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9 2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence  
10 A. Godde, Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen  
11 Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family  
12 Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Inc., Edgar C. Ritter Paula  
13 E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, Hines Family Trust , Malloy  
14 Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as  
15 Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas  
16 Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Dennis L. & Marjorie E.  
17 Groven Trust, Scott S. & Kay B. Harter, Habod Javadi, Eugene V., Beverly A., & Paul S. Kindig,  
18 Paul S. & Sharon R. Kindig, Jose Maritorena Living Trust, Richard H. Miner, Jeffrey L. & Nancee J.  
19 Siebert, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Beverly Tobias, Leo L. Simi, White  
20 Fence Farms Mutual Water Co. No. 3., William R. Barnes & Eldora M. Barnes Family Trust of  
21 1989, Del Sur Ranch, LLC, Healy Enterprises, Inc., John and Adrienne Reca, Sahara Nursery, Sal  
22 and Connie L. Cardile, Gene T. Bahlman, **collectively known as the Antelope Valley Ground  
23 Water Agreement Association ("AGWA")**

24  
25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
26 **FOR THE COUNTY OF SANTA CLARA**

27 **ANTELOPE VALLEY** )  
28 **GROUNDWATER CASES** ) Judicial Council Coordination Proceeding  
 ) No. 4408  
29 Included Actions: )  
30 Los Angeles County Waterworks District No. ) **Santa Clara Case No. 1-05-CV-049053**  
31 40 v. Diamond Farming Co. Superior Court of ) Assigned to The Honorable Jack Komar  
32 California County of Los Angeles, Case No. BC )  
33 325 201 Los Angeles County Waterworks )  
34 District No. 40 v. Diamond Farming Co. ) **CASE MANAGEMENT STATEMENT**  
35 Superior Court of California, County of Kern, )  
36 Case No. S-1500-CV-254-348Wm. Bolthouse ) **Date: January 9, 2009**  
37 Farms, Inc. v. City of Lancaster Diamond ) **Time: 1:30 pm**  
38 Farming Co. v. City of Lancaster Diamond ) **Department: LA Superior Court Dept. 1**  
39 Farming Co. v. Palmdale Water Dist. Superior )  
40 Court of California, County of Riverside, )  
41 consolidated actions, Case No. RIC 353 840, )  
42 RIC 344 436, RIC 344 668 )

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) hereby submits this  
2 Case Management Statement in preparation for the January 9, 2009 Case Management Conference.

3 **PHASE 3 TRIAL**

4 **A. Subject Matter of Phase 3**

5 AGWA agrees with other parties that Phase 3 should include all elements necessary for the  
6 determination of the Water Purveyors’ claims of prescription. Phasing the trial according to Causes  
7 of Action rather than abstract issues such as Safe Yield and Overdraft is the most straightforward  
8 approach to phasing of this case in order to avoid ambiguities about the issues and their relevance to  
9 the case. For example, the issue of the “Safe Yield” of the Basin is relevant for Causes of Action in  
10 this case other than the Water Purveyors’ claim of prescription, such as the request for a Physical  
11 Solution. But a historical analysis of what the Safe Yield was in the past, and whether there was  
12 overdraft in the past, has no relevance to any other Cause of Action except the claim of prescription.  
13 That is, the relevance of “Safe Yield” to the issue of a Physical Solution is entirely forward looking  
14 – establishing what is the Safe Yield currently and whether it is anticipated to increase or decrease  
15 over time. What the Safe Yield was in the past and whether pumping relative to that Safe Yield  
16 resulted in overdraft has no relevance to future management of the Basin – it is relevant only to the  
17 adversity element of the question of whether prescriptive rights were established. The Water  
18 Purveyors suggest that issues relative to the right to a jury trial can be avoided simply by eliminating  
19 all issues relative to prescription from the Phase III trial. (Water Purveyor’s CMC Statement filed  
20 January 2, 2009, 10:1-6.) They suggest that Phase 3 should be concerned with a Physical Solution,  
21 and, therefore, with the question of Safe Yield and Overdraft. This suggestion merely proves the  
22 need to avoid ambiguity in the phasing of the trial by organizing the trial around Causes of Action  
23 rather than abstract issues whose relevance is open to considerable debate.

24 **B. Timing of Phase 3**

25 This case is the largest and perhaps most complex groundwater adjudication in California  
26 history, involving the determination as to water rights that will have an impact either directly or  
27 indirectly on the entire Los Angeles region. The complexity of the issues and the number of  
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1 interests involved have caused the case to move very slowly so far. This is simply the nature of this  
2 case.

3 There are tens of thousands of potential parties to this case that have not yet received notice  
4 of the case. AGWA has not been involved in the negotiations between the Class Representatives  
5 and the Purveyors regarding Class Notice, but there appear to be issues that are still in the process of  
6 resolution. After Class Notice is effected, there will no doubt continue to be issues relating to  
7 organizing all of the new parties to the case.

8 Given the history of this case to date, it is not reasonable to think that anyone can predict  
9 how long it will take to resolve all of the issues that need to be resolved to get this case at issue.  
10 AGWA recommends that instead of being distracted by scheduling Phase 3, the Court should focus  
11 entirely upon getting the case at issue and should not satisfy the Purveyor's obvious desire to  
12 schedule the Phase 3 trial as early as they can get it until the Purveyors have brought all the parties  
13 into the case and the case is at issue. The Court should establish a schedule of regular and frequent  
14 status updates, perhaps by conference call, in order to ensure that all parties are proceeding with  
15 diligence to get the case at issue. Only once this has happened, will it be possible to realistically  
16 schedule the Phase 3 Trial.

### 17 DISCOVERY

18 Various parties have lamented the lack of meaningful discovery that has taken place in this  
19 case in regard to the Phase 3 Trial issues. Anticipating future disagreements in the discovery  
20 process, some parties have already requested that the Court establish a discovery referee to resolve  
21 those disputes. AGWA does not believe that the issues subject to discovery in this case are unique  
22 or in any way more complicated than the issues that have existed in other water rights cases.  
23 AGWA therefore supports standardized form discovery, in which the parties would create forms that  
24 will be approved by the court and not be subject to objection. This will allow discovery to proceed  
25 efficiently, minimize the parties' costs, and, perhaps, obviate the need for a discovery referee.

### 26 LOCATION OF PHASE 3 TRIAL

27 AGWA reiterates its prior requests that the Court hold the Phase 3 Trial within the Antelope  
28

1 Valley. This case deals with groundwater rights pertaining to the waters of the Antelope Valley  
2 Groundwater Basin. The issue is fundamentally a local concern, adjudicating the rights of the local  
3 public water purveyors and, most importantly, of local landowners. The vast majority of the parties  
4 are located in the Antelope Valley, and traveling to a remote location for trial will be an undue  
5 burden on these parties. The community's confidence in the equity and validity of the Court's  
6 proceedings in this phase cannot be guaranteed if trial is removed from the area and held in a  
7 location where it cannot be observed and monitored by the parties. For this reason, AGWA requests  
8 that the Court hold any Phase 3 Trial proceedings in the Antelope Valley at the Los Angeles  
9 Superior Court's Michael D. Antonovich Courthouse in Lancaster. This location for trial was  
10 originally proposed by the lead plaintiff Los Angeles County Waterworks and AGWA supports this  
11 proposal.

12 **RIGHT TO JURY TRIAL**

13 The right to a jury trial on the claims of prescription is a fundamental constitutional right  
14 under the California State Constitution. (*Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 124-  
15 25.)

16 AGWA supports a jury trial on the factual issues to be determined in Phase 3, including the  
17 issues of Safe Yield and Overdraft to the extent they may function as the adversity element of the  
18 Purveyor's claim of prescription. As AGWA has reiterated throughout this case, the issues to be  
19 determined in this case are fundamentally of local concerns, adjudicating the rights of the local  
20 public water purveyors and, most importantly, of local landowners. As discussed in the context of  
21 the location of the Phase 3 Trial, the community's confidence in the equity and validity of the court's  
22 proceedings in this phase must be preserved, and the determination of the factual issues by a jury  
23 will aid in preserving that confidence.

24 Contrary to the assertion of the City of Los Angeles, the issue of a jury trial for Phase 3 has  
25 not been waived. The Court has previously indicated that the issue of a jury trial would be addressed  
26 at the time the trial is set:

27 Mr. Zimmer: Your Honor, one issue. I'm not sure, since we are in a  
28 complex case that has been coordinated and consolidated and is here in

1 L.A. and Santa Clara, what the Court requests in terms of requests for  
2 jury trial on issues that are appropriate for jury trial. I wanted to raise  
that at the appropriate time.

3 The Court: Well, when we set it for trial, you will be able to indicate  
4 jury or non-jury as to appropriate issues to the extent there are  
5 appropriate issues. Contrary to the Federal Rules, we don't require  
you to state it at the outset.

6 (February 14, 2007 Hearing Transcript, 17:16-25.)

7 Article I section 16 of the California Constitution provides, "Trial by jury is an inviolate right  
8 and shall be secured to all...." The California Supreme Court has held that the constitutional right to  
9 a jury trial is that which existed at common law in 1850 when the California Constitution was  
10 adopted. (*McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal .3d 348, 379-380; *People v.*  
11 *One 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283, 286-287.) The Courts of Appeal have held that a  
12 cause of action to establish a prescriptive right is an action at law as to which the right to a jury trial  
13 existed in 1850 and continues to be guaranteed by the California Constitution. (*Frahm v. Briggs*  
14 (1970) 12 Cal.App.3d 441, 445; *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 125.)  
15 Therefore, in an action to establish prescription there is a constitutional right to a jury trial. (*Arciero*  
16 *Ranches*, 17 Cal.App.4th at 124-125; *Frahm*, 12 Cal.App.3d at 445-446; see also, 7 Witkin, Cal.  
17 Procedure (4th ed. 1997) Trial, § 96, p. 115.) Each party to such an action has the right to insist  
18 upon a jury trial on the claimant's attempted establishment of such a right. (See *Frahm*, 12  
19 Cal.App.3d at 445-46 [lower court erred in denying defendants the right to have a jury determine  
20 whether plaintiffs had obtained prescriptive rights]; Cal Judges Benchbook: Civil Proceedings  
21 Before Trial, § 2.70.)  
22  
23  
24

25 Historical overdraft for a period of five years constitutes the adversity element of a  
26 prescriptive claim. If a right to a jury exists for a Cause of Action (prescription), then it must also  
27 exist for the necessary elements of that Cause of Action. Otherwise the right to a jury is meaningless.  
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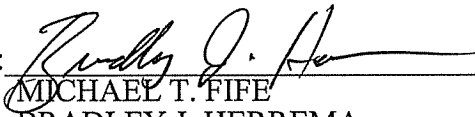
1 While the Water Purveyors attempt to reframe this case in a manner that would eliminate the  
2 right to a jury trial, the Court should take care in making its determination. The fundamental right  
3 involved in the right to a jury trial is the right to have a jury determination of a question of fact.  
4 (*Dorsey v. Barba* (1952) 38 Cal. 2d 350, overruled on other grounds in part by *Jehl v. Southern Pac.*  
5 *Co.* (1967) 66 Cal. 2d 821.) “The jury as a fact-finding body occupies so firm and important a place  
6 in our system of jurisprudence that any interference with its function in this respect must be  
7 examined with the utmost care.” (*Dorsey*, 38 Cal.2d at 356; *Beacon Theaters, Inc. v. Westover*  
8 (1959) 359 U.S. 500, 501.) “In case of doubt...the issue should be resolved in favor of preserving a  
9 litigant’s right to trial by jury.” (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 411.)

11 AGWA believes this issue is of sufficient importance that further briefing, with an  
12 opportunity to reply to opposition briefs, is warranted.

16 Dated: January 2, 2008

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

19 By:

  
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ATTORNEYS FOR AGWA

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA,  
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On January 2, 2009, I served the foregoing document described as:

**CASE MANAGEMENT STATEMENT**

on the interested parties in this action.

By posting it on the website at 4:35 (p.m.)/a.m. on January 2, 2009.  
This posting was reported as complete and without error.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed in Santa Barbara, California, on January 2, 2009.

Maria Klachko-Blair  
TYPE OR PRINT NAME

  
SIGNATURE

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