Bob H. Joyce, (SBN 84607)
Andrew Sheffield (SBN 220735)
LAW OFFICES OF
LEBEAU • THELEN, LLP
5001 East Commercenter Drive, Suite 300
Post Office Box 12092
Bakersfield, California 93389-2092
(661) 325-8962; Fax (661) 325-1127

Attorneys for DIAMOND FARMING COMPANY, a California corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550 (b)) ANTELOPE VALLEY GROUNDWATER CASES Included actions: Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company Los Angeles Superior Court Case No. BC 325201 Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company Kern County Superior Court Case No. S-1500-CV 254348 NFT Diamond Farming Company vs. City of Lancaster Riverside County Superior Court Lead Case No. RIC 344436 [Consolidated w/Case Nos. 344668 & 353840]	Judicial Council Coordination No. 4408 Case No.: 1-05-CV-049053 **CASE MANAGEMENT CONFERENCE STATEMENT** Date: May 22, 2008 Time: 9:00 a.m. Dept: 1

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I.

INTRODUCTION

As will be more fully discussed below, it is extremely important for this Court to both appreciate and realize that any order of bifurcation and the phasing for trial of these proceedings should be considered and structured with the realization that, if this already protracted litigation is unduly prolonged, the result will likely be a significant and large number of landowners simply abandoning their property rights because the cost of litigation itself makes defending those rights prohibitive. Very few, if any, single parcel of real property has sufficient economic value to justify and/or support the cost of litigation in a case of this nature. It is firmly believed that it is both the intent and strategy of the Purveyor Parties to make this litigation extremely complex, and to seek by bifurcation to break it up into numerous discrete pieces so as to prolong and by temporal and economic attrition wear down and thus outlast the Landowner Parties and thereby acquire advantages not otherwise factually or legally justified.

This litigation pits the might and funding resources of the government against the separate individual property rights and limited resources of hundreds of separate landowners. A governmental entity attempting to take private property for a public use without compensation under a theory of prescription, engages in a form of theft, not sanctioned by the Federal nor California State Constitution. If the common law principles of prescription are without qualification or constitutional considerations equally applicable to this effort by these governmental entities, then this Court will sooner or later have to decide by clear and convincing evidence whether or not all or most all landowners with knowledge of each adverse claim by each Purveyor sat idle for the prescribed 5 year period, and thus ceded their rights. Such a finding must presuppose mass stupidity, not benevolence. The government must not be permitted to use litigation and thus the judicial system to aid in that effort, and thus, any procedural order should be structured to ensure a quick, efficient, and final resolution.

This basin-wide adjudication is the end product of two Complaints filed by Los Angeles County Water Works District 40 in late 2004. Those two Complaints followed the denial by the Riverside County Superior Court of Water Works' Motion for Leave to File a late and procedurally ineffective Cross-Complaint. Thereafter, through coordination proceedings, we now have a basin-wide adjudication. We are now, three and one-half (3 ½) years later, no closer to an end to this litigation than

we were in late 2004. Both new Complaints were identical and both asserted that because the available water supply was overtaxed the Purveyors had acquired prescriptive rights. Nonetheless, and in the interim, each Purveyor has continued to participate in the land use process and decisions at the local level and has participated in the approval of new subdivisions and commercial developments within its respective jurisdiction, and has issued "Will Serve" letters thus creating new demand and thus permitting ever increasing demands upon what the Purveyors claim is an already insufficient supply. In those planning processes they represent that sufficient water supplies are available to support that new demand, subdivisions and commercial developments, but before this Court, they repeatedly stress that the available supply is extremely overtaxed. They speak out of both sides of their mouths and cannot have it both ways. Thus, this Court should:

1. Conclude the class certification process as soon as possible;
2. Order that service of process be completed by the Purveyors on all necessary parties not now before the Court;
3. Order the Purveyors by declaration to certify for the benefit of this Court and all existing parties that that service of process has been completed;
4. Thereafter elicit from the United States Government that it is satisfied that the McCarran Act jurisdictional requirements have been satisfied;
5. Order that trial is to proceed in two phases. The first being an adjudication of all water rights which would of necessity involve evidence concerning the characteristics and hydrology of the area within the adjudication boundary; and, a second phase addressing remedies, including injunctive relief and a physical solution; and,
6. Immediately lift the stay on discovery.

II.

CLASS CERTIFICATION PROCESS, SERVICE OF PROCESS AND SATISFACTION OF THE MCCARRAN ACT BY THE U.S. GOVERNMENT

This case needs to be at issue. Thus, putting aside at present the propriety of litigating these issues in a class context, given the Court's preference for that approach, the class certification process needs to be completed as soon as possible. Concurrently, any landowner which will not be within the

class and/or classes as certified, must be served immediately. Only an express and unequivocal directive from this Court to the Purveyor parties to effect service on non-joined parties will accomplish that objective. Any order must set definitive time limits within which that service of process must be completed. The Court should order that the Purveyors certify by declaration within a set time that service of process has been completed.

Affirmation by the Federal Government that the McCarran Act jurisdictional requirements have been satisfied is extremely important. It would be futile to schedule and proceed to try any issue with that issue remaining open and unresolved. The absence of indispensable parties must be determined before the commencement of trial rather than in later proceedings challenging a judgment based upon a lack of jurisdiction.

III.

THE COURT SHOULD ORDER THAT TRIAL PROCEED IN TWO PHASES

The Court should order trial of this controversy in two phases: The first being an adjudication of all water rights, and the second phase addressing remedies including injunctive relief and a physical solution. As noted above, it is anticipated that the Purveyors will suggest multiple trial phases of discrete issues with trial of the most controversial and substantive issues, prescription, notice, and self-help, being deferred until the end at some latter point in time. That approach will increase complexity, prolong this litigation, and impede settlement and compromise rather than promote same. It is anticipated that the Purveyor's will urge the Court to set a first phase trial to address "the characteristics of the area within the adjudication boundary, including the issue of 'overdraft.'" It is likewise anticipated that the Purveyors will urge the Court to ignore in that first phase trial the mandate of the California State Constitution, Article X, Section 2. That is to say, the Purveyors will seek to establish "overdraft" based upon the gross aggregate of all groundwater pumping by both overlyers and Purveyors without regard to the limitation imposed upon water rights by Article X, Section 2 of the California Constitution. The California Supreme Court stated:

> "The Constitutional Amendment therefore dictates the basic principles defining water rights: That no one can have a protectable interest in the unreasonable use of water, and that holders of water rights must use water reasonably and beneficially." *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, at p. 1242.

It would be of little benefit to this Court or any litigant to merely litigate whether or not the aggregate of all pumping presently or historically exceeds and/or exceeded the supply. Ultimately the issue will be whether or not the area within the adjudication boundary was "Constitutionally overdrafted." That is to say, whether or not the aggregate of all groundwater pumping which was put to a reasonable and beneficial use nonetheless exceeded the available supply. Hypothetically, if we were to assume that the evidence substantiated that:

1. The "safe yield," the "safe operating yield," or the "available supply" equaled 100,000 acre feet;
2. The aggregate of all overlying landowner pumping, without regard to method and/or manner of use, equaled 90,000 acre feet; and,
3. The aggregate of all Purveyor pumping, without regard to method and/or manner of use, equaled 20,000 acre feet.

Then, one would presumably conclude that the area was "overdrafted" to the extent of 10,000 acre feet. However, if upon the taking of evidence, the Court were to conclude that collectively, as between both overlyers and Purveyors, 10,000 acre feet of the aggregate of all pumping was put to an unreasonable and/or non-beneficial use, then the area would not be Constitutionally overdrafted. Just as an overlying landowner cannot preserve nor protect the overlying right through self-help to an unreasonable and/or non-beneficial use of water, neither could any Purveyor acquire a prescriptive right to an unreasonable and/or non-beneficial use of water. In the hypothetical, the remedy would be an injunction as against the offending parties, and by injunction, thus restoring balance.

The purpose of the foregoing hypothetical is intended to demonstrate that virtually every substantive issue will of necessity involve the application of the limitations imposed by the California State Constitution, Article X, Section 2. To structure a phase one trial which ignores that Constitutional Amendment, would not advance or serve any ultimate constructive purpose, and would only defer a crucial issue affecting the competing water rights of all participants in this litigation. As observed by the California Supreme Court in *Mojave, supra*, given the mandate of Article X, Section 2, it is now necessary for a trial court to determine whether each water right claimant, considering all the needs of those in the particular water field, are putting the waters to a reasonable beneficial use, giving

consideration to all factors involved, including reasonable methods of use and reasonable methods of diversion. As noted, no water right claimant has a protectable interest in the unreasonable use of water. It is only from a consideration of all uses, that the trial court can then determine whether there is or is not a surplus within the water field available for appropriation. Thus, adherence to the mandate of Article X, Section 2, is a predicate or at minimum a component of determining "overdraft," a predicate to the existence and/or non-existence of a surplus available for Purveyor appropriation, a predicate to the sustaining of any prescriptive right by quantity, a predicate to the preservation of any overlying right under the doctrine of "self-help," in short, a significant predicate to a resolution of this litigation. Thus, any first phase trial attempting to litigate any substantive issue must of necessity address the mandate of Article X, Section 2, of the California Constitution.

Additionally, as this Court is well aware, and as all litigating attorneys soon learn, participants in litigation defer confronting serious settlement options until shortly before the reality that they may lose control of their own destiny has manifested itself. Thus, motivating the parties to this litigation to seriously entertain the alternative dispute resolution vehicles that are available will only be furthered if an imminent trial of a substantive factual and legal issue is scheduled. It is only when all parties realize that they are substantively at risk on a material issue that they will seriously pursue alternatives. Settlement will be promoted not hindered by adopting this suggestion and ordering that a first phase trial be conducted resolving the competing water rights of all claimants as limited by Article X, Section 2.

The logic of the approach suggested herein, is and should be readily seen as compelling. If after a phase one trial is completed as suggested, Article X, Section 2, would compel the Court to first enjoin all unreasonable uses by any party as determined by the Court. That injunctive remedy would of necessity have to precede the formulation of any physical solution and/or alternative remedy. Given that at present no substantive discovery has been permitted, no one knows for sure what the evidence will ultimately demonstrate. However, it is conceivable that the injunctive orders which would be necessitated by Article X, Section 2, may in and of themselves prove to be a sufficient remedy to address and resolve the problem, if any exist.

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IV.

THE COURT SHOULD IMMEDIATELY LIFT THE STAY ON DISCOVERY

This Court should immediately remove any obstacle and the existing stay order as to any and all discovery. After nine (9) years of litigation, we still do not know and again ask: "What is the claimed prescriptive period?" It is anticipated that the Purveyor parties will urge the Court to *seriately* limit the discovery only to their perception of what should be explored with reference to each separate and multiple discrete trial phase as they desire. The California legislature through the California Code of Civil Procedure has ordained that party litigants should be given the right to test and resolve issues in litigation short of trial by way of motion for summary judgment. The statutory scheme itself both presupposes and recognizes the necessity and importance of discovery towards that end and that objective. A standing order either limiting and/or precluding discovery in its entirety by necessity obviates that statutorily conferred right, and precludes all litigants from availing themselves of that statutory procedure, thus compelling all to, of necessity, incur the inordinate expense and cost associated with what the Purveyors will suggest should be discrete multiple phases with the most controversial and critical issues being deferred until last, far out into the future, with no immediate right of discovery nor any opportunity to resolve any issue short of trial.

V.

CONCLUSION

Diamond Farming Company has already spent in attorneys fees and litigation cost more than the total value of all real property it owns in fee within the boundaries of the adjudication area by a sum in the multiples. At the outset, Diamond Farming was motivated to litigate the Constitutional implications of the claims of prescription asserted by the governmental entity Purveyors. Diamond Farming is losing interest not because it does not believe in its cause, but simply because after nine (9) years of litigation it is rapidly concluding that it cannot afford to be right. Justice delayed is truly justice denied.

Dated: May 20, 2008

LeBEAU • THELEN, LLP

By: _____
BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY, a California corporation

PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On May 20, 2008, I served the within

CASE MANAGEMENT CONFERENCE STATEMENT

■ (**BY POSTING**) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ **(BY MAIL)** 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 at Bakersfield, California, in the ordinary course of business.

☐ **(OVERNIGHT/EXPRESS MAIL)** By enclosing a true copy thereof in a sealed envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary business practices from Kern County. I am readily familiar with this business' practice of collecting and processing correspondence for overnight/express/UPS mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with delivery fees paid/provided for at the facility regularly maintained by United States Postal Service (Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal Express/United Postal Service to receive documents].

■ (**STATE**) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on May 20, 2008, in Bakersfield, California.

Donna M. Luis

DONNA M. LUIS