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 11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF LOS ANGELES**

13 Coordination Proceeding
 14 Special Title (Rule 1550(b))

15 **ANTELOPE VALLEY**
 16 **GROUNDWATER CASES**

17 Included Actions:

18 Los Angeles County Waterworks District
 19 No. 40 v. Diamond Farming Co.
 20 Superior Court of California
 21 County of Los Angeles, Case No. BC
 22 325201

23 Los Angeles County Waterworks District
 24 No. 40 v. Diamond Farming Co.
 25 Superior Court of California, County of
 26 Kern, Case No. S-1500-CV 254348

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

Judicial Council Coordination Proceeding
 No. 4408

SC Case No. 105CV 049053
 Assigned to Hon. Jack Komar

**PHASE 4 TRIAL BRIEF OF CRAIG VAN
 DAM, GERTRUDE J. VAN DAM,
 DELMAR D. VAN DAM, GARY VAN
 DAM AND WDS CALIFORNIA II, LLC**

Phase 4 Trial Date: May 28, 2013
Time: 1:00 p.m.
Dept.: 322
Judge: Hon. Jack Komar

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 CRAIG VAN DAM, GERTRUDE J. VAN DAM, DELMAR D. VAN DAM, GARY
3 VAN DAM and WDS CALIFORNIA II, LLC provide the following Trial Brief for the Phase 4
4 proceedings, in accordance with the Court's Minute Order of May 23, 2013.

5 **INTRODUCTION- SCOPE OF PHASE 4 TRIAL**

6 On December 12, 2012, the Court entered its Case Management Order for Phase 4 Trial
7 (CMO) setting for trial the following issues: (1) current groundwater production of all parties for
8 the calendar year 2011 and January 1 through November 30, 2012; (2) proof of claimed
9 reasonable and beneficial use of water for each parcel to be adjudicated; (3) claimed return flows
10 from imported water; and (4) federal reserve rights. Claims of prescription were excluded from
11 Phase 4. On January 17, 2013 the original CMO was amended to state that the parties' claimed
12 reasonable and beneficial uses of water will include the amount of water used by each party and
13 the identification of the beneficial use to which the amount was applied, but will not include any
14 determination as the reasonableness of that type of use, of the manner in which the party applied
15 the water to use, or any determination of a water right. Claims of prescription were excluded
16 from Phase 4. On May 13, 2013, the Court excluded from the Phase 4 Trial the determination of
17 claimed return flows from imported water. On May 20, 2013 the Court entered its Fifth
18 Amendment to the CMO limiting the Phase 4 Trial to the issue of determining groundwater
19 pumping during 2011 and 2012. Specifically, the Phase 4 Trial shall not result in any
20 determination of any water rights, or the reasonableness of any party's water use or manner of
21 applying water to the use. The Phase 4 Trial will not preclude any party from introducing in a
22 later trial phase evidence to support its claimed water rights including, without limitation,
23 evidence of water use in years other than 2011 and 2012. All parties reserve their rights to
24 produce any evidence to support their claimed water rights and make any related legal arguments
25 including, without limitation, arguments based on any applicable constitutional, statutory, or
26 decisional authority.

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CURRENT GROUNDWATER PUMPING IN 2011 AND 2012

Pursuant to the Court's CMO for the Phase 4 Trial, as amended, Craig Van Dam, Gertrude J. Van Dam, Delmar D. Van Dam, Gary Van Dam and WDS California II, LLC hereby state their respective amounts of current groundwater pumping in 2011 and 2012.

I. Craig Van Dam**A. Current Groundwater Pumping:**

1. 2011: 55 acre-feet.
2. 2012: 57 acre-feet.

B. Objections Filed to January 31, 2013 Declaration:

1. Public Water Suppliers, filed April 15, 2013 (p. 3) and May 3, 2013 (p. 3.)

C. Resolution of Objections:

1. Public Water Suppliers Stipulation, filed May 23, 2013, stipulating that the groundwater pumped in 2011 was 55 acre-feet and in 2012 was 57 acre-feet.

D. Supporting Evidence:¹

1. Stipulation With Craig Van Dam For Phase 4 Trial;
2. Business Records Affidavit of Carl F. Voss, Jr., Grimmway Enterprises, Inc., On Behalf of Craig Van Dam Pursuant to Evidence Code Sections 1560-1562;
3. Business Records Affidavit of Frederick J. Koch III, Southern California Edison, On Behalf of Craig Van Dam Pursuant to Evidence Code Sections 1560-1562;
4. Response of Craig Van Dam to Court Ordered Discovery For Phase 4 Trial (pgs. 23-25);
5. Declaration of Craig Van Dam in Lieu of Deposition Testimony for Phase 4 Trial;
6. First Supplemental Declaration of Craig Van Dam in Lieu of Deposition Testimony For Phase 4 Trial.

¹ Concurrent with the filing of this Phase 4 Trial Brief a list of Phase 4 Trial Exhibits has been filed for each party identified above.

II. Gertrude J. Van Dam, Delmar D. Van Dam, Gary Van Dam

A. Current Groundwater Pumping:

1. 2011: 9,840 acre-feet.
2. 2012: 10,023 acre-feet.

B. Objections Filed to January 31, 2013 Declaration: Public Water Suppliers, filed April 15, 2013 (p. 3) and May 3, 2013 (p. 3.)

C. Resolution of Objections:

1. Public Water Suppliers Stipulation, filed May 23, 2013, stipulating that the groundwater pumped in 2011 was 9,840 acre-feet and in 2012 was 10,023 acre-feet.

D. Supporting Evidence:

1. Stipulation With Delmar D. Van Dam, Gertrude J. Van Dam, and Gary Van Dam For Phase 4 Trial;
2. Business Records Affidavit of Frederick J. Koch III, Southern California Edison, On Behalf of Gary Van Dam (High Desert Dairy) Pursuant to Evidence Code Sections 1560-1562;
3. Response of Delmar D. Van Dam, Gertrude J. Van Dam, and Gary Van Dam to Court Ordered Discovery For Phase 4 Trial;
4. First Supplemental Response of Delmar D. Van Dam, Gertrude J. Van Dam, and Gary Van Dam to Court Ordered Discovery For Phase 4 Trial (**pgs. 10-12**);
5. Declaration of Gary Van Dam in Lieu of Deposition Testimony for Phase 4 Trial;
6. First Supplemental Declaration of Gary Van Dam in Lieu of Deposition Testimony For Phase 4 Trial.

III. WDS California II, LLC

A. Current Groundwater Pumping:

1. 2011: 2,244 acre-feet.

2. 2012: 2,550 acre-feet.

B. Objections Filed to January 31, 2013 Declaration:

1. Public Water Suppliers, filed April 15, 2013 (p. 3) and May 3, 2013 (p. 3.)

C. Resolution of Objections:

1. Public Water Suppliers Stipulation, filed May 23, 2013, stipulating that the groundwater pumped in 2011 was 2,244 acre-feet and in 2012 was 2,550 acre-feet.

D. Supporting Evidence:

1. Stipulation With WDS California II, LLC For Phase 4 Trial;
2. Business Records Affidavit of Carl F. Voss, Jr., Grimmway Enterprises, Inc., On Behalf of WDS California II, LLC Pursuant to Evidence Code Sections 1560-1562;
3. Business Records Affidavit of Frederick J. Koch III, Southern California Edison, On Behalf of WDS California II, LLC Pursuant to Evidence Code Sections 1560-1562;
4. Response of WDS California II, LLC to Court Ordered Discovery For Phase 4 Trial (pgs. 271-73);
5. Declaration of WDS California II, LLC in Lieu of Deposition Testimony for Phase 4 Trial.

Dated: May 28, 2013

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: 

SCOTT K. KUNEY, Esq., Attorneys for Craig Van Dam, Gertrude J. Van Dam, Delmar D. Van Dam, Gary Van Dam and WDS California II, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF KERN

I, ERIN L. LINDSEY, declare: I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is The Law Offices of Young Wooldridge LLP, 1800 30th Street, Fourth Floor, Bakersfield, CA 93301.

On May 28, 2013, I caused the foregoing document(s) entitled as:
**PHASE 4 TRIAL BRIEF OF CRAIG VAN DAM, GERTRUDE J. VAN DAM, DELMAR
D. VAN DAM, GARY VAN DAM and WDS CALIFORNIA II, LLC**
to be served on the parties via the following service:

X (BY POSTING) I posted the document listed above to the Santa Clara Superior Court website regarding the Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service posting completed through www.scefilings.org.

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

Executed on May 28, 2013, at Bakersfield, California.

ERIN L. LINDSEY