

DECLARATIONS

- A. Declaration of William J. Brunick
- B. Declaration of Robert G. Kuhs
- C. Declaration of Michael D. McLachlan
- D. Declaration of William M. Sloan
- E. Declaration of Richard G. Zimmer

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*Exempt from filing fee pursuant to
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8 ANTELOPE VALLEY-EAST KERN WATER AGENCY

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12 Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding
No. 4408

13
14 **ANTELOPE VALLEY**
GROUNDWATER CASES

Santa Clara Case No.
1-05-CV-049053
The Honorable Jack Komar, Dept.17

15
16 **Included Actions:**

17 Los Angeles County Waterworks District
No. 40 vs. Diamond Farming Company, a
18 corporation, Superior Court of California,
County of Los Angeles, Case No.
19 BC325201;

20 Los Angeles County Waterworks District
No. 40 vs. Diamond Farming Company, a
21 corporation., Superior Court of California,
County of Kern, Case No. S-1500-CV-254-
22 348;

23 Wm. Bolthouse Farms, Inc. vs. City of
Lancaster, Diamond Farming Company, a
24 corporation, vs. City of Lancaster, Diamond
Farming Company, a corporation vs.
25 Palmdale Water District, Superior Court of
California, County of Riverside, Case Nos.
26 RIC 353840, RIC 344436, RIC 344668.

**DECLARATION OF WILLIAM J.
BRUNICK IN SUPPORT OF REPLY TO
PUBLIC WATER SUPPLIERS'
OPPOSITION TO MOTION BY
PRIVATE AND PUBLIC
LANDOWNERS FOR ORDER
APPROVING RULES & PROCEDURES
FOR APPOINTMENT AND ELECTION
OF WATERMASTER BOARD
MEMBERS**

Date: September 8, 2016
Time: 10:00 a.m.
Room: Room 222, Los Angeles
Judge: Hon. Jack Komar

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28 **DECLARATION OF BILL BRUNICK IN SUPPORT OF REPLY OF PUBLIC WATER SUPPLIERS' OPPOSITION TO MOTION
BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING RULES & PROCEDURES FOR APPOINTMENT AND
ELECTION OF WATERMASTER BOARD MEMBERS**

1 WILLIAM J. BRUNICK declares and states:

2 1. I am an attorney at law duly licensed to practice before all courts of the State of
3 California, and counsel of record in these coordinated proceedings for cross-complainant,
4 Antelope Valley - East Kern Water Agency (AVEK). I have personal knowledge of all of the
5 matters set forth below and, if called as a witness, I could and would testify competently thereto.

6 2. Since 2006, I have been actively engaged in these coordinated proceedings, representing
7 AVEK. I also was involved in virtually all of the settlement discussions, including those
8 mediated by Justice Robie, which ultimately culminated in almost all parties stipulating to the
9 proposed Judgment and Physical Solution that was ultimately approved and entered by the Court
10 in December, 2015.

11 3. During the settlement negotiations, the Public Water Suppliers and the private and public
12 landowners manifested clearly divergent interests. Among other things, the Public Water
13 Suppliers were then pursuing prescription claims against virtually all of the landowners, and an
14 almost complete lack of trust between the appropriators and the landowners was clearly evident.

15 3. Much of the discussion and negotiations related to the composition and powers of the
16 Watermaster. The landowners demanded representation on the Watermaster Board. That demand
17 was one of the key points of discussion and negotiation, with all stipulating parties ultimately
18 agreeing that a balance of voting power on the Watermaster Board between the appropriators
19 and the landowners was appropriate.

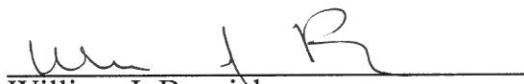
20 4. As a result, the parties finally agreed that the landowners (other than public agencies and
21 members of the two Classes) would be assigned two seats on the Watermaster Board, with the
22 Public Water Suppliers being assigned an equal number of seats, and AVEK being assigned the
23 fifth seat on the Board. The landowners clearly stated they would not agree to a settlement
24 without assurance they would be assigned two seats on the 5-member Watermaster Board.

25 5. In my presence during these negotiations, no representative of the Public Water Suppliers
26 ever stated, hinted, suggested or requested that, in the event of a transfer of a landowner water
27 right to a PWS, the purchasing PWS should then be able to vote in the election for the landowner

28 **DECLARATION OF BILL BRUNICK IN SUPPORT OF REPLY OF PUBLIC WATER SUPPLIERS' OPPOSITION TO MOTION
BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING RULES & PROCEDURES FOR APPOINTMENT AND
ELECTION OF WATERMASTER BOARD MEMBERS**

1 seats on the Watermaster Board. To my knowledge, the first time any PWS manifested any
2 claimed right to vote in an election for the landowner seats was when the PWS recently
3 announced their intention to file an Opposition to the landowners' pending motion for approval
4 of proposed rules and procedures for appointment/election of representatives to the Watermaster
5 Board.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct, and that this declaration was executed on August 30, 2016, in San
8 Bernardino, California.

9
10 
11 William J. Brunick

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9 Attorneys for Tejon Ranchcorp and Tejon Ranch Company

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

14 ANTELOPE VALLEY GROUNDWATER
15 CASES

16 **Included Actions:**

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

21 Los Angeles County Waterworks District No. 40
22 v. Diamond Farming Co., Superior Court of
23 California, County of Kern, Case No. S-1500-CV-
24 254-348;

25 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
26 Diamond Farming Co. v. Lancaster, Diamond
27 Farming Co. v. Palmdale Water Dist., Superior
28 Court of California, County of Riverside, Case
No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

**DECLARATION OF ROBERT G.
KUHS IN SUPPORT OF REPLY TO
PUBLIC WATER SUPPLIERS'
OPPOSITION TO MOTION BY
PRIVATE AND PUBLIC
LANDOWNERS FOR ORDER
APPROVING RULES &
REGULATIONS FOR
APPOINTMENT AND ELECTION
OF WATERMASTER BOARD
MEMBERS**

Date: September 8, 2016
Time: 9:00 a.m.
Dept: Room 222, LASC
Judge: Jack Komar, Presiding

1 I, ROBERT G. KUHS, declare:

2 1. I am an attorney licensed to practice in the State of California and the owner of
3 Kuhs & Parker, counsel for Tejon Ranchcorp. and Granite Construction Company. I have been
4 involved in this case since 2008. I am very familiar with the case and all matters leading up to
5 the Stipulation for Judgment and Physical Solution. I am also familiar with the terms negotiated,
6 the arguments made by the parties in support of their respective positions, the terms of the
7 ultimate agreement and the stated intentions of the parties regarding the agreement. I make this
8 Declaration based upon personal knowledge.
9

10 2. The Judgment and Physical Solution (**Judgment**) was negotiated over several
11 years. Because the Public Water Suppliers (**PWS**) asserted prescriptive claims, negotiations
12 typically involved the PWS on one side of an issue, and landowners with overlying rights on the
13 other side of the issue. AVEK and the United States typically had their own unique perspectives.
14

15 3. One of the main areas of controversy was the composition of the Watermaster
16 Board. The PWS initially wanted to control the Watermaster Board. That demand was flatly
17 rejected by the landowners. In order to settle the case, the landowners demanded equal
18 representation on the Watermaster Board to create a balance of voting power. These
19 negotiations culminated in the current five member Watermaster Board consisting of two PWS
20 representatives, two Exhibit 4 non-public landowner representatives, and AVEK as the fifth
21 board member.
22

23 4. In opposition to the current motion the PWS now assert for the first time the right
24 to purchase water rights from landowners on Exhibit 4 and then participate in voting for the two
25 landowner Watermaster representatives. The PWS's argument fails for the legal reasons set forth
26
27

1 in the reply brief filed herewith and because the argument runs contrary to the spirit and intent of
2 the settling parties and the Judgment and is contrary to the settlement discussions leading up to
3 the Stipulation and entry of the Judgment.

4 5. The parties bargained for and the Judgment provides for the transfer of water
5 rights on Exhibit 4. During negotiation, however, neither the PWS, nor the landowners, nor any
6 other party ever negotiated for the proposition now advanced, that the PWS could purchase
7 landowner Exhibit 4 water rights and thereby acquire the right to vote for the two landowner
8 Watermaster representatives. Not only was such provision not agreed to, but allowing the PWS's
9 to vote for landowner representatives would pollute the process, deprive the landowners of
10 valuable consideration, input and control over issues critical to landowners and change the
11 negotiated balance of voting power on the Watermaster Board. Neither I, nor my clients agreed
12 to any provision that conveyed landowner voting rights to the PWS since they are already
13 guaranteed two positions on the Watermaster Board. Such a result was not acceptable to my
14 clients and is not supported by the Judgment.

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

17 Executed this 31st day of August, 2016, at Bakersfield, California.

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ROBERT G. KUHS

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15 Attorneys for Plaintiff Richard Wood and the Class

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et
al.

Defendants.

Judicial Council Coordination
Proceeding No. 4408
(Honorable Jack Komar)

Lead Case No. BC 325201

Case No.: BC 391869

**DECLARATION OF MICHAEL D.
MCLACHLAN IN SUPPORT OF
REPLY TO PUBLIC WATER
SUPPLIERS' OPPOSITION TO
MOTION BY PRIVATE AND
PUBLIC LANDOWNERS FOR
ORDER APPROVING RULES &
REGULATIONS FOR
APPOINTMENT AND ELECTION
OF WATERMASTER BOARD
MEMBERS**


Date: September 8, 2016
Time: 10:00 a.m.
Dept.: Room 222 (Mosk courthouse)

1

**DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF REPLY RE:
MOTION BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING
RULES & REGULATIONS FOR APPOINTMENT AND ELECTION OF
WATERMASTER BOARD MEMBERS**

1 Water Suppliers have been, and continue to be, adverse to the interests of the
2 Small Pumpers, whose interests are most similarly aligned to varying degrees
3 with other overlying landowners, including the mutual water companies. As the
4 Court is aware, the Small Pumper Class did not pursue a right to vote for the two
5 landowners seats because of the mechanical difficulties in doing so. The Class
6 ceded these voting rights with the full knowledge and understanding that the
7 other landowners would be controlling the two seats allocated to the landowner
8 parties.

9
10 I declare under penalty of perjury under the laws of the State of California
11 that the foregoing is true and correct. Executed this 31st day of August, 2016, at
12 Hermosa Beach, California.

13 Michael D.  Digitally signed by Michael D.
14 McLachlan
15 DN: cn=Michael D. McLachlan, o=Law
16 Offices of Michael D. McLachlan, ou,
17 email=mike@mclachlanlaw.com, c=US
18 Date: 2016.08.31 12:47:09 -07'00'

16 Michael D. McLachlan

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 Coordination Proceeding
Special Title (Rule 3.550)

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

15 Included Actions:

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

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

21 **Wm. Bolthouse Farms, Inc. v. City of Lancaster**
22 **Diamond Farming Co. v. City of Lancaster**
23 **Diamond Farming Co. v. Palmdale Water District**
Riverside County Superior Court
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668
24 (Consolidated Actions)

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Los Angeles County Superior Court
Lead Case No. BC 325 201

For e-service purposes only:
Santa Clara County Superior Court
Case No. 1-05-CV-049053

**DECLARATION OF WILLIAM M.
SLOAN IN SUPPORT OF MOTION BY
PRIVATE AND PUBLIC
LANDOWNERS FOR ORDER
APPROVING RULES &
REGULATIONS FOR APPOINTMENT
AND ELECTION OF WATERMASTER
BOARD MEMBERS**

The Hon. Jack Komar

Date: September 8, 2016
Time: 10:00 a.m.
Dept: Room 222 (Mosk courthouse)

1 I, WILLIAM SLOAN, hereby declare as follows:

2
3 1. I am an attorney at Morrison and Foerster, LLP, counsel of record for cross-defendant
4 U.S. Borax, Inc., and I am licensed to practice law in the state of California. The facts contained in
5 this declaration are known personally to me and, if called as a witness, I could and would testify
6 competently thereto under oath.

7 2. On August 25, 2016, Los Angeles County Waterworks District No. 40, Rosamond
8 Community Services District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
9 Desert Lake Community Services District, Palmdale Water District, Quartz Hill Water District, and
10 California Water Service Company (collectively, “Public Water Suppliers”), submitted an opposition
11 to the motion for an order approving the rules and regulations for appointment and election of the
12 watermaster board members.

13 3. In that opposition, the Public Water Suppliers advanced a new interpretation of
14 Section 18.1.1 of the Judgment and Physical Solution. That section provides that the watermaster
15 board shall be comprised of five members—one representative from the Antelope Valley East Kern
16 Water Agency, two representatives selected by the Public Water Suppliers (one from Los Angeles
17 County Waterworks District No. 40, and one selected by the Public Water Suppliers), and

18 two (2) landowner Parties, exclusive of public agencies and members
19 of the Non-Pumper and Small Pumper Classes, selected by majority
20 vote of the landowners identified on Exhibit 4 (or their successors in
interest) based on their proportionate share of the total Production
Rights identified in Exhibit 4.

21 4. The opposition by the Public Water Suppliers advances a novel interpretation of this
22 provision, asserting that if they simply acquire Production Rights, that “entitles” them “to vote under
23 Section 18.1.1 for Exhibit 4 water master board seats.” Opposition at 2:8-9. Nothing in the language
24 of Section 18.1.1 or anywhere else in the Judgment and Physical Solution says this. To the extent the
25 opposition by the Public Water Suppliers seeks to impose such a contradictory interpretation, this
26 declaration is submitted to inform how the Judgment and Physical Solution was negotiated and the
27 agreement reached.
28

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6 Attorneys for BOLTHOUSE PROPERTIES, LLC
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7

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

9
10 CENTRAL DISTRICT

11 COORDINATION PROCEEDING
SPECIAL TITLE (Rule 1550(b))

JUDICIAL COUNCIL COORDINATION PROCEEDING
No. 4408

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

CLASS ACTION

14 INCLUDED ACTIONS:

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar
Action Filed: October 26, 2005

15 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 v. DIAMOND FARMING
16 COMPANY, et al.,
Los Angeles Superior Court Case No. BC325201

**DECLARATION OF RICHARD G.
ZIMMER IN SUPPORT OF REPLY TO
PUBLIC WATER SUPPLIERS'
OPPOSITION TO MOTION BY PRIVATE
AND PUBLIC LANDOWNERS FOR
ORDER APPROVING RULES &
REGULATIONS FOR APPOINTMENT
AND ELECTION OF WATERMASTER
BOARD MEMBERS**

17 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 v. DIAMOND FARMING
18 COMPANY, et al.,
Kern County Superior Court Case No. S-1500-
19 CV-254348

20 DIAMOND FARMING COMPANY, and W.M.
21 BOLTHOUSE FARMS, INC., v. CITY OF
LANCASTER, et al.,
22 Riverside Superior Court Case No. RIC 344436
[c/w case no. RIC 344668 and 353840]
23

Date: September 8, 2016
Time: 9:00 a.m.
Dept: Room 222, LASC
Judge: Jack Komar, Presiding

24
25 AND RELATED ACTIONS.
26

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1 I, RICHARD G. ZIMMER, declare:

2 1. I am an attorney licensed to practice in the State of California. In this capacity I am a member
3 of the Law Firm of Clifford & Brown and the attorney primarily responsible for the handling of this
4 matter. I have been involved in this case since approximately the year 2000 when Wm. Bolthouse Farms,
5 Inc. filed its Complaint following the Complaint filed by Diamond Farming. I am very familiar with the
6 case and all matters leading up to the Judgment and Physical Solution. I was involved in virtually every
7 formal settlement discussion, both in person and by telephone. I am also familiar with the terms
8 negotiated, the arguments made by the parties in support of their respective positions, the terms of the
9 ultimate agreement and the stated intentions of the parties regarding the agreement. I make this
10 Declaration based upon personal knowledge.

11 2. The Judgment and Physical Solution were negotiated over a multi-year period of time.
12 One of the main areas of disagreement was the issue of the Watermaster Board. Neither side trusted the
13 other side to have control over the Watermaster Board which would be making decisions critical to
14 enforcing the rights of the parties under the Judgment and protecting the groundwater basin. The
15 landowners demanded positions on the Watermaster Board or they would not settle the case. The
16 Purveyors wanted to limit the number of landowner representatives on the Watermaster Board. This
17 resulted in negotiations which culminated in a balance of power among the five Board Member positions.
18 It was agreed that AVEK would be dedicated one representative and that District No. 40 would be
19 dedicated one position. A second public water supplier position would be selected by District No. 40 and
20 the other water purveyors. Two positions were required to be held by landowner parties, not including
21 any public agencies or Class members.

22 3. Other than setting forth that each group would have its Watermaster positions guaranteed
23 in the Judgment and Physical Solution, the parties were left to determine how they would elect their
24 representatives. The Landowners agreed to select their members by majority vote of the landowners.
25 None of the parties submitted any detailed Rules & Regulations regarding selection of their Watermaster
26 representatives but the balance of power was clearly discussed and agreed upon.

27 4. During the negotiations that I attended, I have no knowledge of any purveyor attorney
28 stating, suggesting or expressing any interpretation of the agreement that would allow a Purveyor party to
**DECLARATION OF RICHARD G. ZIMMER IN SUPPORT OF REPLY TO PUBLIC WATER SUPPLIERS' OPPOSITION TO MOTION
BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING RULES & REGULATIONS FOR APPOINTMENT OF
WATERMASTER BOARD MEMBERS**

1 take over voting rights of the landowners to select their Watermaster representatives. Allowing this
2 would have unacceptably deprived the landowners of consideration, input and control over issues critical
3 to landowners. I did not agree to any provisions that conveyed landowner voting rights to the Purveyors
4 who were already guaranteed two positions on the Watermaster Board. Although voting for all
5 Watermaster representatives based upon a percentage of groundwater rights clearly would have been
6 advantageous to landowners, this was not the agreement. Both sides agreed to a perpetual balance of
7 control over management to protect the basin and the interests of all stakeholders in the basin.

8 5. The first time I had knowledge a purveyor arguing that they could obtain landowner
9 voting rights by purchasing Exhibit 4 water allocations was after the settlement and approval of the
10 Judgement and Physical Solution when one of the Mutual Water Company group requested Court
11 interpretation of the landowner Rules & Procedures which had been agreed to by the other landowners.
12 In response to this this inter-landowner disagreement, the purveyor parties to my knowledge first made
13 the argument that they could obtain voting rights along with the allocation of Exhibit 4 water rights. This
14 never occurred to my knowledge during the negotiation process that culminated in the Judgment and
15 Physical Solution.

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

18 Executed this 31st day of August, 2016, at Bakersfield, California.

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20 
21 RICHARD G. ZIMMER
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