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7 Attorneys for New Anaverde, LLC

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

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

12 **ANTELOPE VALLEY**
13 **GROUNDWATER CASES**

14 Included **CONSOLIDATED** Actions:

15 Los Angeles County Waterworks District
16 No. 40 v. Diamond Farming Co.
17 Superior Court of California, County of
18 Los Angeles, Case No. BC 325201

19 Los Angeles County Waterworks District
20 No. 40 v. Diamond Farming Co.,
21 Superior Court of California, County of
22 Kern, Case No. S-1500-CV-254-348

23 Wm. Bolthouse Farms, Inc. v. City of
24 Lancaster Diamond Farming Co. v. City of
25 Lancaster Diamond Farming Co. Palmdale
26 Water Dist., Superior Court of California,
27 County of Riverside, consolidated actions,
28 Case Nos. RIC 353840, RIC 344436,
RIC 344668

Willis v. Los Angeles County Waterworks
District No. 40 Superior Court of
California, County of Los Angeles,
Case No. BC 364553

Wood v. Los Angeles County Waterworks
District No. 40, Superior Court of
California, County of Los Angeles
Case No. BC 391869

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325201

Assigned to: Hon. Jack Komar
Dept. 12

**NOTICE OF MOTION TO
SUBSTITUTE PARTIES AND TO
PERMIT FILING AND SERVICE OF
SUPPLEMENTAL CROSS-
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JAMES
GOLDMAN**

**[proposed Supplemental Cross-
Complaint lodged separately]**

Date: November 18, 2010

Time: 9:00 a.m.

Dept.: 1

Los Angeles Superior Court
111 N. Hill Street
Los Angeles, CA 90012

1 **NOTICE OF MOTION**

2 **TO THE COURT AND TO THE PARTIES AND COUNSEL OF RECORD:**

3 On November 18, 2010 at 9:00 a.m. in Department 1 of the Los Angeles Superior
4 Court, located at 111 N. Hill Street, Los Angeles California, New Anaverde, LLC ("New
5 Anaverde") will move the Court for an order substituting it, as a cross-complainant and cross-
6 defendant, in the place of Anaverde, LLC ("Anaverde") for all purposes, and permitting it to
7 file a supplemental Cross-Complaint (in the form and substance of the proposed Supplemental
8 Cross-Complaint lodged and served concurrently herewith) to allege the transfer of Anaverde's
9 interests in the property that is the subject of this action to New Anaverde.

10 The motion is made on the grounds that the property interests that are the subject of the
11 claims alleged by and against Anaverde herein have been acquired by New Anaverde.

12 The motion is made pursuant to California Code of Civil Procedure section 368.5.

13 The motion will be based on this Notice of Motion, the attached Memorandum of
14 Points and Authorities, the attached Declaration of James Goldman, the proposed
15 Supplemental Cross-Complaint, all pleadings on file herein, any additional papers that may be
16 filed in support of the motion or in reply to any opposition to the motion, and any argument of
17 counsel or material that may be presented at the hearing on the motion.

18 A proposed order is also being lodged and served concurrently herewith.

19
20 DATED: October 1, 2010

PIRCHER, NICHOLS & MEEKS

21
22 By:



James L. Goldman

Attorneys for New Anaverde, LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND FACTS**

3 On or about June 20, 2007, Cross-Complainant and Cross-Defendant Anaverde, LLC
4 ("Anaverde") filed a Cross-Complaint and an Answer to the Public Water Suppliers' First
5 Amended Cross-Complaint in this action. At the time when it filed these pleadings, Anaverde
6 owned approximately 1,545 acres of land within the Antelope Valley, including a master-
7 planned, partially entitled residential development in and around the City of Palmdale,
8 California. The Anaverde Development includes approximately 3500 undeveloped lots in the
9 City of Palmdale. Anaverde also owned an adjacent unimproved development known as
10 Chandar planned for 157 single family home sites. Anaverde also held and operated certain
11 water wells that draw water from beneath these developments (the "Property"). (Declaration
12 of James Goldman ["Goldman Decl."], par. 2.)

13 On January 15, 2010, Anaverde filed a voluntary petition for relief under Chapter 11 of
14 Title 11 of the United States Code protection in the United States Bankruptcy Court for the
15 District of Delaware in the action entitled In Re: Anaverde LLC, Case Number 10-10113 (the
16 "Bankruptcy Case"). Goldman Decl., par. 3.) On June 14, 2010, after receiving approval
17 from the Court in the Bankruptcy Case, Anaverde sold all of its interests in the Property and in
18 this litigation to New Anaverde, LLC ("New Anaverde"). (Goldman Decl., pars. 4-9.)

19 **II. NEW ANAVERDE SHOULD BE SUBSTITUTED IN PLACE OF**
20 **ANAVERDE AS A CROSS-COMPLAINANT AND CROSS-**
21 **DEFENDANT IN THIS LITIGATION**

22 Code of Civil Procedure section 368.5 states:

23 An action or proceeding does not abate by the transfer of an interest in
24 the action or proceeding or by any other transfer of an interest. The
25 action or proceeding may be continued in the name of the original
26 party, or the court may allow the person to whom the transfer is made
27 to be substituted in the action or proceeding.

28 As explained in Witkin:

In most cases, the substitution is so obviously desirable that it should
be ordered as a matter of right if requested by the transferor or the
transferee. 4 Witkin, California Procedure (5th Ed.), "Pleading," § 264
at page 341.


1 Witkin notes that although Code Civ. Proc. § 368.5 does not specify the procedure to
2 be followed to accomplish the substitution, the "preferred procedure" is to serve and file a
3 formal notice of motion supported by a proposal supplemental pleading alleging the facts
4 relating to the transfer. *Id.*, § 265 at page 342.

5 Given the facts relating to the transfer described in Section I above, New Anaverde is
6 now the real-party-in-interest insofar as the issues raised in the Cross-Complaints filed by and
7 against Anaverde are concerned, and Anaverde no longer has any interest in such issues. The
8 substitution should not have any adverse impact on any party to this litigation or on the
9 schedule that has been established by the Court. Therefore, this motion is well taken and
10 should be granted. New Anaverde should be substituted in place of Anaverde for all purposes
11 in this litigation, and it should be permitted to file the proposed Supplemental Cross-
12 Complaint lodged and served concurrently herewith. The substitution of parties, if approved,
13 will also have the effect of removing Anaverde's counsel, Lewis, Brisbois, Brisgaard & Smith,
14 LLP as counsel of record.

15
16 DATED: October 1, 2010

PIRCHER, NICHOLS & MEEKS

17
18 By:


James L. Goldman
Attorneys for New Anaverde, LLC

DECLARATION

DECLARATION OF JAMES GOLDMAN

I, James Goldman, declare:

1. I am, and since 1973 have been, duly licensed to practice law in the State of California. I am a partner in the law firm of Pircher, Nichols & Meeks, counsel for New Anaverde, LLC ("New Anaverde").

2. On or about June 20, 2007, Anaverde, LLC ("Anaverde") filed a Cross-Complaint and an Answer to the Public Water Suppliers' First Amended Cross-Complaint. At the time when it filed these pleadings, Anaverde owned approximately 1,545 acres of land within the Antelope Valley, including a master-planned, partially entitled residential development in and around the City of Palmdale, California. The Anaverde Development includes approximately 3,500 undeveloped lots in the City of Palmdale. Anaverde also owned an adjacent unimproved development known as Chandar planned for 157 single family home sites. Anaverde also held and operated certain water wells that draw water from beneath the developments identified above (the "Property").

3. On January 15, 2010, Anaverde filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code protection in the United States Bankruptcy Court for the District of Delaware in the action entitled In Re: Anaverde LLC, Case Number 10-10113 (the "Bankruptcy Case").

4. On January 15, 2010, Anaverde filed a motion for an order: (a) approving certain procedures for the sale of the debtor's assets, (b) scheduling an auction and hearing to consider approval of the sale, (c) approving notice of respective dates, times and places for the auction and hearing on approval of sale and an assumption and assignment of certain executory contracts and unexpired leases, (d) approving the form and manner of notice of sale process and of approval hearing, and (e) granting related relief (the "Sale Procedures Motion"). In essence, Anaverde was seeking to have the Bankruptcy Court establish sale procedures for a proposed sale of the Property, including all of its rights in the Antelope Groundwater Litigation to New Anaverde or a higher bidder.

1 5. On February 5, 2010, the Bankruptcy Court approved the Sale Procedures
2 Motion.

3 6. On March 24, 2010, Anaverde filed a motion for an order: (a) approving the sale
4 of Anaverde's assets free and clear of all liens, claims, encumbrances and other interests; (b)
5 approving the assumption by and assignment to New Anaverde of certain executory contracts
6 and unexpired leases; and (c) granting related relief (the "Sale Motion"). In essence,
7 Anaverde was seeking to have the Bankruptcy Court approve the sale of substantially all of its
8 assets, including all of Anaverde's rights and interests in the Property and in this litigation to
9 New Anaverde or such higher bidder (the "Sale Motion").

10 7. On June 14, 2010, the Bankruptcy Court entered an order (the "Confirmation
11 Order") confirming Anaverde's Amended Plan of Liquidation (the "Plan"). The Plan
12 contemplated that the proposed sale of Anaverde's assets to New Anaverde would be
13 consummated.

14 8. On June 14, 2010, the Bankruptcy Court entered an order (the "Sale Order")
15 approving the sale of substantially all of Anaverde's assets, including the Property and its
16 interests in this litigation, to New Anaverde.


17 9. Following the entry of the Sale Order, Anaverde and New Anaverde executed an
18 agreement (entitled "Asset Purchase Agreement"), the effect of which, together with certain
19 related documentation, was to transfer the Property, as well as Anaverde's rights and interests
20 in this litigation, to New Anaverde.

21 10. The Anaverde Liquidation Trust (the "Trust") is the sucessor-in-interest to
22 Anaverde. In anticipation of the sale of Anaverde's assets to New Anaverde, counsel for the
23 Trust requested counsel for Anaverde to stop work on this litigation effective June 14, 2010,
24 and Anaverde has not participated in the litigation since that date pursuant to that request. By
25 way of a letter dated September 30, 2010 to Malissa Hathaway McKeith of the law firm of
26 Lewis Brisbois Bisgaard & Smith, LLP, counsel for Anaverde in this litigation, Kevin Mann
27 of Cross & Simon, counsel for the Trust, confirmed the request for Anaverde's counsel to stop
28

1 work as of June 14, 2010. Further, Mr. Mann stated, in the letter, that his understanding is that
2 New Anaverde engaged Pircher, Nichols & Meeks to represent it in this litigation.

3 Executed on October 1, 2010.

4 I declare under penalty of perjury that the foregoing is true and correct.

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7 James Goldman
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PROOF OF SERVICE
Antelope Valley Groundwater Cases
Case No. Judicial Council Coordination Proceeding No. 4408
Santa Clara Case No. 1-05-CV-049053

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1925 Century Park East, Suite 1700, Los Angeles, California 90067.

On October 1, 2010, I served the following document:

**NOTICE OF MOTION TO SUBSTITUTE PARTIES AND TO PERMIT
FILING AND SERVICE OF SUPPLEMENTAL CROSS-COMPLAINT;
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF
JAMES GOLDMAN**

on all interested parties in this action by posting the document listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater Adjudication matter, pursuant to the Electronic Filing and Service Standing Order of Judge Komar.

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

Executed on October 1, 2010, at Los Angeles, California.


Erin Shull