

MICHAEL T. FIFE (State Bar No. 203025)
BRADLEY J. HERREMA (State Bar No. 228976)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
21 East Carrillo Street
Santa Barbara, California 93101
Telephone No: (805) 963-7000
Facsimile No: (805) 965-4333

Attorneys for: Gene T. Bahlman, William R. Barnes & Eldora M. Barnes Family Trust of 1989, Thomas M. and Julie Bookman, B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri 2001 Trust, Calmat Land Company, Sal and Connie L. Cardile, Consolidated Rock Products, Del Sur Ranch LLC, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Dennis L. & Marjorie E. Groven Trust, Healy Enterprises, Inc., Hines Family Trust, Habod Javadi, Juniper Hills Water Group, Eugene V., Beverly A., & Paul S. Kindig, Paul S. & Sharon R. Kindig, Kootenai Properties, Inc., Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Malloy Family Partners, Maritorea Living Trust, Jose Richard H. Miner, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Eugene B. Nebeker, R and M Ranch, Inc., John and Adrienne Reza, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Sahara Nursery, Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Mabel Selak, Jeffrey L. & Nancee J. Siebert, Leo L. Simi, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Tierra Bonita Ranch Company, Beverly Tobias, **collectively known as the Antelope Valley Ground Water Agreement Association ("AGWA")**

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

CASE MANAGEMENT STATEMENT

Date: November 18, 2010
Time: 9:00 am
Dept.: 1

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) provides this case
2 management statement in order to update the Court on issues relating to the upcoming phase 3 trial.

3 The Court has defined the scope of the third phase of trial as follows:

4 The public water provider parties have essentially alleged that the
5 basin is in overdraft, that extraction of water on an annual basis
6 exceeds recharge, and that the basin will suffer serious degradation
7 and damage unless the Court exercises its equitable jurisdiction. In
8 this third phase of trial, the Court will hear evidence to determine
9 whether the basin, as previously defined by the Court in trial phases
10 one and two, is in such overdraft and to determine whether there is a
11 basis for the Court to exercise its equitable jurisdiction, including
12 implementation of a “physical solution,” as prayed for by the public
13 water providers. The public water providers have the burden of proof.

14 (May 6, 2010 Order 3:3-10.)

15 I. PHASE 3 POSITIONS OF THE PARTIES

16 The public water providers allege that the total sustainable yield of the basin is 110,500 acre-
17 feet per year. AGWA alleges that the yield of the basin is likely on the order of 180,000 acre-feet or
18 more, but that given the lack of any consistent monitoring of conditions in the basin, coupled with
19 the vast geographic scale of the basin, any identification of a specific numerical safe yield for the
20 basin at this time is subject to a wide margin of error.

21 There is no agreement about the current amount of pumping from the basin. Some parties
22 believe that current pumping is approximately 170,000 to 175,000 AFY. Others believe current
23 pumping is lower than this. All parties appear to agree that pumping from the basin was greatest in
24 the 1950s and 1960s at over 300,000 AFY for this entire 20-year period. The historic high appears
25 to have occurred in the early 1960s at approximately 380,000 AFY. No party appears to allege that
26 pumping has since reached these levels.

27 II. AGWA’S PHASE 3 POSITION

28 AGWA believes that since the late 1970s to early 1980s water levels show a general stability
or even an improvement across most of the basin, with the exception of localized pumping

1 depressions in the vicinity of the larger municipal pumping areas. Even if pumping levels are not
2 currently above the safe yield of the basin, planned urban growth in the Valley and the uncertainty of
3 imported water supplies makes it clear that pumping will increase to the point where it will exceed
4 the safe yield. AGWA believes that this condition is sufficient to justify the Court to exercise its
5 equitable jurisdiction, including the imposition of a physical solution.

6 Whether or not the term “physical solution” is applied to the management plan for the basin,
7 AGWA believes that the basin must be managed through a traditional Watermaster structure under
8 the supervision of the Court. It does not appear that any party contests the need for the Court to
9 exercise its equitable jurisdiction over the case and AGWA believes this would be an appropriate
10 area for stipulation between the parties prior to the Phase 3 trial.

11 AGWA believes that 150,000 AFY is a legitimate pumping target (not necessarily the safe
12 yield) for the basin for the next ten years while a management program that involves aggressive
13 monitoring is implemented. AGWA believes that an established management target of 150,000
14 AFY for the next ten years is technically justifiable and appropriately balances the Court’s
15 responsibilities under Article X, section 2 of the California Constitution to ensure that the basin is
16 put to maximum beneficial use, but in a way that does not cause harm to the resource. AGWA
17 believes that current data supports the position that the safe yield is higher than 150,000 AFY and
18 that additional data will continue to support this position.

19 20 **III. PHASE 3 PROCEDURAL ISSUES**

21 AGWA has identified the following procedural issue that may require the Court’s assistance
22 prior to the Phase 3 trial:

23 **A. Electronic Models**

24 Based on the deposition testimony to date, AGWA anticipates procedural issues concerning
25 the use of electronic models by the public water providers’ experts. It appears that the public water
26 providers analysis is heavily dependent on electronic modeling, but there appears to be an
27 unwillingness by the public water provider parties to provide working copies of these electronic
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1 models so that their functionality may be evaluated. If the parties cannot resolve this issue among
2 themselves, a request may be made to the Court to require production of the models.

3 4 **IV. PHASE 3 LEGAL ISSUES**

5 AGWA has identified the following legal issues that require briefing and resolution prior to
6 the Phase 3 trial. In order to properly prepare trial presentations and briefing, AGWA believes the
7 Court should rule on these issues at the earliest possible opportunity. AGWA is prepared to present
8 these issues via motions in limine in advance of the deadline for such motions if the Court believes
9 this would be the most appropriate format for such issues. These issues include:

10 **A. Definition of “Overdraft” and “Safe Yield”**

11 AGWA believes that the definition of “overdraft” is extraction in excess of safe yield of
12 water from the aquifer. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199; *City of*
13 *Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 929, *Orange County Water District v. City of*
14 *Riverside* (1959) 173 Cal. App. 2d 137.) The definition of “safe yield” is the maximum quantity of
15 water which can be withdrawn annually from a ground water supply under a given set of conditions
16 without causing an undesirable result. The phrase “undesirable result” is to be understood to broadly
17 refer to harm to the resource. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199,
18 278.).

19 AGWA believes there may be disagreement between the parties on this point.

20 **B. Redetermination of Safe Yield**

21 Article X, section 2 of the California Constitution mandates that, “. . . the general welfare
22 requires that the water resources of the State be put to beneficial use to the fullest extent of which
23 they are capable”

24 AGWA believes that implied in this mandate is a requirement that the Court maintain
25 continuing jurisdiction to adjust any ruling setting the safe yield of the basin should evidence be
26 presented of changed conditions or if new information is found -- such as that obtained through
27 increased monitoring and study of the Basin. If evidence of changed conditions or other new
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1 information is presented that suggests that the safe yield is higher or lower than the safe yield
2 determined by the Court, then it would violate Article X, section 2 to not consider this evidence in
3 order to determine whether the water resources of the basin can be used to a fuller extent or whether
4 there is a risk of harm to the resource. In short, res judicata does not apply to the determination of
5 safe yield.

6 AGWA believes there may be disagreement among the parties on this point.

7 **C. Equitable Jurisdiction to Implement a Physical Solution**

8 A "physical solution" involves the application of general equitable principles to achieve
9 practical allocation of water to competing interests so that a reasonable accommodation of
10 competing demands upon a water source can be achieved. (See Hutchins, *The California Law of*
11 *Water Rights* (1956) 351-354.) "The sine qua non of a physical solution is the existence of specific
12 conflicting demands which can be arbitrated." (*IID v. SWRCB* (1990) 225 Cal.App.3d 548, 572.) If
13 the evidence shows that the parties share a common water supply, and additionally, that one parties'
14 water use practices are substantially impacting another party's practices, an injunction against such
15 interference is proper. As a result, the court should impose a physical solution if one is feasible.
16 There need only be a "reasonable probability" of injury to another party to trigger the equitable
17 jurisdiction to impose a physical solution. (See, e.g., *Big Bear Mun. Water Dist. v. Bear Valley*
18 *Mutual Water Co.* (1989) 207 Cal.App.3d 363, 376.)

19 As a subspecies of real property, usufructuary water rights are subject to protection by
20 injunctive relief. (*People v. City of Los Angeles* (1950) 34 Cal.2d 695, 699-701; *Corona Foothill*
21 *Lemon Co. v. Lillibridge* (1937) 8 Cal.2d 522, 525.) However the activity to be enjoined must be the
22 actual cause of material injury to an existing reasonable and beneficial use. Although an existing
23 user is not entitled to an injunction against the appropriation and/ or use of surplus water supplies, he
24 or she is entitled to an injunction where the threat of future injury constitutes an immediate danger.
25 (*Rancho Santa Margarita v. Vail* (1938) 1 Cal.2d 501, 558.) The immediate or imminent danger
26 requirement is satisfied by a showing that there is a "reasonable probability" that the injury will
27 occur. (*Orcutt v. Pasadena Land & Water Co.* (1908) 152 Cal. 599, 601.)
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1 AGWA believes there may be disagreement between the parties on this point.

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4 Dated: November 15, 2010

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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6 By: _____

7 MICHAEL T. FIFE
8 BRADLEY J. HERREMA
9 ATTORNEYS FOR AGWA
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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 November 15, 2010, I served the foregoing document described as:

CASE MANAGEMENT STATEMENT

on the interested parties in this action.

By posting it on the website at 11:55 a.m. on November 15, 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 November 15, 2010.

MARIA KLACHKO-BLAIR
TYPE OR PRINT NAME

SIGNATURE