

**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, Cameo Ranching Co., 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, Gorrindo Family Trust, Leonard and Laura Griffin, 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., Dr. Samuel Kremen, 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, Jose Maritorenna Living Trust, Richard H. Miner, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Eugene B. Nebeker, R and M Ranch, Inc., John and Adrienne Reca, 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, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Tierra Bonita Ranch Company, Beverly Tobias, Vulcan Lands, Inc., Wilson Trust, **collectively known as the Antelope Valley Ground Water Agreement Association (“AGWA”)**

## ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding  
No. 4408

Included Actions:

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

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

## AGWA's OFFER OF PROOF FOR TESTIMONY OF DR. EUGENE NEBEKER

## PHASE III TRIAL

1 The Antelope Valley Groundwater Agreement Association ("AGWA") respectfully submits  
2 this Offer of Proof as to the testimony of Dr. Eugene Nebeker.

3 **A. Expert Designation of Dr. Nebeker**

4 Dr. Nebeker has specialized knowledge concerning matters relevant to the Antelope  
5 Valley as a whole, based on his personal experiences. Because of this he is both an expert and a  
6 percipient.

7 1. On July 15, 2010 Dr. Nebeker was designated as an expert for Phase III. A  
8 copy of Dr. Nebeker's expert designation is attached hereto as Exhibit "A."

9 2. The designation of Dr. Nebeker as an expert followed Court direction from  
10 the March 23, 2010 Case Management Conference. A true and correct copy of the transcript from  
11 this Case Management Conference is attached hereto as Exhibit "B." In pertinent part, the Court  
12 directed that, "Lay testimony about farming practices is expert testimony as opposed to percipient  
13 witness testimony." (RT, March 23, 2010 30:22-24)

14 3. Dr. Nebeker has the requisite specialized knowledge to permit him to provide  
15 competent and relevant expert testimony for the purposes of the proposed testimony described in  
16 Part B, below.

17 a. Dr. Nebeker is a licensed professional engineer in the branch of  
18 Agricultural Engineering, State of California.<sup>1</sup>

19 b. Dr. Nebeker was a member of the California Regional Water Quality  
20 Control Board, Lahontan Region from 1984 to 2004, and was Chairman twice. This is the Regional  
21 Board that adopted the Orders at issue.

22 c. Irrigation at Nebeker Ranch occurs with the use of effluent water from  
23 Los Angeles County Sanitation District No. 14 ("District"). Usage is currently 4 to 8 million gallons  
24 per day. Dr. Nebeker has made two presentations regarding irrigation with effluent in the Antelope  
25 Valley:

26 \_\_\_\_\_  
27 <sup>1</sup> Dr. Nebeker holds a Ph.D. in Chemical and Nuclear Engineering, California Institute of  
28 Technology; an M.S., Chemical Engineering, California Institute of Technology; and a B.S.,  
Chemical Engineering, Stanford University, though this educational background will not be used a  
basis for his competence to testify.

"Case History – Producing Alfalfa with Effluent Water,” Recycling Wastewater with Forage Crops, National Alfalfa Symposium, December 13-15, 2004, San Diego, California.

“Compatibility of Agriculture and Suburban Interests, Agricultural Reuse of Reclaimed Water in Antelope Valley,” Proceedings of the 1996 Water Reuse Conference, San Diego, CA, Feb. 25-28, 1996 Water Reuse Conference, San Diego, CA, Feb. 25-28, 1996, with D. B. Lambert.

The use of effluent water on Nebeker Ranch is specifically described in the Regional Board Orders as a measure that will reduce the volume of discharge to Paiute Ponds in the winter. (See Cease and Desist Order No. R6V-2004-0038, Finding No. 6 ("Interim Corrective Actions") paragraph "f".)

d. Dr. Nebeker is a third generation farmer in the Antelope Valley and has been involved in issues concerning farming practices in the Antelope Valley for many decades. He is the current President of the Los Angeles County Farm Bureau.

e. Dr. Nebeker engaged in a project with the Agricultural Extension Service of the University of California to compile a paper titled, "An Estimate of Crop Water Requirements in the Antelope Valley," dated April 19, 2007. This paper was peer reviewed by individuals from UC Extension. This paper was submitted to the State Water Resources Control Board who determined that, "it should be used as a guide in our Annual Notices."

**B. Subject of Dr. Nebeker's Testimony**

1. Dr. Nebeker will testify that effluent from the Lancaster Water Reclamation Plant has in the past flowed on to Rosamond Dry Lake. He will only testify as to the existence of this general fact. He will not testify as to specific quantities of such flows or when they occurred. The basis of this testimony will be his personal experiences as the owner and manager of Nebeker Ranch and his personal experiences as member of the Regional Board. This testimony will take approximately 5 minutes.

2. Dr. Nebeker will testify as to crop water requirements in the Antelope Valley. This testimony will be based upon his compilation of the paper identified above. Dr. Nebeker will testify as to the process of peer review of this paper and its submission to the State Water Resources

Control Board. This testimony will take approximately 10 minutes. In support of this testimony Dr. Nebeker will offer the following Exhibits:

a. Paper entitled, An Estimate of Crop Water Requirements in the Antelope Valley," dated April 19, 2007. A copy of this paper is attached hereto as Exhibit "C." This paper was provided during the deposition of Dr. Nebeker.

b. Correspondence from Mr. Blaine Hanson, Extension Irrigation and Drainage Specialist, Department of Land, Air and Water Resources, University of California, Davis, and Mr. Steve Orloff, Farm Advisor, Siskiyou County and former Farm Advisor, Los Angeles County, University of California Cooperative Extension, dated April 22, 2008 providing a peer review of the paper described above. This correspondence is reply correspondence to a letter from Dr. Nebeker dated March 25, 2008, and thus is admissible under the "reply letter doctrine" of Evidence Code section 1420. A copy of this letter is attached hereto as Exhibit "D." This letter was provided during the deposition of Dr. Nebeker.

c. Correspondence from Ms. Victoria A. Whitney, Deputy Director of Water Rights, State Water Resources Control Board, to Dr. Nebeker dated April 6, 2009 responding to the submission of the paper described above and the State Board's review of same. A copy of this letter is attached hereto as Exhibit "E." This letter was provided during the deposition of Dr. Nebeker.

3. Dr. Nebeker will testify as to the origin of Scalmanini Exhibit 56. On cross examination, Mr. Scalmanini testified that he did not know the origin of the table shown in his Exhibit 56. (See RT, January 19, 2011 (Scalmanini Volume 7) 849:17-851:14, a true and correct copy of which is attached hereto as Exhibit "F".) Dr. Nebeker will testify that Scalmanini Exhibit 56 was prepared to function as Table 2 to the paper described above. Dr. Nebeker will testify that this paper was a first draft and that the values contained therein were subsequently refined and changed. This testimony will take approximately 5 minutes.

4. In the alternative, Mr. Orloff could provide testimony essentially identical to Dr. Nebeker's regarding items 2 and 3, with the exception of the submission of the crop water values to the State Water Resources Control Board. Mr. Orloff was designated as a non-retained expert

witness by AGWA on July 29, 2010. A copy of this designation is attached hereto as Exhibit "G."

Dated: March 19, 2011

BROWNSTEIN HYATT FARBER SCHRECK, LLP



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 March 19, 2011, I served the foregoing document described as:

**AGWA's OFFER OF PROOF FOR TESTIMONY OF DR. EUGENE NEBEKER**

on the interested parties in this action.

By posting it on the website at 12:00 p.m. on March 19, 2011.  
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 March 19, 2011.

MARIA KLACHKO-BLAIR  
**TYPE OR PRINT NAME**



SIGNATURE