

# **EXHIBIT 1**

## **Phase I Order**

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LOS ANGELES  
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordinated Proceeding  
Special Title (Rule 1550(b))

Judicial Council Coordination  
Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER  
CASES

Included Actions:

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Los Angeles County Superior Court  
Case No. BC 325 201

ORDER AFTER HEARING ON  
JURISDICTIONAL BOUNDARIES

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Kern County Superior Court  
Case No. S-1500-CV-254-348

Hearing Date: October 10, 2006  
Time: 10:00 a.m.  
Department: 1, Room 534

Judge: Hon. Jack Komar

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water  
District  
Riverside County Superior Court  
Consolidated Action, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS.

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27 AND RELATED CROSS-ACTIONS.  
28

1 This matter came on for hearing on October 10, 11, and 12, 2006 for purposes of  
2 establishing the geographical boundaries for the ground water adjudication of the Antelope  
3 Valley coordinated cases. The court heard the testimony of expert witnesses called by the  
4 various parties, admitted exhibits into evidence, and heard oral argument.

5 The relief sought in this coordinated case is the adjudication of the claims of all parties  
6 who assert a right to the ground water within the Antelope Valley basin based upon the various  
7 causes of action and defenses stated by the parties. The court must have jurisdiction of all  
8 parties who may have a claim to the ground water at issue and accordingly must determine the  
9 geographical boundaries of the ground water basin. All overlying land owners with correlative  
10 usufructuary rights and appropriators who produce water from the aquifer are necessary parties.

11 The United States is a major overlying land owner within the basin and has been made a  
12 party to this litigation. The United States waives its sovereign immunity pursuant to the  
13 McCarran Amendment and may be sued in litigation which involves rights to surface or ground  
14 water *only* when the adjudication will be a comprehensive adjudication of all the rights in a  
15 river or other water source. 43 U.S.C.S. Section 666(a), *United States District Court for Eagle*  
16 *County* (1971) 401 U.S. 520, *United States v. Oregon, Water Resources Dep't* (9<sup>th</sup> Cir. 1994)  
17 44 F. 3d 758.

#### 18 The Watershed

19 The purpose of the comprehensive adjudication requirement of the McCarran  
20 Amendment is to ensure that the United States is not subject piecemeal litigation. It is argued  
21 that the jurisdictional boundaries must therefore include the watershed in order to satisfy the  
22 McCarran Amendment because the watershed does in fact constitute the primary source of  
23 natural recharge of the basin aquifer. Hydrologic connection alone is not sufficient. *United*  
24 *States v. Eagle County*, supra. The rights claimed in the watershed must be such that without  
25 adjudicating those rights in the instant action, the United States (and other parties) would be  
26 subject to further, separate litigation regarding other *claims of right* affecting their rights to  
27 water within the aquifer. It should not be a potential claim based on some theoretical future  
28 conduct, but rather an actual claim based upon an existing right. The focus of this

1 comprehensive litigation is the determination of rights to water that is within the ground water  
2 basin. And the watershed is not part of the aquifer within the ground water basin.

3 The parties produced evidence at the hearing concerning the hydrology of the basin,  
4 including surface water and ground water, the hydrology of the watershed, and the extent of the  
5 relationship between the basin aquifer and the watershed.

6 The Little Rock Creek Reservoir, which controls significant recharge into the Antelope  
7 Valley aquifer, and which the court understands is operated by the Palmdale Irrigation District  
8 and the Little Rock Creek Irrigation District, is in the watershed and not within the ground  
9 water basin. Those districts are properly parties to the litigation because they claim rights to  
10 that water and because they exercise discretionary control over the release of the reservoir  
11 water for recharge. Any other parties who are similarly situated should also be joined in this  
12 litigation.

13 Other *nominal* users in the watershed whose use is fixed by permit or regulation have  
14 no rights to water within the aquifer and need not be joined absent some evidence that they  
15 have a claim as an appropriator, or otherwise, or are claiming a right to act beyond the  
16 parameters of their permit or regulated use to interfere with recharge of the basin aquifer in a  
17 material way.

18 Thus, the court declines to define the jurisdictional boundaries to include the watershed  
19 area and will limit the boundaries to the basin aquifer itself. However, to the extent that any  
20 other identified parties outside the boundaries of the ground water basin make a claim to  
21 ground basin water, or who claim a right to control basin recharge water from the watershed,  
22 they may be joined as parties upon motion to amend a complaint or cross complaint.

### 23 The Ground Water Basin

24 The principal area of disagreement in defining the basin relates to the area north of the  
25 Willow Springs/Cottonwood fault lines. The specific issue is whether the fault line or bedrock  
26 is so impermeable that it constitutes a northerly barrier so no water flows south of the fault line;  
27 or on the other hand, whether there is sufficient conductivity between the area north of the fault  
28

1 and the balance of the Antelope Valley that the more northerly area should be included within  
2 the jurisdictional boundaries for this adjudication.

3 There are some additional areas of dispute involving the North Muroc area on the  
4 northeastern boundary of the basin, and the Leona Valley, and related areas, where there are a  
5 number wells pumping from fractured bedrock.

6 The court concludes that the alluvial basin as described in California Department of  
7 Water Resources Bulletin 118-2003 should be the basic jurisdictional boundary for purposes of  
8 this litigation. In addition to the alluvial basin, the adjacent valleys also may have conductivity  
9 and potentially some impact on the aquifer. The evidence presently before the court is that the  
10 amount of flow at the present time and historically has been nominal and in some cases  
11 virtually nil, and will likely remain so for the indefinite future. The court will exclude them at  
12 this time from the jurisdictional boundaries. *De minimus non curat lex*. However, any party  
13 who believes that there is measurable impact on the aquifer so that particular parties in those  
14 areas should be joined may seek leave to do so.

15 The eastern boundary will be the jurisdictional line on the east which was established as  
16 the westernmost boundary in the Mojave litigation.

17 These boundaries are established for purposes of ensuring that the most reasonably  
18 inclusive boundaries will be used to ensure a complete and final adjudication of rights to the  
19 ground water.

20 As the litigation in this case progresses certain geographical areas, upon further  
21 evidence, may appear to lack any real connection to the Antelope Valley aquifer and such areas  
22 may ultimately be excluded. Other areas may be added as evidence establishes a claim adverse  
23 to the rights of the other parties involved in this groundwater adjudication.  
24 Again, any party who believe that parties who are not within the jurisdictional bounds should  
25 be joined may make application to the court to file a cross complaint, or amended complaint or  
26 cross complaint (as the case may be) to include such parties.

27 At the next Case Management Conference, counsel should address the possibility of  
28 creating defendant subclasses or other remedies for all potential parties who may be in marginal

1 water production areas, including various portions of the watershed that are currently excluded.  
2 Innovative methods may be used to minimize delay and service issues and expenses.

3 The court reaffirms the Case Management Conference set for November 13, 2006 at  
4 1:30 p.m. in the Los Angeles Superior Court, Central District, Department 1, Room 534, 111  
5 North Hill Street, Los Angeles, CA 90012.

6  
7 SO ORDERED.

8  
9 Dated: November 3, 2006

/s/ Jack Komar  
Judge of the Superior Court