

MICHAEL T. FIFE (State Bar No. 203025)
BRADLEY J. HERREMA (State Bar No. 228976)
HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101
Telephone No: (805) 963-7000
Facsimile No: (805) 965-4333

Attorneys for: B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri 2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, 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, Eugene B. Nebeker, R and M Ranch, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, , Hines Family Trust , Malloy Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, **collectively known as the Antelope Valley Ground Water Agreement Association ("AGWA")¹**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

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-254-348 Wm. 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

STATEMENT OF ISSUES BY AGWA

Date: March 24, 2006
Time: 10:00 A.M.

///

///

¹ This list only includes AGWA members who have to date actually been named in the lawsuit.

**Issues List Prepared by Antelope Valley Groundwater Agreement Association
for Meet and Confer Meeting March 24, 2006**

The Antelope Valley Groundwater Agreement Association ("AGWA") is a group of landowners that are acting together for their mutual defense in the Antelope Groundwater Basin Adjudication. At the February 17, 2006 Case Management Conference, AGWA was appointed as the liaison with the local landowners generally.

The following issue list is submitted as AGWA's view of the major issues that will need to be resolved as a part of the adjudication. Where appropriate, issues concerning timing of such resolution are also discussed.

1. Communication with Landowners

LA County Waterworks has named and served a large number of small landowners, and plans to name and serve even more. AGWA has been appointed liaison to these parties, but has no way to contact them until they have appeared in the case and been added to the service list. Most of the named landowners have not yet appeared. AGWA has requested from LA County Waterworks that it provide the contact information for these parties, but LA County Waterworks has been unwilling to cooperate with AGWA.

AGWA would like to be able to make contact with the landowners to which it is liaison. Such communication could help to bring these parties in to the litigation in an orderly and efficient manner. AGWA hopes the Court will take the opportunity of the March 24 issues conference to direct LA County Waterworks to cooperate with AGWA in this regard.

2. Basin Boundaries

The boundaries of the basin need to be established immediately. This will determine who needs to be a party to the litigation. It is not necessary for these purposes that sub-basins be established. For further discussion concerning sub-basins, please see Appendix A to this issue list.

///

///

///

1 **3. Acreage limitation**

2 A determination needs to be made immediately concerning the size of parcels that will be
3 brought in to the adjudication. Our understanding is that much of the area of the Valley is composed
4 of 2.5 acre parcels.

5 **4. Safe Yield**

6 It may not be necessary for the Court to establish a “safe yield” with the legal implications
7 associated with that term. Depending on the resolution of other issues, such as the issue of “self-
8 help,” the issue of prescription may be reached through stipulation between the parties. In that case,
9 the Court may only be required to determine how much water is available to be pumped from the
10 groundwater basin free of any kind of replacement obligation. Such a determination does not require
11 the legal precision associated with a “safe yield” determination. For a further discussion of another
12 approach to a determination of basin yield other than “safe yield,” please see Appendix “B” to this
13 issue list.

14 **5. Legal effect of self-help**

15 While a yield for the Antelope Groundwater Basin has not yet been established, the historic
16 emphasis on agriculture and water use by other landowners in the Antelope Valley suggests that
17 their pumping may be near or greater than the “safe yield” of the Basin. Such pumping would
18 constitute self-help by the landowners. Depending on the legal effect of self-help, a determination
19 concerning safe yield and prescription may become moot. There are other issues associated with this
20 including the fact that some farmers have refrained from pumping under Water Code section 1005.1
21 in order to take recycled water.

22 **6. Special Status Landowners: re nature of overlying rights, effect of**
23 **prescription, water use, etc**

- 24 A. City of Los Angeles
25 B. LA County Sanitation District

26 Both the City of Los Angeles and the LA County Sanitation District have indicated that they
27 intend to assert overlying water rights. Unlike other overlying users however, both are public entities
28 and will likely claim special status in relation to any claim of prescription against overlying users. At

1 the same time, it is not clear that either has ever pumped water for their own use on the property. It is
2 also not clear that either of these entities has a legitimate use for water.

3 While California law concerning prescription may create a special case for these landowners,
4 the law concerning correlative rights does not appear to have ever been applied in a differential
5 manner amongst landowners. Thus, it appears that whatever special status these landowners may
6 claim, whatever rights they may have will be correlative with all other landowners.

7 **7. Water quality issues relating to LA County Sanitation District**

8 LA County Sanitation District will be pumping water as part of a cleanup operation under
9 order from the Regional Water Quality Control Board ("RWQCB"). Any water rights it claims will
10 be based upon this operation. This raises a legal question as to whether a polluter can establish rights
11 based on its ordered cleanup operation. Furthermore, in the context of legal claims made by LA
12 County Waterworks, a determination may be required as to whether such pumping in the Antelope
13 Valley constitutes a waste of water. It is AGWA's understanding that the Sanitation District is
14 proposing a significant increase in pumping from the Basin for the benefit of this cleanup operation
15 and is currently increasing its land ownership for this purpose through condemnation. Finally, it is
16 likely that issues will be raised by the Sanitation District during the course of the litigation with
17 regard to ownership of treated wastewater pursuant to Water Code section 1210.

18 This situation raises substantive issues regarding the Sanitation District's water rights, and it
19 also raises procedural issues since the situation is being addressed in another forum in addition to the
20 adjudication. Members of AGWA have participated in the RWQCB forum in an attempt to prevent
21 further expansion of pumping by the Sanitation District. AGWA would therefore expect to raise the
22 same issues in this litigation, and mirror recommendations that have been made to the RWQCB
23 including: injunctive relief; the appointment of a trustee to oversee the Sanitation District; and the
24 imposition of natural resource damages for harm caused to the groundwater basin.

25 **8. Storage**

26 Central to the adjudication will be legal issues relating to legal entitlement and distribution of
27 benefits of the storage space. The Antelope Valley could contain as much as eight million acre-feet
28

1 of available storage capacity and is located at the intersection of some of the major water
2 transportation facilities in Southern California. It has tremendous value to all of Southern California.

3 Control over the storage assets in an adjudicated basin has been the subject of recent
4 litigation and should be clarified through this litigation. The purveyors currently appear to be
5 attempting to form a Joint Powers Agency in order to conduct water banking in the area for the
6 primary benefit of non-local interests. Formation of this JPA appears to be an attempt to pre-empt
7 the process of the formation of a Water Storage District under the Water Code which has been
8 initiated by local landowners in the Basin for the benefit of the local Antelope Valley community.

9 **9. Dormant Overlying Rights**

10 Most of the acreage in the Valley is raw land on which water has never been pumped. What
11 is the status of overlying rights with regard to this property?

12 **10. Carrot grower special case**

13 Diamond Farming Company and Bolthouse Farms have indicated that they will seek some
14 kind of special status because of their prior lawsuits. AGWA disagrees with any special status for
15 these two parties. As landowners, their rights are correlative to all other landowners, and nothing
16 about their prior lawsuits changes this. Furthermore, since these prior cases are quiet title cases,
17 clarification should be provided to the parties in light of recent events in the Santa Maria
18 adjudication.

19 **11. Water Code section 106**

20 LA County claims that Water Code section 106 means that pumping used for municipal
21 purposes has a higher priority than overlying rights. To AGWA's knowledge, this section of the
22 Water Code has never been applied in this manner. This may be a subject to address at the demurrer
23 stage.

24 **12. Waste and Unreasonable Use**

25 LA County Waterworks has asserted that agricultural pumping in the Antelope Valley is a
26 waste of water per se. AGWA knows of no cases that support such an assertion. This issue may be
27 suitably addressed at the demurrer stage.

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

1 **13. Compensation for Past Trespass on Overlying Water Rights**

2 LA County Waterworks has asserted that it has unlawfully trespassed against the property of
3 the overlying landowners by pumping water in an over drafted condition. The landowners intend to
4 request damages to compensate for this admitted unlawful trespass.

5 **14. Liability for Subsidence**

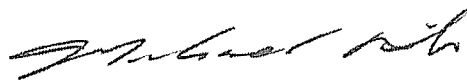
6 LA County Waterworks has alleged that it has pumped water during a condition of overdraft
7 of the Basin, and that such pumping has, among other things, caused subsidence. As a part of this
8 lawsuit, it would be appropriate for the Court to assign liability for damages that have or may arise
9 due to this unlawful pumping.

10 **15. Technical information development**

11 It will take many years to develop accurate technical data about the Antelope Valley.
12 However, given the water situation in the Antelope Valley, the basic structure of the adjudication
13 resolution needs to be established before a full technical analysis can be performed. This is a central
14 issue to the adjudication because the parties and the Court must be prepared to craft a solution that
15 takes account of the lack of complete technical knowledge and that leaves flexibility for change as
16 such information is developed in the future.

17
18 Dated: March 17, 2006

HATCH & PARENT, A LAW CORPORATION

19
20 
21 By: _____

22 MICHAEL T. FIFE
23 BRADLEY J. HERREMA
24 ATTORNEYS FOR AGWA
25
26
27
28

APPENDIX A: SUB – BASINS

“The Antelope Valley drainage basin has been divided into 12 ground-water subdivisions on the basis of faults, consolidated rocks, ground-water divides, and, in some cases, arbitrary boundaries” (Sentence 2, Paragraph 2, Page 6, “Simulation of Ground-Water Flow and Land Subsidence, Antelope Valley Ground-Water Basin, California,” Water Resources Investigation Report 03-4016, U.S.G.S., Sacramento, CA 2003).

“Antelope Valley contains numerous faults, some of which act as partial barriers to ground-water flow.” (Sentence 1, Paragraph 2, Page 7, IBID).

Boundaries of the Antelope Valley Groundwater Basin to be the geographical area defined by the Lancaster, West Antelope, Finger Buttes, Neenach, Pearland, Buttes, and North Muroc subbasins to perhaps include the accompanying watershed boundaries. Basis for determination:

1. The Lancaster subbasin is the most affected area by over-pumping.
2. Since natural recharge and groundwater banking are important aspects of this solution, the areas of recharge and most probable banking areas are the
West Antelope, Finger Buttes, Neenach, Pearland, Buttes and
North Muroc subbasins.
3. North of the Finger Buttes and Neenach subbasins, the boundary of the ground-water basin is formed by the Willow Springs Fault. This fault is assumed to be an effective barrier to ground-water flow to and from subbasins to the north. This assumption is supported by evidence that springs existed along the fault prior to ground-water development and, more recently, by large water-level differences over short distances across the fault. (Paragraph 3, Page 7, IBID.) Therefore, the U.S.G.S. believes the Willow Springs Fault to a great extent isolates the above subbasins from the Willow Springs, Gloster, Chaffee, and Oak Creek subbasins.

Further investigations to improve current knowledge will be time-consuming and expensive. Numerous monitoring wells need to be drilled on both sides of suspected faults and the static water levels and water quality should to be analyzed.

APPENDIX B: EMPIRICAL GROUNDWATER BASIN YIELD

The Empirical Groundwater Basin Yield is the average yearly amount of water that is put into the groundwater by all sources. Therefore this is the amount that can be pumped from the basin every year without having the volume of water in storage decrease. It is considered to be the best estimate at this time using available data. It is expected that the Watermaster should modify this estimate as better and more complete data becomes available in the future. If the basin is managed correctly in the future, this yield may increase.

The Empirical Groundwater Basin Yield should be based on sound engineering and technical fundamentals and prepared based on a simple, straightforward and easy to understand procedure so that the public at large can understand and be comfortable with the estimate. More complicated procedures using better data may be used by the Watermaster in the future to refine these initial estimates. It is not the function of the current process to make estimates based on data that is not available or a procedure that is complicated and not easily understood.

It was noticed that between about 1985 through 1995 that the storage volume of water in the Antelope Valley groundwater basin remained relatively constant. As a result, the flow of water into the basin by natural recharge, return flows, etc. equaled the water that was pumped out of the basin. The Empirical Groundwater Basin Yield is equal to the average annual pumping over this period of time.

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 17, 2006, I served the foregoing document described as:

STATEMENT OF ISSUES BY AGWA

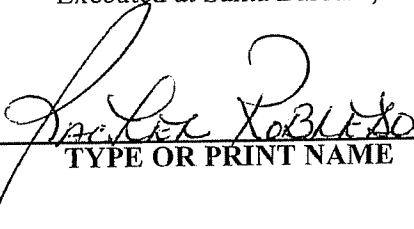
on the interested parties in this action.

By posting it on the website to the party's e-mail address listed on the attached service list at _____ p.m./a.m. on March 17, 2006. This electronic transmission was reported as complete and without error.

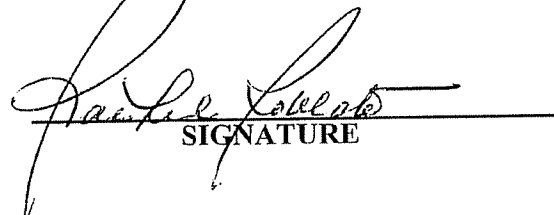
By U.S. Mail to the three courts listed on the attached service list. I am readily familiar with the firm's practice of collection and processing correspondence on the same day with postage thereon fully prepaid at Santa Barbara, California, in the ordinary course of business.

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

Executed at Santa Barbara, California, on March 17, 2006.



TYPE OR PRINT NAME



SIGNATURE

SERVICE LIST

Eric Garner, Esq.
Jeffrey Dunn, Esq.
BEST BEST & KREIGER
3750 University Avenue, Suite 400
Riverside, CA 92502-1028
(951) 686-1450, 301; Fax (951) 682-4612
Addresses for electronic service:
ELGarner@bbklaw.com,
Lynda.Serwy@bbklaw.com,
JVDunn@bbklaw.com, kkeefe@bbklaw.com

Douglas J. Evertz, Esq.
STRADLING, YOCCA, CARLSON & RAUTH
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6522
(949) 725-4000; Fax (949) 725-4100
Address for electronic service:
devertz@sycr.com

John Tootle, Esq.
CALIFORNIA WATER SERVICE COMPANY
3625 Del Amo Boulevard, Suite 350
Torrance, CA 90503
(310) 257-1488; Fax (310) 257-4654
Address for electronic service:
jtootle@calwater.com

Thomas Bunn, Esq.
LAGERLOF, SENEAL, BRADLEY,
GOSNEY & KRUSE
310 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
(626) 793-9400; Fax (626) 793-5900
Address for electronic service:
TomBunn@lagerlof.com

Richard Zimmer, Esq.
CLIFFORD & BROWN
1430 Truxton Avenue, #900
Bakersfield, CA 93301
(661) 322-6023; Fax (661) 322-3508
Address for electronic service:
rzimmer@clifford-brownlaw.com

Robert H. Joyce, Esq.
LEBEAU, THELEN, LAMPE, MCINTOSH
& CREAR, LLP
5001 East Commercenter Drive, Ste 300
Bakersfield, CA 93389-2092
Fax (661) 325-1127
Addresses for electronic service:
bjoyce@lebeauthelen.com,
DLuis@Lebeauthelen.com

1 James L. Markman, Esq.
Steve Orr, Esq.
2 RICHARDS, WATSON & GERSHON
P.O. Box 1059
3 Brea, CA 92822-1059
(714) 990-0901; FAX (714) 990-2308
4 Addresses for electronic service:
jmarkman@rwglaw.com, sorr@rwglaw.com

Attorneys for City of Palmdale

5 Janet Goldsmith, Esq.
6 KRONICK, MOSKOWITZ, TIEDEMANN &
GIRARD
7 400 Capital Mall, 27th Floor
Sacramento, CA 95814-4417
8 FAX: (916) 321-4555
Address for electronic service:
9 jgoldsmith@kmtg.com

Attorneys for City of Los Angeles

10 John Slezak, Esq.
IVERSON, YOAKUM, PAPIANO & HATCH
11 One Wilshire Blvd., 27th Floor
624 S. Grand Ave.
Los Angeles, CA 90017
12 (213) 624-7444; FAX: (213).629-4563
Address for electronic service:
13 Jslezak@iyph.com

Attorneys for Los Angeles Department of Water
and Power

14 Julie A. Conboy
Deputy City Attorney
15 Department of Water and Power
111 North Hope Street
16 P.O. Box 111
Los Angeles, CA 90012
17 213-367-4513; FAX: (213) 241-1416
Address for electronic service:
18 Julie.Conboy@ladwp.com

Attorneys for Los Angeles Department of Water
and Power

19 Henry Weinstock, Esq.
20 Fred Fudacz, Esq.
NOSSAMAN, GUTHNER, KNOX, ELLIOTT LLP
21 445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071
22 (213) 612-7839; FAX (213) 612-7801
Addresses for electronic service:
23 hweinstock@nossaman.com,
24 ffudacz@nossaman.com

Attorneys for Tejon Ranch