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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

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

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 HOA.840177.1

1 CASE MANAGEMENT CONFERENCE STATEMENT

2 1. Mediation before Justice Ronald B. Robie.

3 The Public Water Suppliers have taken an active role in the mediation process supervised
4 by Justice Robie. Additionally, the Public Water Supplies, both individually and collectively,
5 have spent many hours in meetings and telephone conferences with various parties to resolve the
6 allocation of the safe yield and other issues. The Public Water Suppliers have devoted a
7 significant amount of resources and have incurred significant attorneys fees in the mediation
8 process.

9 We have been to Sacramento to negotiate on numerous occasions over the last 5 months
10 and have greatly benefited from Justice Robie's determined and untiring efforts to resolve issues
11 involving allocation of the safe yield and other issues. Yet, despite the efforts, the parties are at
12 an impasse with regards to allocation and other issues. Certain parties have withheld crucial
13 information regarding their groundwater production, which is clearly discoverable and admissible
14 evidence, despite having been ordered by the Court to produce this information, having been
15 requested to produce it multiple times by the parties and Justice Robie, and having promised to
16 produce it. This failure to produce has hampered the mediation process and engendered mistrust
17 between parties.

18 2. A Trial Date Should Be Set.

19 "Setting a firm trial date is generally the most effective means to motivate parties to
20 settle." Judicial Council of California, *Deskbook on the Management of Complex Civil Litigation*
21 (Nov. 2010) § 2.91, p. 2-56. While further mediation sessions with Justice Robie could be
22 scheduled, there is no trial date to promote settlement. As the Court is aware, the parties have
23 been without a trial date since the close of the Phase III trial earlier this year.

24 The Public Water Suppliers have met with other parties, including the United States, and
25 they have agreed that a trial date is needed to resolve the parties competing claims to the
26 groundwater.¹ Without a court determination of the competing groundwater claims, the parties
27

28 ¹ The United States will likely address the Court on McCarran Amendment requirements for a court-determined
right for the various groundwater claimants in these coordinated and consolidated cases.

1 will not be able to agree and implement the needed physical solution to the Antelope Valley
2 Groundwater Basin (“Basin”) overdraft conditions. In any event, a Court determination of the
3 appropriate allocation of water rights would be needed even if the parties reached a settlement.

4 3. The Next Phase of Trial Should Determine The Allocation Of Groundwater.

5 As previously stated, the Public Water Suppliers agree with the Court that it is critical to
6 develop a physical solution to alleviate overdraft conditions in the Basin as soon as possible, the
7 Public Water Suppliers the United States’ concern with the next trial phase being focused solely
8 on the physical solution. To manage the Basin and eliminate its overdraft as soon as possible, the
9 Court will need to implement the physical solution to the Basin’s groundwater overdraft
10 conditions. Yet, a physical solution is not legally possible without an allocation of the
11 groundwater water rights:

12 [A]lthough it is clear that a trial court may impose a physical
13 solution to achieve a practical allocation of water to competing
14 interests, the solution’s general purpose cannot simply ignore the
15 priority rights of the parties asserting them. In ordering a physical
16 solution, therefore, a court may neither change priorities among the
17 water rights holders nor eliminate vested rights in applying the
18 solution without first considering them in relation to the reasonable
19 use doctrine.

20 *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1250 (citations omitted).

21 It is of paramount importance that the Court develop a physical solution to alleviate the
22 overdraft conditions. In order for the physical solution to meaningfully address the Basin’s
23 overdraft condition, however, it must be implemented in a way which will require more
24 supplemental water importation and/or curtailing groundwater use. While the Court can certainly
25 modify pre-existing water rights pursuant to the *Mojave*, the Public Water Suppliers are
26 concerned that the physical solution may be contrary to the *Mojave* holding if the Court
27 implements a physical solution without prior consideration of the parties’ water rights.

28 4. The Court Could Schedule Both a Case Management and a Trial Management
Conference For The Next Trial Phase.

A case management conference could be scheduled soon to address the following case

1 issues:

- 2 • How to deal with claims by parties not participating in the Justice Robie
3 mediation. For example, the Court could consider an order requiring non-
4 participating parties to disclose, not only the amount of their respective
5 groundwater claims, but disclose the factual basis for the claim.
6 Alternatively, the active parties could propound written discovery seeking
7 the same information.
- 8 • How to implement court-approved discovery requests to ensure both
9 adequate and timely exchange of discovery with minimal expense and
10 delay to the parties. As in most complex litigation cases, court supervision
11 over the discovery process could reduce or eliminate costly and delay-
12 causing discovery and discovery responses. The Public Water Suppliers
13 propose the Court review and approve discovery requests as well as
14 approve appropriate extensions of time, if necessary, to respond to
15 requests.
- 16 • How to preliminarily decide certain legal and factual issues to narrow the
17 scope of the next phase of trial. A key issue concerns the parties
18 compliance with Water Code provisions mandating certain parties'
19 submission of groundwater usage reports to the State.

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In conclusion, the Public Water Suppliers suggest the most efficient use of the parties' limited resources and 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 Public Water Suppliers respectfully suggest that the Court set the next trial phase for a date in late May, 2012.

Dated: November 10, 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 November 10, 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 November 10, 2011, at Irvine, California.


Kerry V. Keefe