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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY
GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348Wm. Bolthouse Farms, Inc. v. City of 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 No. RIC 353 840, RIC 344 436, RIC 344 668

) Judicial Council Coordination Proceeding
) No. 4408
)

) **Santa Clara Case No. 1-05-CV-049053**
) Assigned to The Honorable Jack Komar

) **ANTELOPE VALLEY GROUNDWATER**
) **AGREEMENT ASSOCIATION'S CASE**
) **MANAGEMENT STATEMENT**

) **Hearing Date: July 15, 2010**
) **Time: 9:00 am**

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) joins in the case
2 management statement of the City of Lancaster and believes that the Court should provide a
3 continuance of the scheduled trial so that settlement efforts can continue.

4 **I. Summary**

5 AGWA believes that the current settlement process mediated by Jim Waldo has produced a
6 meaningful agreement that can serve as a basis for final resolution for the adjudication. No other
7 attempt at settlement over the course of the past ten years has been able to achieve this. Both
8 landowners and Public Water Suppliers are participating in this process. Only a small minority of
9 parties have refused to participate, apparently because of a belief that litigation is preferable to
10 settlement.¹

11 There is no doubt that the currently scheduled Phase III trial has prompted the high level of
12 participation and activity in the principals’ settlement process. However, AGWA believes that
13 settlement is the only way that this adjudication can be resolved. The issues and the parties are too
14 numerous to be adequately addressed in the adversarial environment of the courtroom. Even if such
15 issues could be adequately addressed in this proceeding, any resolution would take many years to
16 obtain. Already this litigation is over 10 years old. This pace is due to the nature of the case itself,
17 and thus can be expected to continue if the intention is to try to work-out a solution through litigation
18 rather than settlement.

19 AGWA believes that the time and resources of the parties are better spent in an effort to
20 continue making progress toward completion of the settlement rather than devoted to the large
21 amount of activity associated with depositions and other trial preparation that will follow the July 15
22 exchange of expert witness designations. In fact, because of the short period allocated to conduct
23 expert witness depositions, AGWA believes that further progress toward completion of the
24 settlement will be impossible following July 15 if the September trial date remains on calendar. For
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27 ¹ See for example, Case Management Statement of Littlerock Creek Irrigation District, et al. filed
28 July 7, 2010: “Delaying the trial for settlement discussion will delay resolution of this matter.” (2:9-10.)

1 this reason, and as more fully explained below, AGWA believes that the Court should provide a
2 continuance in order to allow an opportunity to those parties who wish to settle to do so.²

3
4 **II. Most of the Parties in the Litigation Would Prefer to Settle Rather Than Attempt to Litigate a Resolution**

5 AGWA is composed primarily of local family farms that have operated continuously in the
6 Antelope Valley for generations. The names of the members of AGWA illustrate the nature of these
7 parties. For example: Mr. Gene Nebeker is the owner and operator of Nebeker Ranch, a third
8 generation farming operation, Gailen Kyle is the owner and operator of Kyle & Kyle Ranch, a third
9 generation farming operation, and John Calandri is the owner and operator of Calandri Sunrise
10 Farms, a third generation farming operation.

11 AGWA has no desire to litigate this case. The group of landowners that form AGWA chose
12 the name of the group³ specifically in order to serve as a constant reminder to everyone that their
13 goal is to reach a settlement agreement rather than attempt to litigate the case.

14 The Court went to great pains to encourage a settlement between the Public Water Suppliers
15 and the two classes, and AGWA believes it would be equitable and appropriate for the Court now to
16 afford the same opportunity to the other parties who have been caught in the middle of this fight to
17 settle rather than litigate. If such a settlement can be reached, then whatever issues are left can be
18 litigated between those limited parties who are currently resisting settlement. Attached to this
19 pleading as Exhibit "A" is a recent front page Antelope Valley Press article about the adjudication
20 that clearly demonstrates that most parties to this case are attempting to reach a settlement rather
21 than litigate.

22
23 **III. Most of the Parties to the Adjudication Are Attempting to Settle Their Issues in Order to Make Further Litigation, Including the Phase III Trial, Unnecessary**

24 The Antelope Valley Accord is intended to serve as a comprehensive settlement of the
25 litigation, but also specifically to resolve the issues associated with Phase III. While it is not

26 ² AGWA encourages the Court to grant such a continuance at the July 15, 2010 hearing. With only
27 two months between now and the hearing, without confidence that the September 27, 2010 trial date
28 can be continued, the parties will be forced to focus their efforts on trial, following the July 15, 2010
expert witness designations.

³ Antelope Valley Groundwater Agreement Association

1 AGWA's intention to violate the mediation privilege, it is important to understand that the Accord
2 does substantively address the specific questions at issue in Phase III – the safe yield of the Basin
3 and the imposition of a physical solution. To AGWA's knowledge, no party to this litigation
4 disputes the Court's equitable power to impose a physical solution in this case, and the settlement
5 under discussion is framed as such a physical solution. The settlement also identifies a specific safe
6 yield. As reported by Lancaster, no party is entirely happy with it, as some parties think it should be
7 higher and some parties think it should be lower. However, all parties appear to be able to work
8 with the compromise within the overall context of the settlement. The Accord includes provisions
9 for continued monitoring and study by a Watermaster and specific provisions for adjustment of
10 pumping if the Watermaster determines over the course of time that the safe yield number is either
11 too high or too low. The Accord contains provisions to protect the Basin against harm while these
12 studies are underway. The principals' group employed neutral technical experts to provide a peer
13 review and "scientific support" for this approach.

14 It is important for the Court to understand at least this much of the substance of the Accord in
15 order to understand the relationship between the settlement and the Phase III trial. The Accord is a
16 compromise based around a specific identification of an initial safe yield. Parties, such as AGWA,
17 who believe that the actual safe yield should be higher than that identified in the settlement, are able
18 to agree to the initial number because of assurances in other parts of the settlement regarding
19 additional studies and timing associated with any potential reductions. Other parties who believe the
20 number should be lower, are given other assurances that resolve their concerns.

21 However, since the settlement is a compromise, if the parties are forced to go to Court, it is
22 not likely that any party will advocate for the number identified in the settlement – some parties will
23 argue for a higher number and some parties will argue for a lower number. The Phase III trial will
24 thus be at odds with the settlement, and it is unlikely that the result of the Phase III trial will match
25 the compromise reached in the settlement. Furthermore, due to the considerable amount of time and
26 effort that will be involved to prepare for trial following the July 15 expert witness designations, it is
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1 unlikely that further progress toward completion of the settlement will be realistic. AGWA thus
2 fears that a failure to continue the trial will result in the death knell for the Accord.

3 **IV. Proposed Continuance to Allow Settlement Process to Continue**

4 AGWA believes that the Court should continue the Phase III trial in order to allow the parties
5 to continue negotiations so that those parties who prefer to settle may do so. While further Court
6 hearings may eventually be necessary, allowing those parties that desire to settle to do so may clear
7 the way to make any future litigation process more simple, both in terms of the issues to be resolved
8 as well as the parties involved.

9 The Court should continue the trial as recommended by the City of Lancaster and extend all
10 deadlines associated with the trial for the same amount of time. A further case management
11 conference should be scheduled at the end of this time. If at that time the Court believes that further
12 progress is not being made on settlement, then the case can proceed to the Phase III trial.

13 Many parties who have participated in the settlement process have done so under the belief
14 that a successful settlement process could avoid the time and expense associated with trial. If the
15 Court is not willing to consider an extension of the trial date to accommodate efforts to settle, then
16 the Court should so inform the parties now. Since the Phase III trial will be at odds with the
17 settlement process, if there is no opportunity to avoid the time and expense associated with the trial,
18 then the parties will more prudently end the attempt at completion of the settlement and direct their
19 resources toward litigation. Such an outcome would be unfortunate and would guarantee that this
20 case will remain bogged down in unproductive litigation for years to come. The Court should not
21 allow a small minority of parties to effectively veto further settlement efforts by everyone else
22 simply because this minority believes it will gain leverage by resisting settlement.

23
24 Dated: July 13, 2010

BROWNSTEIN HYATT FARBER SCHRECK, LLP

25
26 By: 

MICHAEL T. FIFE
BRADLEY J. HERREMA
ATTORNEYS FOR AGWA

PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On July 13, 2010, I served the foregoing document described as:

**ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION'S
CASE MANAGEMENT STATEMENT**

on the interested parties in this action.

By posting it on the website at 4:30 p.m. on July 13, 2010.
This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on July 13, 2010.

MARIA KLACHKO-BLAIR
TYPE OR PRINT NAME



SIGNATURE