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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 Coordination Proceeding
Special Title (Rule 1550(b))

12 **ANTELOPE VALLEY GROUNDWATER CASES**

13 Included **CONSOLIDATED** Actions:

14 **Los Angeles County Waterworks District No. 40 v.**
15 **Diamond Farming Co.**
Superior Court of California, County of Los Angeles,
16 Case No. BC 325 201

17 **Los Angeles County Waterworks District No. 40 v.**
18 **Diamond Farming Co.**
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

19 **Wm. Bolthouse Farms, Inc. v. City of Lancaster**
20 **Diamond Farming Co. v. City of Lancaster**
21 **Diamond Farming Co. v. Palmdale Water Dist.**
Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668
22 (Consolidated Actions)

Judicial Council Coordination
Proceeding No. 4408

Los Angeles County Superior Court
Lead Case No. BC 325201

Assigned to: Hon. Jack Komar
Dept. 12

**U.S. BORAX'S TRIAL SETTING
CONFERENCE STATEMENT FOR
PHASE IV TRIAL**

Date: July 9, 2012
Time: 9:00 a.m.
Dept: 1(111 N. Hill St., Los Angeles)

For Court's Use Only:
Santa Clara County
Case No. 1-05-CV-049053
(For E-Posting/E-Service Purposes Only)

23
24 **INTRODUCTION**

25 Adjudicating the rights of all stakeholders claiming an interest in the groundwater supply of
26 the Antelope Valley is a daunting task. For that reason among others, U.S. Borax has continually
27 maintained that the most efficient and equitable way to resolve all of the issues presented by these
28 proceedings is by way of a comprehensive settlement. As the Court knows, the parties have been

1 devoting extraordinary amounts of resources and time to the settlement effort, with regular meetings
2 taking place everywhere from the Antelope Valley to a number of other locales in both southern and
3 northern California.

4 U.S. Borax believes that progress has been made in these meetings. U.S. Borax further
5 believes that it is only through cooperation that the parties will ultimately be able to forge a sensible
6 and equitable result that provides for the societal needs of the valley while also protecting the
7 groundwater resource.

8 Nevertheless, some parties to this case still apparently hold the belief that the courtroom, and
9 pursuing a trial, is a more favorable forum and strategy than settlement discussions. Unfortunately,
10 when parties believe the courtroom will be more advantageous, that dynamic can erode the
11 cooperation and consensus-building necessary to settle a case of this magnitude.

12 Given that settlement can never be a mandated, the realities of litigation are that sooner or
13 later trials will be set. In light of the Court's understandable interest in seeing progress, U.S. Borax
14 submits that a foundational principle of civil procedure should govern how the next phase of trial is
15 framed. In particular, judicial efficiency has resulted in a preference for the complete disposition of
16 causes of action. For example, the appellate court in *Lilienthal & Fowler v. Superior Court*
17 recognized that Code of Civil Procedure section 437c(f) was amended "to stop the practice of
18 adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or
19 defense." 12 Cal. App. 4th 1848, 1853 (1993). The court of appeal, in explaining this amendment,
20 expressed that motions "that would not reduce the costs and length of litigation" are disfavored. *Id.*
21 As this Court contemplates the next phase of trial, U.S. Borax believes it would be highly inefficient,
22 and would *increase* the costs and length of this litigation, to have the not just motions, but another
23 whole phase of trial on issues that do not completely dispose of a cause of action.

24 **PROPOSED PHASE IV TRIAL**

25 The operative complaint that initiated this comprehensive adjudication contains eight causes
26 of action. Those causes of action are specifically:

- 27 • First (Prescription)
- 28 • Second (Appropriative Rights)

- 1 • Third (Physical Solution)
- 2 • Fourth (Municipal Priority)
- 3 • Fifth (Storage of Imported Water)
- 4 • Sixth (Return Flows)
- 5 • Seventh (Unreasonable Use)
- 6 • Eighth (Boundaries)

7 So far, the Court has conducted three trial phases. In the first phase, the Court determined the
8 boundaries of the basin (consistent with the eighth cause of action). In the second phase, the Court
9 evaluated whether there are hydrologically separate subbasins (one could construe this as a
10 continuation of the boundary phase, i.e., to determine whether internal boundaries needed to be
11 established).

12 In the third and most recent phase, the parties who filed the operative complaint requested that
13 the Court depart from the causes of action they had pled and instead conduct a trial phase on the
14 issues of “safe yield” and “overdraft.” Over objections by others, certain of these parties urged for a
15 trial phase on those individual issues, stating in part that they believed obtaining these rulings from
16 the Court would lead to settlement.

17 Now, the parties are at the starting gates of another phase of trial—one that has the potential
18 to be substantially larger and maybe more contentious than any of the previous phases. Rather than
19 entertain further requests for trial on isolated issues or processes that do not result in the resolution of
20 causes of action, U.S. Borax submits that the Court should define this next phase based on the causes
21 pled in the operative complaint. Recognizing that taking on all of the remaining causes of action in
22 one phase could be an unwieldy challenge, three causes of action stand out as presenting the sensible
23 next phase:

- 24 • First (Prescription)
- 25 • Second (Appropriative Rights)
- 26 • Sixth (Return Flows)

27 These causes of action will serve to judicially define what rights, if any, belong to the parties that
28 initially elected to sue everyone in the Antelope Valley. The Court will be able to resolve whether

1 those parties have taken the rights of others by prescription, as well as whether those parties can on
2 the one hand claim to accumulate return flows while on the other hand claim that any pumping they
3 conduct is exclusively drawn from the native yield in pursuit of prescription.

4 A further reason for proceeding with these three causes of action for the next phase is that
5 they also lend themselves to possible resolution through dispositive motions. Therefore, setting a
6 schedule that accommodates the extensive discovery that will likely ensue, but also allows for
7 dispositive motions well in advance of trial so that some causes of action, such as prescription, may
8 even be eliminated, would also make sense. With all this in mind, the following general schedule is
9 proposed:

10 Trial Management Conference to address preliminary issues for trial—late September 2012

11 Discovery/Depositions—commence upon conclusion of Trial Management Conference

12 Motions for Summary Adjudication/Judgment—December 2012

13 Expert Discovery/Disclosures—January 2013

14 Motions in Limine—February/March 2013

15 Trial—March/April/May 2013

16 If the Court adopts the proposed approach of setting causes of action as outlined above, U.S. Borax
17 estimates that the trial might be concluded within 30 trial days, pending any refinements that may
18 result from the trial management conference.

19 In conclusion, U.S. Borax remains committed to resolving this case through settlement, and
20 further hopes that the expense and resources involved in another trial phase can be avoided.

21
22 Respectfully submitted,

23 Dated: July 6, 2012

WILLIAM M. SLOAN
MORRISON & FOERSTER LLP

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26 By: 

William M. Sloan

Attorneys for U.S. BORAX INC.

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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on July 6, 2012, I served a copy of:


**U.S. BORAX'S TRIAL SETTING CONFERENCE STATEMENT
FOR PHASE IV TRIAL**

BY ELECTRONIC SERVICE by electronically posting a true copy thereof to Santa Clara County Superior Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C - <http://www.scefiling.org>) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope Valley Groundwater matter).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, July 6, 2012.

Patti Pomerantz
(typed)


(signature)