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6 LITTLE ROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT,
7 NORTH EDWARDS WATER DISTRICT, DESERT LAKES COMMUNITY SERVICES DISTRICT,
LLANO DEL-RIO WATER CO., LLANO MUTUAL WATER CO., BIG ROCK MUTUAL WATER
8 CO., and LITTLE BALDY WATER CO.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11
12 Coordinated Proceeding
Special Title (Rule 1550(b))

) **Judicial Council Coordination No. 4408**

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

) Santa Clara Case No. 1-05-CV-049053
) Assigned to the Honorable Jack Komar – Dept. 17

15 Included Actions:

) **WATER PURVEYOR BRIEF RE TRIAL
PHASING AND JURY TRIAL**

16 Los Angeles County Waterworks District No. 40
17 v. Diamond Farming Co. Los Angeles County
Superior Court Case No. BC 325201;

) **DATE: January 9, 2009**

18 Los Angeles County Waterworks District No. 40
19 v. Diamond Farming Co., Kern County Superior
Court, Case No. S-1500-CV-234348;

) **TIME: 1:30 p.m.**

) **DEPT: LASC - 1**

20
21 Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster v.
22 Palmdale Water District, Riverside County
Superior Court, Consolidated Actions, Case Nos.
23 RIC 353840, RIC 344436, RIC 344668

24 AND RELATED CROSS-ACTIONS
25 _____
26 _____
27 _____
28 _____

1 The Los Angeles County Waterworks District No. 40, the City of Lancaster, the Palmdale Water
2 District, the Littlerock Irrigation District, the Palm Ranch Irrigation District, the Quartz Hill Water
3 District, the Rosamond Community Service Company, the California Water Service Company, the North
4 Edwards Water District, and the Desert Lakes Community Services District, (collectively “Public Water
5 Suppliers”) hereby submit their brief re trial phasing and jury trial, as follows.

6 I. INTRODUCTION

7 Where the court is faced with issues requiring a jury trial and issues which do not require a jury
8 trial, the court is encouraged to resolve the non-jury issues first as a matter of efficient administration.
9 Determination of safe yield or overdraft does not require a jury trial. Therefore, Phase III does not require
10 a jury trial if the issue to be resolved is safe yield and/or overdraft.

11 The private parties have sought injunctive and declaratory relief and damages for inverse
12 condemnation. The private parties cannot obtain injunctive relief or declaratory relief as a matter of law.
13 Their claims are limited to damages. The private parties have a constitutional right to a jury trial only in
14 one instance: determination of damages in the event of a “taking.”

15 However, before the private parties can successfully assert inverse condemnation, they must
16 establish that their “property” was taken. This issue does not require a jury trial. Therefore, the jury trial
17 issue is only germane to the final phase of this proceeding, which would come only after this court has
18 made a determination prescription does not apply and that by virtue of pumping, the public water
19 suppliers have taken the private parties’ water rights. At this point and time, the jury would be called
20 upon to make a determination as to valuation.

21 II. ARGUMENT

22 A. THERE IS NO RIGHT TO A JURY TRIAL IN THIS CASE

23 1. There Is No Right To A Jury Trial For An Equitable Proceeding Or Special 24 Proceeding

25 Because this case is an equitable and “special proceedings,” the constitutional right to a jury trial
26 does not apply here.

1 California Code of Civil Procedure states:

2 “In actions for the recovery of specific, real, or personal property, with or without
3 damages, or for money claimed as due upon contract, or as damages for breach of
4 contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is
5 waived, or a reference is ordered, as provided in this Code. When in these cases there are
6 issues both of law and fact, the issue of law must be first disposed of. In other cases,
7 issues of fact must be tried by the Court, subject to its power to order any such issue to be
8 tried by a jury, or to be referred to a referee, as provided in this Code.” (CCP. § 592.)

9 Generally this means that legal actions are triable by jury. (See *People v. One 1941 Chevrolet*
10 *Coupe* (1951) 37 Cal.2d 283, 286 [231 P.2d 832]; *Grossblatt v. Wright* 91951) 108 Cal.App.2d 475, 483
11 [239 P.2d 19].) Equitable proceedings are triable by the court. (See C.E.B., 1 *Civil Proc. During Trial* 3d,
12 § 8.5; C.J.E.R., Judges Benchbook, *Civil Proceedings: Trial*, § 4.4; 65 Harv. L. Rev. 453; 75 A.L.R. 3d
13 894 [question arising on motion to vacate judgment]; 56 A.L.R. 4th 955 [divorce]; 3 *Cal. Proc.* (5th)
14 *Actions*, § 126 *et seq.*)

15 There is no right to a jury trial when the *gist* of the action is equitable rather than legal. (*C&K*
16 *Engineering Contractors v. Amber Steel Co., Inc.* (1978) 23 Cal.3d 1, 9 [151 Cal.Rptr. 323, 327]; see
17 *Hodge v. Superior Court (AON Ins. Services)* (2006) 145 Cal.App.4th 278, 283 [51 Cal.Rptr.3d 519, 523]
18 (discussed at ¶ 2:85a), *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, 614 [120 Cal.Rptr.2d 1,
19 6].)

20 “The ‘gist of the action’ means the *nature of the rights* involved in the particular case: “If
21 the action has to deal with ordinary common-law rights cognizable in courts of law, it is
22 to that extent an action at law (and jury triable). On the other hand, if the action is
23 essentially on in equity and the relief sought depends upon the application of equitable
24 doctrines, the parties are not entitled to a jury trial.” (*C&K Engineering Contractors v.*
25 *Amber Steel Co., Inc., supra*, 23 Cal.App.3d at 9 [151 Cal.Rptr. at 327 (parentheses
26 added; internal quotes omitted.)

27 The critical factor in excluding the right to jury trial is that the relief sought was historically
28 available *only* in courts of equity; “Without the employment of this doctrine, essentially equitable, there
29 was no remedy at all.” (*C&K Engineering Contractors v. Amber Steel Co., Inc., supra* 23 Cal.3d 9 [151
30 Cal.Rptr. at 327]; promissory estoppel; see *DiPirro v. Bondo Corp., supra* (2007) 153 Cal.App.4th at 179];
31 abatement of public nuisance.)

1 Although the pleadings may provide some indication whether the action is of a legal or equitable
2 nature, they are not conclusive. (*C&K Engineering Contractors v. Amber Steel Co., Inc.*, *supra* (1978) 23
3 Cal.3d 9 [151 Cal.Rptr. 327]; *DiPirro v. Bondo Corp.*, *supra* 153 Cal.App.4th at 179 [62 Cal.Rptr.3d at
4 744].) The fact a complaint is captioned “Claim for Damages” (or that damages is one of various
5 remedies sought) does not guarantee the right to a jury trial if the *underlying rights* are purely equitable in
6 nature. (*C&K Engineering Contractors v. Amber Steel Co., Inc.*, *supra* (1978) 23 Cal.3d 1, 9 [151
7 Cal.Rptr. 327] *Caira v. Offner* (2005) 126 Cal.App.4th 12, 39 [24 Cal.Rptr.3d 233, 253-254; *Martin v.*
8 *County of Los Angeles* (1996) 51 Cal.App.4th 688, 694 [59 Cal.Rptr.2d 303, 306].) “The complaint
9 purports to seek recovery of damages for breach of contract, in form an action at law in which a right to
10 jury trial ordinary would exist. However, where the complaint seeks relief which was *available only in*
11 *equity* (under doctrine of promissory estoppel), a jury trial is not available. (*C&K Engineering*
12 *Contractors v. Amber Steel Co., Inc.*, *supra* 23 Cal.3d 9 [151 Cal.Rptr. 327] (emphasis added).)

13 In addition to legal and equitable actions, there are also “special proceedings.” “Special
14 Proceedings” are statutory proceedings (some of which are enumerated in CCP § 1063 *et seq.*) that
15 generally were unavailable at common law or in equity. (See *People v. Superior Court (Laff)* 2001) 25
16 Cal.4th 703, 725 [107 Cal.Rptr.2d 323, 341]; “special proceedings” are confined to statutory proceedings
17 that were neither “an action at law (nor) a suit in equity” (parentheses added). There is no right to a jury
18 trial in “special proceedings” unless it is expressly made available by statute. (See *Cornette v. Department*
19 *of Transp.* (2001) 26 Cal.4th 63, 76 [109 Cal.Rptr.2d 1, 11]; *Kinder v. Superior Court (Market Ins. Corp.)*
20 (1978) 78 Cal.App.3d 574, 581 [144 Cal.Rptr. 291, 296].) As set forth more fully below, the quasi-
21 legislative nature of a groundwater adjudication also renders it a “special proceeding” for which no jury
22 trial is required.

23 2. The “Gist” Of This Action Is For Equitable Relief

24 The “gist of this adjudication” is a request for equitable relief. The Public Water Suppliers seek an
25 adjudication of their water rights. These rights were acquired by adverse possession and the remedy is
26 declaratory relief and injunction. Declaratory relief and injunctive relief are equitable. (*Hoopes v. Dolan*
27 (2008) 168 Cal.App.4th 146 [85 Cal.Rptr.3d 337.] Appellate courts have examined suits to adjudicate

1 groundwater rights which seek quiet title, declaratory relief, or injunctive relief.¹ In each instance, these
2 cases were resolved by the court and not a jury. (*Id.*) The Public Water Suppliers can find no examples
3 where a jury was called upon to decide these issues.

4 Bolthouse and Grimmway sued for quiet title. Public Water Suppliers, Antelope Valley
5 Groundwater Association, AV United Mutual Group, Rebecca Willis, and Tejon Ranch have sued for
6 declaratory and injunctive relief. All parties seek to protect their supply by the imposition of a physical
7 solution.

8 An action seeking quiet title is equitable. “[T]he action is to quiet title. Generally, there is no right
9 to a jury trial in a quiet title action which is fundamentally equitable in nature.” (*Estate of Phelps v.*
10 *Odekerken* (1990) 223 Cal.App.3d 332, 340.) Likewise, an action seeking declaratory relief is equitable.
11 (*City of Los Angeles v. City of Glendale* (1941) 23 Cal.2d 68, 81.) “In giving declaratory relief, a court
12 has the powers of a court of equity.” (*Id.*)

13 The gist of this proceeding invokes the court’s equitable powers of injunction and declaratory
14 relief to fashion a physical solution of remedy to control groundwater pumping in the basin. For this
15 reason, courts have historically resolved groundwater adjudications through a bench trial.

16 **3. Because Of The Unique Statutory Nature Of California Water Rights, Cases**
17 **Involving Ordinary Prescriptive Easements Are Inapposite To A**
18 **Groundwater Adjudication**

19 The Landowners reference to prescriptive easement cases is misplaced. The Landowners cite to
20 *Frahm v. Briggs* (1970) 12 Cal.App.3d 441, 90 Cal.Rptr. 725, for the proposition a determination of a
21 prescriptive easement is a legal issue that requires a jury. This case is inapposite for two important
22

23 ¹ In *Katz v. Walkinshaw* (1902) 141 Cal. 116, 138, the court determined groundwater rights in the context of a
24 request for injunctive relief. In *Hudson v. Dailey* (1909) 156 Cal. 617, 620 plaintiff sought to quiet title to water
25 and an order enjoining the defendants from pumping. This same court also ruled in favor of defendants on the basis
26 of laches, which is an affirmative defense exclusive to equitable actions, *Id* at p. 630. *Orange County Water*
27 *District v. City of Riverside* (1959) 173 Cal.App.2d 137, 168 the court described the complaint for a declaration of
28 the groundwater rights as one for quiet title. In *City of San Bernardino v. City Of Riverside* (1921) 186 Cal. 7, 23,
the court referenced Civil Code section 1007 as the basis for obtaining prescriptive rights to water. Section 1007 is
the statute for the adverse possession cause of action. In *City of Los Angeles v. City of San Fernando* (1975) 14
Cal.3d 199, 207 the city of Los Angeles sued to quiet title and obtain injunctive relief.

1 reasons: (1) establishing a right to the reasonable and beneficial *use* of water is legally distinguishable
2 from establishing an easement to use real property; and (2) a claim for damages as a result of the failure to
3 prove prescription is corollary to claims for inverse condemnation and only requires a jury on the issue of
4 valuation. Accordingly, the prescriptive claim is a “special proceeding” not subject to the right for a jury
5 trial (except, perhaps, as to the final issue).

6 **a. Establishing A Right To The Reasonable And Beneficial Use Of Water**
7 **Is Legally Distinguishable From Establishing An Easement To Use Real**
8 **Property**

9 The constitutional right to jury trial is “the right *as it existed at common law in 1850* when the
10 California Constitution was first adopted. (*C&K Engineering Contractors v. Amber Steel Co., Inc., supra*
11 23 Cal.3d at 8 [151 Cal.Rptr. at 326] (emphasis added).) This is “a purely historical question, a fact
12 which is to be ascertained like any other social, political or legal fact.” (*C&K Engineering, supra*, at p. 8;
13 *DiPirro v. Bondo Corp.* (2007) 153 Cal.App.4th 150, 178 [62 Cal.Rptr.3d 722, 743; *Wisden v. Superior*
14 *Court (Sims)* (2004) 124 Cal.App.4th 750, 754 [21 Cal.Rptr.3d 523, 526]. Although the common law
15 forms of action are abolished and Law and Equity are united in one forum, the problem of right to jury
16 trial must still be approached in the context of 1850 common law pleading. (*Ripling v. Superior Court*
17 (*Norton*) (1952) 112 Cal.App.2d 399, 402 [247 P.2d 117, 119].)

18 The prescriptive easement case cited by Landowners simply involves a dispute regarding the right
19 to use real property. The nature of the property right itself was not in dispute. The only question before
20 the court was whether certain factual elements for prescription could be met. This determination was
21 founded solely upon the common law as it existed prior to 1850.

22 Conversely, here the ownership interest at issue is not title or interest in land but, rather, the right
23 to *use* water. Courts have observed that this property interest is markedly different:

24 “The title or interest the one may acquire in the water of a stream is entirely different to
25 that which may be acquired in land. Running water, so long as it continues to flow in its
26 nature course, is not and cannot be subject to private ownership. A right may be acquired
27 to its use, but this right carries with it no specific property in the corpus of the water
itself. One availing himself of use of such waters has simply the right of usufruct as it
passes down the bed of a stream, subject to reasonable use and consumption for domestic

1 and other purposes. This interest is dependent upon user, and it may be lost when the
2 owner ceases to make avail of the same.” (*Big Rock Mutual Water Company v. Valyermo
Ranch Co., et al.*, (1926) 78 Cal.App. 266, 274 [248 P.2d 64, 67].)

3 Unlike title in the ownership of real property, the very nature of water use ownership has
4 undergone significant statutory revision and modification since 1850. Perhaps, the most dramatic revision
5 took place in 1926, when Californians adopted a constitutional amendment mandating the reasonable use
6 of water (California Constitution, Article X, § 2). This section provides:

7 “It is hereby declared that because of the conditions prevailing in this State, the general
8 welfare requires that the water resources of the State be put to beneficial use to the
9 fullest extent of which they are capable, and the waste or unreasonable use or
10 unreasonable method of use of water be prevented, and that the conservation of such
11 water is to be exercised with a view to the reasonable and beneficial use thereof in the
12 interest of the people and for the public welfare. The right to water or to the use of flow
13 of water in or from any natural stream or water course in this State is and shall be
limited to such water as shall be reasonably required for the beneficial use to be served,
and such right does not and shall not extend to the waste or unreasonable use or
unreasonable method of use or unreasonable method of division of water.” (California
Constitution, Article X, § 2.)

14 Following this significant revision of law in 1926, no party can establish any right to use water in
15 the State of California unless that party first establishes that the water is being put to a reasonable and
16 beneficial use. (See *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673 [22 P.2d 5].) This is a
17 determination that is made by the court, not a jury. (*Josin v. Marin Municipal Water District* (1967) 67
18 Cal.2d 132 [60 Cal.Rptr. 377].) Failure to make this showing means there is no water right to dispute.
19 (*Id.*)

20 The use of water was further refined in 1980 through the adoption of Water Code § 100.5. This
21 section provides:

22 “It is hereby declared to be the established policy of this state that conformity of a use,
23 method of use, or method of diversion of water with local custom shall not be solely
24 determinative of its reasonableness, but, shall be considered, as one factor to be weighed
25 in the determination of the reasonableness of the sue, method of use, or method of
diversion of water, within the meaning of Section 2 of Article X of the California
Constitution.” (Water Code § 100.5.)

26 In determining whether *any* party in this case has any right to use the groundwater, the court will
27 examine a number of factors including: The purpose of the use; the suitability of the use to the water; the

1 social value of the use; the extent and amount of the harm it causes; the practicality of avoiding the harm
2 by adjusting the use or method of use of one proprietor or the other; the practicality of adjusting the
3 quantity of water used by each proprietor; the protection of existing values of water uses, land
4 investments, and enterprises; and the justice of requiring the user causing the harm to bear the loss.
5 (Reinstatement (2d) of Torts (1979) § 850a.)

6 Obviously, the statutory character of water use rights is easily distinguishable from a traditional
7 prescriptive easement case involving real parties. The very nature of the property interests has been
8 revised by the California Constitution after 1850. The court should treat all actions involving the
9 assertion of water rights as a “special proceeding” for which no jury is required.

10 **b. The Procedure For The Overlying Owners’ Infringement Claim Is**
11 **Established By Statute**

12 The public water suppliers claims of prescription can be viewed both as affirmative elements to
13 their request for declaratory relief, or as an affirmative defense to the overlying owners’ claims of
14 infringement of their water rights. It is only in the latter instance that the prescription claim could
15 arguably require a jury. However, there is already a statute in place that only requires a jury trial on the
16 final issue of valuation.

17 The court’s powers of injunction may not be used to “prevent the execution of a public statute by
18 officers of the law for the public benefit . . .” (CCP § 526.) Similarly, pursuant to statutory provisions
19 governing specific and preventative relief generally, a writ may not be granted to prevent the execution of
20 a public statute, by officers of the law, for the public benefit. (Civ. Code § 3423(d).) A writ, therefore,
21 will not issue to prevent a public officer from performing a duty imposed on him by a valid law. (See
22 *People ex rel Attorney General v. Board of Supervisors* (1888) 75 Cal. 179 [16 P. 776]; *Randolph v.*
23 *Stanislaus County* (1919) 44 Cal.App. 332 [186 P. 626].) Consequently, injunction is not an appropriate
24 remedy to prevent a taking of private property by officers of the law, acting under a valid statute, where
25 the laws complained of are within the legitimate prevue and scope of the police power. (*Gray v.*
26 *Reclamation District No. 1500* (1917) 174 Cal. 622 [163 P. 1024].)

1 If public use has begun, strong public policy exists in favor of its continuance, although it may
2 effectively take or damage a private owner's property. Under these circumstances, a prohibitory
3 injunction will only be granted if no other relief (such as money damages) is available. (*Hillside Water*
4 *Co. v. City of Los Angeles* (1938) 10 Cal.2d 677, 688 [76 P.2d 681].) As a result, the courts have found
5 that where a public entity has put water to public use, the only remedy to those adversely affected is a
6 claim for damages. (*Id.*; see *Polary Irrigation District v. Lindsey-Strathmore Irrigation District* (1935) 3
7 Cal.2d 489 [45 P.2d 672].)

8 This procedure is codified in Code of Civil Procedure section 534, which provides the legal
9 procedure involving actions concerning the diverting of surface water. This section provides that where
10 public use is asserted as a defense against claims that have asserted infringement of a surface water right,
11 the court, and not a jury, is to decide all issues related to the infringement. This section further provides
12 that only the issue of valuation is to be presented to the jury. (CCP § 534.)

13 This procedure mirrors the procedure for eminent domain proceedings because prescriptive rights
14 claims are directly related to such proceedings. Title by prescription is founded on Civil Code section
15 1007, which provides possession sufficient to bar an action for recovery of property confers a title by
16 prescription. (See Hutchins, *California Law of Water Rights* (1956) at p. 299.) A prescriptive claim is
17 therefore a corollary to the theoretical claim for inverse condemnation.

18 The requirements of California Constitution, Article I, § 19, that just compensation be
19 "ascertained by a jury unless waived," means that in an eminent domain proceeding, the jury trial right
20 exists as to the issue of valuation. All other issues are triable to the court. (See *Coachella Valley Water*
21 *District v. Western Allied Properties* 91987) 190 Cal.App.3d 969, 974 [235 Cal.Rptr. 725]; 8 *Summary*
22 (10th) *Constitutional Law*, § 1219.) As an eminent domain proceeding initiated by the property owner, an
23 inverse condemnation action is subject to the same principles: compensation is constitutionally required
24 to be fixed by a jury; other questions whether of fact or law, are tried to the court. (*Marshall v.*
25 *Department of Water & Power* (1990) 219 Cal.App.3d 1124, 1138 [268 Cal.Rptr. 559]; *Healing v.*
26 *California Coastal Comm.* (1994) 22 Cal.App.4th 1158, 1170 [27 Cal.Rptr.2d 758.]

1 Accordingly, this court has statutory authority to try all issues regarding the right to use the water
2 over the Antelope Valley Basin except, perhaps, the issue of valuation. In relation to the claims of the
3 private landowners, the Phase III issues relate solely to whether or not a taking has occurred, and whether
4 or not the takings claims are time barred. Only once this court determines a taking has occurred, will
5 there be any right to a jury trial.

6 **B. EVEN IF THIS COURT FINDS THERE ARE BOTH LEGAL AND EQUITABLE**
7 **CLAIMS TO BE TRIED IN THIS CASE, IT HAS THE AUTHORITY TO TRY**
8 **THE EQUITABLE CLAIMS FIRST**

9 In actions involving both legal and equitable issues, most courts will try the equitable issues first
10 without a jury because this *may obviate the necessity* for a jury trial of the legal issues. The court has
11 noted:

12 “It is well established in California jurisprudence that ‘[t]he court may decide the
13 equitable issues first, and the decision may result in factual and legal findings that
14 effectively dispose of the legal claims.’ [Citation.] This District Court of Appeal has
15 observed that the ‘better practice’ is for ‘the trial court [to] determine the equitable issues
16 before submitting the legal ones to the jury.’ [Citation.] . . . ‘[T]he practical reason for
17 this procedure is that the trial of the equitable issues may dispense with the legal issues in
18 the case.’ [Citation.] In short, ‘trial of equitable issues first may promote judicial
19 economy.’ [Citation.]” (*Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157 [85
20 Cal.Rptr.3d 337, 344-345].)

21 The court’s rulings on the equitable issues may establish rights or defenses that leave nothing
22 further to be tried. (*Raedeke v. Gibraltar Sav. & Loan Ass’n* (1974) 10 Cal.3d 665, 671 [111 Cal.Rptr.
23 693] ; See *DiPirro v. Bondo Corp.* (2007) 153 Cal.App.4th 150, 185 [62 Cal.Rptr.3d 722, 749]; see also
24 *Windsor Square Homeowners Ass’n v. Citation Homes* (1997) 54 Cal.App.4th 547, 557 [62 Cal.Rptr.2d
25 818, 824].) Even if the legal issues remain to be tried by a jury, any *finding of fact* made by the judge on
26 the equitable issues will be binding on the jury thus significantly curtailing the jury’s power as trier of fact
27 on the legal issues. (*Dill v. Delira Corp.* (1956) 145 Cal.App.2d 124, 129-130 [302 P.2d 397, 400].)

28 The court has observed that the effect of this policy has “produced” a number of cases in which
the bench resolution of equitable issues proceeded consideration of legal claims, and curtailed or
foreclosed legal issues.” (*Hoopes, supra*, 168 Cal.App.4th at 157 [85 Cal.Rptr.3d at 345].)

1 The Landowners urge the prescription issues are legal issues which must be tried by a jury. The
 2 court can avoid the need for a jury trial in Phase III by simply not including any issue involving
 3 prescription in this phase of the trial. Accordingly, this court should limit the third phase of trial to issues
 4 directly germane to the physical solution; namely, the native safe yield of the Basin, by implication, the
 5 existence of overdraft. In deference to the landowners, the court should not include any issues related to
 6 prescription in the next phase of trial.

7 In doing so, the court will not only avoid alleged need for a jury trial, it will also reduce the issues
 8 before the court to matters that can be presented by expert witnesses and will eliminate the need to for
 9 significant percipient witness testimony. The water purveyors believe they will be prepared to try the
 10 case under this framework in June, 2009.

11 III. CONCLUSION

12 The Public Water Suppliers do not believe the Landowners have any right to a jury trial in this
 13 case. However, it is not necessary for this court to decide this issue now. There is no question that there
 14 is no right to a jury trial for the equitable claims in this case, including the request for a physical solution.
 15 Therefore, the court could chose to simply defer this issue by limiting the Phase III trial to the issues of
 16 safe yield and overdraft.

17 DATED: December 31, 2008

LEMIEUX & O'NEILL

18
 19 By: 

W. KEITH LEMIEUX

20 Attorneys for LITTLE ROCK CREEK IRRIGATION
 21 DISTRICT, PALM RANCH IRRIGATION DISTRICT,
 22 NORTH EDWARDS WATER DISTRICT, DESERT
 23 LAKES COMMUNITY SERVICES DISTRICT, LLANO
 24 DEL-RIO WATER CO., LLANO MUTUAL WATER CO.,
 25 BIG ROCK MUTUAL WATER CO., and LITTLE BALDY
 26 WATER CO.

24 DATED: December 31, 2008

LUCE, FORWARD, HAMILTON & SCRIPPS

25
 26 By: 

DOUGLAS J. EVERTZ

27 Attorneys for CITY OF LANCASTER

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1 DATED: January 2, 2009

RICHARD WATSON & GERSHON

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By: _____

JAMES L. MARKMAN

Attorneys for CITY OF PALMDALE

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5 DATED: January 2, 2009

LAGERLOF, SENECA, GOSNEY & KRUSE

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By: _____

THOMAS BUNN

Attorneys for PALMDALE WATER DISTRICT

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9 DATED: January 2, 2009

CHARLTON WEEKS LLP

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11

By: _____

BRADLEY T. WEEKS

Attorneys for QUARTZ HILL WATER DISTRICT

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DATED: January 2, 2009

CALIFORNIA WAER SERVICE COMPANY

14

15

By:  _____

JOHN TOOTLE

Attorneys for ANTELOPE VALLEY WATER CO.

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DATED: January 2, 2009

BEST, BEST & KRIEGER

18

19

By: _____

JEFF DUNN

Attorneys for LOS ANGELES COUNTY WATERWORKS

DIST. 40 and ROSAMOND COMMUNITY SERVICES

DISTRICT

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1 DATED: January 2, 2009

RICHARD WATSON & GERSHON

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3 By: James L. Markman
4 JAMES L. MARKMAN
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5 DATED: January 2, 2009

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9 DATED: January 2, 2009

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13 DATED: January 2, 2009

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17 DATED: January 2, 2009

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21 DIST. 40 and ROSAMOND COMMUNITY SERVICES
22 DISTRICT