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11 a California corporation, CRYSTAL ORGANIC
12 FARMS, a limited liability company, GRIMMWAY
13 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 Coordination Proceeding Special Title
17 (Rule 1550 (b))

Judicial Council Coordination No. 4408

18 ANTELOPE VALLEY GROUNDWATER
19 CASES

Case No.: 1-05-CV-049053

20 Included actions:

**CASE MANAGEMENT STATEMENT
BY DIAMOND FARMING COMPANY,
CRYSTAL ORGANIC FARMS,
GRIMMWAY ENTERPRISES, INC.
AND LAPIS LAND COMPANY, LLC**

21 Los Angeles County Waterworks District No.
22 40 vs. Diamond Farming Company
23 Los Angeles Superior Court
24 Case No. BC 325201

Date: March 8, 2010

25 Los Angeles County Waterworks District No.
26 40 vs. Diamond Farming Company
27 Kern County Superior Court
28 Case No. S-1500-CV 254348 NFT

Time: 10:00 a.m.

Dept: 1

29 Diamond Farming Company vs. City of
30 Lancaster
31 Riverside County Superior Court
32 Lead Case No. RIC 344436 [Consolidated
33 w/Case Nos. 344668 & 353840]

34 AND RELATED CROSS-ACTIONS.

2 IN PERSONAM VS IN REM JURISDICTION, SERVICE OF PROCESS AND
3 SATISFACTION OF THE MCCARRAN ACT

4 This Court has certified two classes of landowners who possess exercised and unexercised
5 overlying rights. Therefore, the remaining landowners (the more important being the remaining parcels
6 of property) not presently before the Court and not within the definition for either or both classes, must
7 be served immediately. (C.C.P. section 389.) Only an express and unequivocal directive from this
8 Court to the Purveyor parties to effect service on non-joined indispensable parties (parcels) will
9 accomplish that objective. That Order must be definitive, with time limits within which that service of
10 process must be completed. Thereafter, the Court should require that the Purveyors certify by
11 Declaration within a set time that the required service of process has been completed, and that this court
12 has jurisdiction over all parcels.

13 It is imperative that this Court have jurisdiction over the *res*, each parcel of real property, and
14 not be limited to solely *in personam* jurisdiction over a predecessor fee owner, the current fee owner,
15 or some subsequent future fee owner. A comprehensive adjudication, as required by the McCarran Act
16 necessary to jurisdiction over the Federal Government, requires that all water rights (parcels) be subject
17 to the Court's jurisdiction at the inception of the litigation, and also subject to the Court's jurisdiction
18 at the time of entry of judgment. Thus, interlitigation transfers (i.e., transfers after service of process
19 but before judgment) through voluntary conveyance, death, foreclosure, and all other myriad and manner
20 of transferring title, become extremely problematic. Even the class actions are limited to and vest only
21 *in personam* jurisdiction. Are transferee's after class certification class members? Does the court have
22 jurisdiction over the parcel transferred? Early on, the legal efficacy of the use of a *lis pendens* was
23 acknowledged but discounted as being unduly burdensome or cumbersome. The absence of jurisdiction
24 over the *res* has heightened the risk that as this litigation has proceeded and as it proceeds hereafter, title
25 to real property and the water right incident thereto, has been and will be transferred beyond the reach
26 of this Court, thus risking transfers to *bona fide* purchasers and thus jeopardizing jurisdiction over the
27 Federal Government. When is the last time the purveyor's have examined the Tax Assessor's records

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1 and reviewed the “Preliminary Change of Ownership” forms which must be filed upon transfer to insure
2 that parties previously served have not transferred title beyond the reach of this court?

3 The Federal Government maintained that the McCarran Act and its jurisdictional requirements
4 and satisfaction of those requirements is extremely important. It would be error to proceed to try any
5 substantive factual issue with the jurisdictional issue remaining open and unresolved. The absence of
6 any indispensable party must be determined and remedied before the commencement of the next trial
7 phase rather than in a later proceeding jeopardizing any judgment based upon a lack of jurisdiction or
8 the absence of an indispensable party.

9 II.

10 THE COURT MUST CLARIFY THE SCOPE OF, PURPOSE, AND INTENDED USE
11 OF THE ISSUES TO BE TRIED IN THE ANTICIPATED TRIAL WHICH THE
12 COURT INTENDS TO SET.

13 At the last hearing, the court expressed its desire to set the next phase of trial on the issues of
14 “Yield” and “Overdraft.” This court needs to clarify and define precisely the intended scope of the
15 next phase of trial, and articulate the purpose and intended use of the evidence and any findings
16 made. If and to the extent that the issue of yield and/or overdraft were to be and are intended to be
17 tried solely for the purposes of assessing the current condition of the area of adjudication and
18 whether or not immediate action is required of the court in the form of a physical solution, then, that
19 object and purpose presents an entirely different factual and legal scenario than if it were the court’s
20 intent to try not only the current condition of the area of adjudication but the fact and effect of any
21 historical differences in yield and/or historical conditions of overdraft. If the next phase of trial were
22 limited to the former objective, then the evidence and ultimate findings would be directed to and in
23 ultimate support of the equitable as opposed to the legal prayed for relief, specifically a “physical
24 solution.” If the latter scope and purpose of the adjudication of the condition of the overall area of
25 adjudication is intended to embrace both current as well as historical conditions, then the only
26 conceivable relevancy to that inquiry would be to the issue of prescription, significantly changing
27 both the legal and practical effect of the scope of the evidence and the legal rights of the parties
28 participating. Most importantly, the latter scope and purpose would necessitate this court’s

1 consideration of broader issues, specifically, the limitations imposed by the California State
2 Constitution, Article X, section 2. Additionally, it would necessitate that this court also litigate
3 concurrently the relative appropriative priorities by and between, i.e., *inter se*, of the appropriative
4 rights of each and every purveyor as against one and the other. Most significantly, if the evidence
5 and this court's ultimate findings on the next phase of trial were intended to and were in fact
6 expected to be used as a basis for and ultimately as findings in support of the claims of prescription,
7 then any party and/or all parties have a right to insist that the next phase of trial be tried to a jury.

8 A. *If the Evidence and Ultimate Findings of the Next Phase of Trial are Intended to be*
9 *Applicable and Used to Establish Adversity for the Purposes of the Prescriptive Claims, then*
10 *the Competing Appropriative Rights Plead by Each Purveyor as Against Each Other*
Purveyor in the Second Cause of Action of the First Amended Cross-Complaint Must be
Tried Concurrently with any Evidence of a Historical Overdraft.

11 If it is the intent of this court to try both the fact and quantification of any and all periods of
12 historical overdraft as well as the existence and/or nonexistence of a present overdraft, then the court
13 should likewise adjudicate as amongst and between each and every purveyor their respective asserted
14 and pled claims of appropriative rights. Some of the purveyors have existed and have pumped
15 groundwater since the turn of the century and others have been created and come into existence and
16 have commenced pumping groundwater in more recent times. It is axiomatic and likewise a matter
17 of law that as to the competing appropriative rights by and amongst each purveyor vis-a-vis each
18 other purveyor that an *inter se* adjudication of their competing appropriative rights must of necessity
19 recognize that the right is premised upon the first in time, first in right principle. Additionally and
20 significantly it mandates that as to various points in time from a perspective of history, and to the
21 extent that issues in this phase of the trial will be used later as predicates to prescription, that the last
22 in time appropriator will of necessity be discretely the first in time potential prescriptor.

23 Hypothetically, if we were to assume that the evidence substantiated that:

- 24 1. The "safe yield," the "safe operating yield," or the "available supply," equaled
25 100,000 acre feet;
- 26 2. The aggregate of all reasonable and beneficial overlying landowner pumping at a
27 given point in time equaled 80,000 acre feet;

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1 3. The aggregate of all reasonable and beneficial purveyor pumping at the same point in
2 time equaled 20,000 acre feet; and,

3 4. The next year a new purveyor was created, and then pumped and put to a reasonable
4 and beneficial use 5,000 acre feet.

5 Then, one would presumable conclude that the area was “over drafted” to the extent of five
6 thousand acre feet. However, the court likewise, recognizing the priority of overlying use, and the
7 principle of “first in time, first in right” applicable to the competing claims of the purveyors, would
8 have to conclude that absent a perfected claim of prescription that the latter created and pumping
9 purveyor was the most junior of all those pumping and claiming water rights, overlying and/or
10 appropriative. In this hypothetical, the remedy would be in the absence of prescription by the later
11 purveyor, an injunction against the offending junior appropriator, thus restoring balance.

12 B. *If the Evidence and Ultimate Findings of the Next Phase of Trial are Intended to be*
13 *Applicable and Used to Establish Adversity for the Purposes of the Prescriptive Claims, then*
14 *the Court Should Try the Issues Involved in the Limitations Imposed by the California State*
15 *Constitution, Article X, Section 2.*

16 It is anticipated that the Purveyors will urge the Court to ignore in the next phase of trial the
17 mandate of the California State Constitution, Article X, Section 2. That is to say, the Purveyors will
18 seek to establish “overdraft” based upon the gross aggregate of all groundwater pumping by both
19 overlyers and Purveyors without regard to the limitation imposed upon water rights by Article X,
20 Section 2 of the California Constitution. The California Supreme Court stated:

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

25 It would be of little benefit to this Court or any litigant to merely litigate whether or not the aggregate
26 of all pumping presently or historically exceeds and/or exceeded the supply. Ultimately the issue
27 will be whether or not the area within the adjudication boundary was “Constitutionally overdrafted.”
28 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 1. The “safe yield,” the “safe operating yield,” or the “available supply” equaled 100,000
- 2 acre feet;
- 3 2. The aggregate of all overlying landowner pumping, without regard to method and/or
- 4 manner of use, equaled 90,000 acre feet; and,
- 5 3. The aggregate of all Purveyor pumping, without regard to method and/or manner of
- 6 use, equaled 20,000 acre feet.

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

15 The purpose of the foregoing hypothetical is intended to demonstrate that virtually every
16 substantive issue will of necessity involve the application of the limitations imposed by the
17 California State Constitution, Article X, Section 2. To structure a phase of trial which ignores that
18 Constitutional Amendment, would not advance or serve any ultimate constructive purpose, and
19 would only defer a crucial issue affecting the competing water rights of all participants in this
20 litigation. As observed by the California Supreme Court in *Mojave, supra*, given the mandate of
21 Article X, Section 2, it is now necessary for a trial court to determine whether each water right
22 claimant, considering all the needs of those in the particular water field, are putting the waters to a
23 reasonable beneficial use, giving consideration to all factors involved, including reasonable methods
24 of use and reasonable methods of diversion. As noted, no water right claimant has a protectable
25 interest in the unreasonable use of water. It is only from a consideration of all uses, that the trial
26 court can then determine whether there is or is not a surplus within the water field available for
27 appropriation. Thus, adherence to the mandate of Article X, Section 2, is a predicate or at minimum
28 a component of determining “overdraft,” a predicate to the existence and/or non-existence of a

1 surplus available for Purveyor appropriation, a predicate to the sustaining of any prescriptive right by
2 quantity, a predicate to the preservation of any overlying right under the doctrine of “self-help,” in
3 short, a significant predicate to a resolution of this litigation. Thus, the next phase trial attempting to
4 litigate any substantive issue as a predicate to prescription must of necessity address the mandate of
5 Article X, Section 2, of the California Constitution.

6 C. *If the Court Intends to Try by Scope, Not Only the Current Conditions of the Area of*
7 *Adjudication, But Also to Take Evidence and Make Findings Upon the Fact and Extent of*
8 *Any Historical “Yield” and/or “Overdraft,” Then All Parties Have a Right to a Trial by*
9 *Jury. The Only Conceivable Relevance and/or Necessity for Evidence Concerning any*
10 *Claimed Historical Overdraft Would of Necessity be for and Used as a Predicate to Establish*
11 *the Element of Adversity for the Purveyors’ Claims of Prescription. As Such, and Under that*
12 *Scenario, then all Parties Would Have a Right to a Determination of Those Issues by a Jury.*
13 *The Issue and the Right to a Jury Trial has been Thoroughly Briefed in Earlier Filings with*
14 *this court, and specifically the following specifically identified briefs.*

15 1. Bolthouse Properties, LLC’s and Wm. Bolthouse Farms, Inc.’s Case Management
16 Conference Statement filed December 31, 2008 (Docket No. 19278);

17 2. U.S. Borax’s Case Management Conference Statement for January 9, 2009 Hearing
18 filed December 31, 2008 (Docket No. 19279);

19 3. Plaintiff Rebecca Willis’ Brief Regarding Right to Jury Trial filed January 2, 2009
20 (Docket No. 19314);

21 4. Plaintiff Rebecca Willis’ Case Management Conference Statement filed January 2,
22 2009 (Docket No. 19315);

23 5. Case Management Statement; Joinder in Case Management Statement of Bolthouse
24 Properties, LLC filed January 2, 2009 (Docket No. 19317);

25 6. Antelope Valley Ground Water Agreement Association’s Case Management
26 Statement filed January 2, 2009 (Docket No. 19320);

27 7. Opposition to Water Purveyors’ Brief Re Jury Trial filed January 26, 2009 (Docket
28 No.19952);

8. Bolthouse Properties, LLC’s and Wm. Bolthouse Farms, Inc.’s Reply to Water
Purveyor Brief Re Trial Phasing and Jury Trial filed January 26, 2009 (Docket No. 19963);

9. U.S. Borax’s Briefing Re Phase 3 Trial on Entire Cause of Action Versus Safe Yield
and Overdraft filed January 26, 2009 (Docket No. 19968);

PROOF OF SERVICE

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

4 I am a citizen of the United States and a resident of the county aforesaid; I am over the age
5 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter
6 Drive, Suite 300, Bakersfield, California 93309. On March 2, 2010, I served the within **CASE**
7 **MANAGEMENT STATEMENT BY DIAMOND FARMING COMPANY, CRYSTAL**
8 **ORGANIC FARMS, GRIMMWAY ENTERPRISES, INC. AND LAPIS LAND COMPANY,**
9 **LLC**

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

13 Los Angeles County Superior Court
14 111 North Hill Street
15 Los Angeles, CA 90012
16 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

17 **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and
18 processing correspondence for mailing. Under that practice it would be deposited with the U.S.
19 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in
20 the ordinary course of business.

21 **(STATE)** I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct, and that the foregoing was executed on March 2,
2010, in Bakersfield, California.

23 
24 **LEQUETTA HANSEN**

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