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10	COUNTY OF LOS ANGELES	
11		
12		Judicial Council Coordination
13	Coordination Proceeding Special Title (Rule 3.550(c))	Proceeding No. 4408
14	ANTELOPE VALLEY GROUNDWATER	Santa Clara Case No. 1-05-CV-049053
15	CASES Included Actions:	STATE OF CALIFORNIA, SANTA MONICA MOUNTAINS
16	Los Angeles County Waterworks District	CONSERVANCY, AND 50TH DISTRICT AGRICULTURAL ASSOCIATION'S
17	No. 40 v. Diamond Farming Co. Superior Court of California County of Los	OPPOSITION TO LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S MOTION FOR LEGAL
18	Angeles, Case No. BC 325 201	FINDINGS ON WATER CODE
19	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of	REQUIREMENTS TO REPORT EXTRACTION OF GROUNDWATER IN LOS ANGELES COUNTY
20	Kern, Case No. S-1500-CV-254-348	[Assigned for All Purposes to the Honorable
21	Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of	Jack Komar]
22	Lancaster, Diamond Farming Co. v. Palmdale Water Dist. Superior Court of	Date: February 14, 2012 Time: 9:00 a.m.
23	California, County of Riverside, consolidated Actions, Case Nos. RIC 353	Dept: 15th Floor, Central Civil West
24	840, RIC 344 436, RIC 344 668	Action Filed: October 26, 2005
25	AND RELATED ACTIONS.	
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INTRODUCTION

The State of California, Santa Monica Mountains Conservancy, and 50th District
Agricultural Association submit the following opposition to Los Angeles County Waterworks
District No. 40's (LA County Waterworks) Motion for Legal Findings on Water Code
Requirements to Report Extractions of Groundwater in Los Angeles County (Motion). The
Motion should be denied for the procedural reason that it improperly seeks an advisory opinion,
and substantively because it seeks relief not available under the statutes.

#### ARGUMENT

I. THE MOTION RAISES ISSUES THAT ARE NOT RIPE FOR ADJUDICATION, SEEKS AN ADVISORY OPINION OF THIS COURT, AND SHOULD NOT BE ENTERTAINED

Courts should not render decisions absent a genuine need to resolve a present and actual dispute between the parties. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.) An actual dispute ripe for legal decisionmaking is distinguished from the request for an advisory opinion by the existence of facts that are not hypothetical in nature. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.) The ripeness doctrine ensures that "the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinions." (*Pacific Legal Foundation v. California Coastal Comm.* (1982) 33 Cal.3d 158, 170.)

The Motion is based on purely hypothetical facts. Little discovery has been completed in this case. It is unclear which, if any, parties would be subject to the statute discussed in the Motion. Which parties have failed to file the notice? What years is LA County Waterworks suggesting the court use to determine if someone has failed to file a notice? What evidence exists with respect to prescription claims? Which, if any, parties have overlying water rights or are using their extraction for consumptive use? Which parties would be affected by a ruling on this issue? These are just a few among the many questions and underlying facts that need to be developed and answered before the Court would be able to issue more than an advisory opinion regarding abstract differences of legal opinion based on hypothetical facts.

Further, LA County Waterworks asks this Court to opine on a legal issue without knowing what, if any, consequences will flow from that decision for the parties to the case. The legal issue

on which it seeks the Court's guidance is one that has never been decided before in a published judicial opinion, and for which LA County Waterworks cites no authority to support its conclusions. This Motion is clearly premature and the Court should not offer an advisory opinion on this Motion that is not yet ripe for adjudication.

# II. CALIFORNIA WATER CODE SECTIONS 4999 THROUGH 5005 DO NOT RESULT IN THE LOSS OR FORFEITURE OF ANY RIGHTS TO GROUNDWATER IN THIS BASIN

LA County Waterworks further argues in its Motion that as a matter of law "a party's failure to file the Notice as required by Water Code section 5001, is deemed to be a nonuse of groundwater for reasonable and beneficial use, and a loss of a ground water right for each year in which the Notice was required." (Motion p. 5.) Nowhere do Water Code sections 4999 through 5005 state that any water rights are forfeited when a party fails to provide the Notice of Extraction and Diversion of Water required by section 5001 (Notice). The statute states that only if the Notice requirement applies to an entity's extraction, and that entity fails to file the Notice, then its water use might be deemed equivalent to a nonuse of water for beneficial use for the applicable year. The form Notice requested by the State Water Resources Control Board (State Board) and attached as Exhibit A to the Motion supports this interpretation, that failure to submit a Notice when otherwise required creates, at most, a rebuttable presumption of non-use. (See Notice, Exhibit A to Motion, p. 2.) The form Notice states that "there is no penalty for failure to file the annual notice . . . persons who do not file notices may have difficulty in supporting a claim of water use during a lawsuit." (*Ibid.*)

The statute and the State Board notably do not equate the failure to file the Notice with the loss of any water rights. LA County Waterworks' reading of the statute adds additional content and consequences into the statute that simply are not present in the statutory language. The statute's purpose is to "establish a record of water use which can assist the court in determining your rights." (*Ibid.*) It does not conclusively determine those rights and does not extinguish any such rights by its plain meaning. For example, even if an entity fails to file the notice, but can verify its claims of water rights in a given year, the statute does not impose a legal bar to submitting that evidence to the Court and does not bar the Court from determining a party's water

rights claim for a beneficial use of water. The statute merely requires a record of such extraction, but in no way bars a party from submitting evidence of its water rights.

Finally, the statute cannot and does not apply to the water rights of overliers, or entities that extract for nonconsumptive use or incidental consumptive use and cannot result in a forfeiture of their rights. Overlying water rights to extract groundwater exist irrespective of the amount of water extracted for beneficial use in the past. (*City of Barstow v. Mojave Water Agency*, (2000) 23 Cal.4th 1224, 1243-1249.) In addition, nonconsumptive or incidental consumptive users are not required to have a water right to extract the groundwater they extract. (*City of Los Angeles v. City of San Fernando*, (1975) 14 Cal.3d 199, 291-292.)<sup>1</sup> The statute does not apply to either of these past, current or future pumpers in this adjudication.

# III. THE WATER CODE DOES NOT PROVIDE THAT REPORTS OF EXTRACTION DETERMINATIVELY ESTABLISH HISTORICAL EXTRACTION AMOUNTS

LA County Waterworks takes the statute even one step farther by suggesting that the amount of water stated to have been extracted in a Notice is conclusive on that issue. While the amount of water stated in a Notice may or may not be evidence of past use, there is nothing in the Water Code that provides a court must deem the amount of water use claimed in a Notice as conclusive. A court must be free to accept other evidence to support or contradict the assertion that the amount of water which was claimed to be extracted in a Notice is or is not reliable.

#### CONCLUSION

This court should deny this Motion as it is not ripe and seeks an advisory opinion.

Moreover, the statute does not apply to overliers and cannot result in a loss or forfeiture of any of their water rights. A plain reading of the statute makes clear that the statute was never intended to take away any water rights from entities in this adjudication. Nor should the court be required to accept, without contradiction, the amount of water stated in a Notice as being the actual water

<sup>&</sup>lt;sup>1</sup> LA County Waterworks also fails to mention that this adjudication not only includes pumpers in Los Angeles County, but also pumpers in Kern County, who are not even required to file the notice at issue in this motion. This would create an inequitable and absurd result where entities from Kern County who did not provide the Notice would keep their rights and entities from Los Angeles County would lose their rights.

1	extracted by any Notice-filer. Therefore, the Court should deny LA County Waterworks'		
2	attempts to have the Court strip entities of their rights based on this statute.		
3		N .	
4	D . 1 1 2010		
5	Dated: January 31, 2012	Respectfully Submitted,	
6		KAMALA D. HARRIS Attorney General of California	
7		RICHARD M. MAGASIN Supervising Deputy Attorney General	
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9		12/	
10		NOAH GOLDEN-KRASNER Deputy Attorney General	
11		Attorneys for State of California, Santa Monica Mountains Conservancy, and 50th	
12		District Agricultural Association	
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### **CERTIFICATE OF SERVICE**

No.

1-05-CV-049053

Cases		
I hereby certify that on <u>January 31, 2012</u> , I ele the Clerk of the Court by using the CM/ECF s	ectronically filed the following document(s) with ystem:	
50TH DISTRICT AGRICULTURAL ASSO ANGELES COUNTY WATERWORKS DI	STRICT NO. 40'S MOTION FOR LEGAL EMENTS TO REPORT EXTRACTION OF	
I certify that <b>all</b> participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.		
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on <u>January 31, 2012</u> , at Los Angeles, California.		
Gwen Blanchard	GwenBlanchard	
Declarant	Signature	

AG Certificate of Service CM ECF no paper filers (W).doc

Case Name: Antelope Valley Groudwater