the physical solution. While the PWS desire to manage the basin and eliminate
11 overdraft as soon as reasonable, this will require a watermaster appointment, reducing
12 groundwater pumping, and assessing those who pump water in excess of their rights. Stated
13 another way in order to manage the Basin, the Court will need to implement the physical solution.
14 However, the PWS are concerned that it is not legally possible to implement the physical solution
15 without first allocating water rights. This concern arises from the California Supreme Court’s
16 decision in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224:

17 Thus, although it is clear that a trial court may impose a physical
18 solution to achieve a practical allocation of water to competing
19 interests, the solution’s general purpose cannot simply ignore the
20 priority rights of the parties asserting them. (See *City of San*
21 *Fernando, supra*, 14 Cal. 3d at p. 290.) In ordering a physical
22 solution, therefore, a court may neither change priorities among the
23 water rights holders nor eliminate vested rights in applying the
24 solution without first considering them in relation to the reasonable
25 use doctrine. (See 1 Rogers & Nichols, *Water for California* (1967)
26 § 404, p. 549, and cases cited.) *Id.* at 1250.

27 The *Mojave* decision found that the physical solution did not apportion production rights
28 on the basis of pre-existing legal water rights. The Supreme Court noted that the trial court
expressly held that the parties were “estopped and barred from asserting special priorities or

¹ For purposes of this filing the PWS include: Palmdale Water District; Quartz Hill Water District; Big Rock Mutual Water Company; Desert Lakes Community Services District; Little Baldy Mutual Water Company; Llano Mutual Water Company; North Edwards Water District; Palm Ranch Irrigation District; and Los Angeles County Waterworks District No. 40.

1 preferences” and the court further concluded that allocating water based on asserted legal
2 priorities would be “extremely difficult, if not impossible.” The Supreme Court rejected this
3 approach. In this case it is of paramount importance that the Court develop a physical solution to
4 alleviate the overdraft conditions. However, in order for the physical solution to meaningfully
5 address the Basin’s overdraft condition, it must be implemented in a way which will require
6 importing more supplemental water and/or curtailing pumping. Thus, it is critical to comply with
7 the holding in *Mojave* and determine the water rights and consider them in implementing a
8 physical solution. While the Court can certainly modify pre-existing water rights pursuant to the
9 language in *Mojave*, if the court implements a physical solution without consideration of the
10 parties’ water rights, the PWS are concerned that the physical solution may be contrary to the
11 *Mojave* holding.

12 Should the Court decide to focus the next trial phase on a physical solution, the PWS
13 believe the physical solution should have the conceptual features outlined below:

- 14 • The Court should consider how to address overdraft pumping and how to facilitate the
15 importation of supplemental water;
- 16 • The Court should consider how to administer the judgment and physical solution
17 including the appointment and responsibilities of a watermaster;
- 18 • The Court should consider how to address monitoring of groundwater and groundwater
19 production in the Basin.

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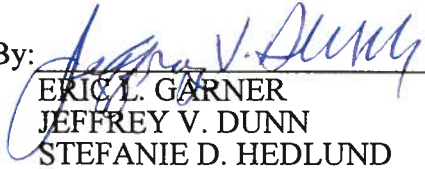
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In conclusion, the PWS believe that the most efficient use of the Court's time is to allocate water rights in the next trial phase immediately followed by the Court's approval and implementation of a physical solution. The PWS believe that the next trial phase should be scheduled in approximately six months.

Dated: October 11, 2011

BEST BEST & KRIEGER LLP

By: 
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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 October 11, 2011, I served the within document(s):

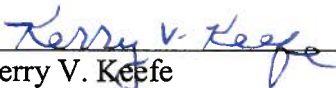
PUBLIC WATER SUPPLIERS' CASE MANAGEMENT STATEMENT

- 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 October 11, 2011, at Irvine, California.


Kerry V. Keefe