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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
2District 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
)

) **AGWA PROPOSAL RE CONTENT OF**
) **STATEMENT OF DECISION**
)

) **Date: TBD**
) **Time: TBD**
)

1 Pursuant to California Code of Civil Procedure section 632, the Antelope Valley
2 Groundwater Agreement Association ("AGWA") makes the following initial proposals as to the
3 content of the statement of decision.

4 All references are to the Court's Tentative Decision Phase Three Trial dated May 4, 2011
5 unless otherwise noted.

6 Page 2, lines 12-14: "The first issues to be decided in the declaratory relief cause of action
7 are the issues of overdraft and safe yield. The remaining causes of action and issues are to be tried in
8 a subsequent phase or phases." The statement of decision should clarify whether the findings
9 concerning safe yield and overdraft are intended to be used in subsequent phases of trial, in
10 particular for a prescriptive rights phase.

11 Page 3, lines 7-9: "These same parties contend that it is not possible to establish a single
12 value for safe yield; instead they have requested that the Court determine a range of values for safe
13 yield." The statement of decision should clarify the basis for this statement. No landowner party
14 asserted that it is "not possible to establish a single value for safe yield," rather they claimed that the
15 current state of the data does not allow for the level of precision asserted by the purveyors experts.
16 Each of the landowner experts identified optimal specific numbers within the ranges they calculated;
17 two of the purveyor experts (Mr. Durbin and Ms. Oberdorfer) acknowledged significant error bands
18 on the purveyor calculations.

19 Page 3, line 11: ". . . the burden must be satisfied for this phase and purpose by a
20 preponderance of the evidence." The statement of decision should clarify what is meant by
21 "purpose" in this sentence and identify the legal basis for the use of a preponderance of the evidence
22 standard to accomplish this purpose.

23 Page 3, lines 17-19: "'Safe Yield' is the amount of annual extractions of water from the
24 aquifer over time equal to the amount of water needed to recharge the groundwater aquifer and
25 maintain it in equilibrium, plus any temporary surplus." The statement of decision should clarify that
26 the definition of "safe yield" used in the decision is a simple water balance of extractions compared
27 to recharge. It should also identify the legal basis for the use of such a definition.

1 Page 4, line 28: "Reliable estimates of long-term extractions from the basin have exceeded
2 reliable estimates of the basin's recharge by significant margins" The statement of decision
3 should explain the evidentiary basis for this conclusion. The statement of decision should explain
4 what is meant by "significant margins" and specifically identify the time periods in which such
5 "significant margins" exist.

6 Page 5, line 1: ". . . and empirical evidence of overdraft in the basin corroborates this
7 conclusion." The statement of decision should explain the evidentiary basis for this conclusion and
8 specifically define "empirical evidence" in this context and identify the time-frames in which such
9 empirical evidence exists.

10 Page 5, lines 2-3: "The basin has sustained a significant loss of groundwater storage since
11 1951." The statement of decision should explain the evidentiary basis for this conclusion, and should
12 define the term "significant" as it relates to the overall amount of water in storage in the basin.

13 Page 5, lines 4-5: ". . . precipitation has increased with the appearance of wetter parts of the
14 historical cycle" The statement of decision should explain the evidentiary basis for this
15 conclusion.

16 Page 5, line 6: The statement of decision should explain the meaning of "harm" in this
17 context.

18 Page 5, line 8 (footnote 3): The statement of decision should explain the evidentiary and
19 legal basis for the conclusion that precipitation and wells records post 1951, in particular in the
20 1951-1961 period, are more reliable than precipitation and well records prior to 1951.

21 Page 5, lines 11-12: ". . . with continuous lowering of water levels and subsidence extending
22 to the present time, with intervals of only slight rises in water levels in some areas." The statement of
23 decision should explain the evidentiary basis for this conclusion and specifically explain the
24 apparent inconsistency between a "continuous" lowering of water levels when there are "intervals of
25 slight rises" of water levels.

Page 5, line 13: the statement of decision should clarify that the areas of increased pumping are the "Palmdale and Lancaster areas" and specifically define the extent of these areas. The statement of decision should explain the evidentiary basis for this conclusion.

Page 5, lines 19-21: "While the lowering of current water levels has slowed, and some levels in wells in some areas have risen in recent years, significant areas within the aquifer continue to show declining levels, some slightly so, but many with material lowering of water levels." The statement of decision should explain the evidentiary basis for this conclusion, and specifically identify which wells levels in which areas have risen, and what is "significant" and what is "material" in this context.

Page 5, lines 22-23: "Thus, the Antelope Valley adjudication area has been in a state of overdraft for more than 50 years" The statement of decision should explain the evidentiary basis for this conclusion.

Page 5, line 25: The statement of decision should explain the evidentiary basis for the finding of "increased precipitation" in "recent years."

Page 5, line 25 – page 6, line 1: The statement of decision should explain the evidentiary basis for the conclusion that, ". . . prospective cyclical precipitation fluctuations . . . " create a danger of exacerbating the effects of overdraft.

Page 6, lines 4-6: "While some of the ongoing subsidence may be attributable to residual subsidence (from earlier periods of shortfall) that would not seem to be an explanation for the extent of continued subsidence." The statement of decision should explain the evidentiary basis for this conclusion and specifically identify the amount of the referenced "extent" of continued subsidence that is not attributable to residual subsidence. The statement of decision should address procedural irregularities associated with such evidence.

Page 6, line 10: The statement of decision should explain the legal or evidentiary basis for the conclusion that, "A calculation of safe yield is necessary to manage the basin"

Page 6, lines 20-21; page 7, line 1: The statement of decision should explain the evidentiary basis for the conclusion that the 50 year base period is more credible than the base periods used by

1 either Dr. Bachman or Mr. Sheahan, and should explain the referenced "standard" used to make this
2 determination.

3 Page 7, lines 3-4: "The total amount of extractions of water by pumping is not seriously in
4 dispute by any of the experts who testified." This statement is inaccurate. The statement of decision
5 should clarify that AGWA raised significant concerns about Mr. Scalmanini's pumping calculations,
6 calling in to question both the crop acreages used in those calculations as well as the crop water duty
7 used. For example, if the crop water duty for alfalfa is 7.5 acre-feet per acre rather than the 6.5 acre-
8 feet per acre used by Mr. Scalmanini, then in 2009, Mr. Scalmanini's pumping estimate for alfalfa
9 alone is 6,592 acre-feet too low (one-acre foot for every acre of alfalfa grown in 2009).

10 Page 7, Line 5: ". . . pumping currently is estimated to range from 130,000 to 150,000 acre
11 feet a year." The statement of decision should explain the evidentiary basis for this conclusion. Due
12 to the dispute concerning calculation of pumping as described above, the statement of decision
13 should specifically identify the component evidentiary grounds for the various parts of the pumping
14 calculation including the evidentiary basis for the calculated crop water duties and agricultural
15 acreages through time.

16 Page 7, line 14: "The nature of agricultural duties has changed as well." The statement of
17 decision should explain the evidentiary basis for this conclusion.

18 Page 7, lines 15-16: "The type of irrigation used by farmers has become more efficient"
19 The statement of decision should explain the evidentiary basis for this conclusion.

20 Page 8, lines 2-4: "The Court recognizes the imprecision of the various estimates and the fact
21 that an estimate by definition is imprecise." The statement of decision should clarify the quantified
22 degree of imprecision in the estimates as presented by the expert testimony by both purveyors and
23 landowners, and explain how this relates to the finding that the identified safe yield of 110,000 is
24 "conservative."

25 Page 8, lines 16-17: "If there were a surplus, even in the shortened base periods used by
26 some experts, there should not be subsidence of land" The statement of decision should explain
27 the evidentiary basis for this conclusion.

1 Page, 8, lines 16-19: "If there were a surplus, even in the shortened base periods used by
2 some experts, there should not be . . . the need to drill for water at deeper and deeper levels in those
3 parts of the aquifer most affected by the overdraft." The statement of decision should explain the
4 evidentiary basis for this conclusion, in particular it should identify the evidentiary basis for the
5 conclusion that there has been a need to drill for water at deeper and deeper levels and that such
6 would not be the case even if the Basin were in a condition of surplus.

7 Page 8, lines 19-20: "The physical condition of the valley is inconsistent with those estimates
8 that there is and has been a surplus of water in the aquifer." The statement of decision should clarify
9 that the physical conditions referenced in this sentence are those described in the prior sentence: (1)
10 subsidence of land, and (2) the need to drill for water at deeper and deeper levels in those parts of the
11 aquifer most affected by the overdraft.

12 Page 9, line 8: The statement of decision should clarify in what way the 110,000 is
13 "conservative" and explain how this relates to the legal definition of safe yield and Article X, section
14 2 of the California Constitution.

15 Page 9, line 7-10: ". . . the Court finds by a preponderance of the evidence that setting a safe
16 yield at a conservative 110,000 acre feet a year will permit management of the valley in such a way
17 as to preserve the rights of all parties" The statement of decision should clarify that the setting
18 of the safe yield in the phase 3 decision is done for the purpose of establishing a management
19 number to be used in the formulation of a management plan.

20 Page 9, line 15: consistent with the previous comment, the statement of decision should
21 clarify that the number established in Phase 3 is a "safe yield management number" and should
22 clarify what this means.

23 Page 9, lines 10-11: ". . . in accordance with the Constitution and the laws of the State of
24 California." The statement of decision should clarify what this means and specifically explain how
25 setting a safe yield at a "conservative 110,000" will accomplish this goal.
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27
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Page 9, lines 12-14: "These differences require management decisions that respect the differences in both geology and the cultural needs of the diverse parts of the valley." The statement of decision should clarify what is meant by the terms "respect" and "cultural needs" in this sentence.

Page 9, lines 15-17: "It should not be assumed that the safe yield management number may not change . . . as the empirical evidence based on experience in managing the basin suggests it is either too high or too low." The statement of decision should clarify that this means that if going forward monitoring of the basin produces empirical evidence demonstrating that evidence presented in Phase 3, including but not limited to, estimates of pumping, estimates of change in storage and estimates of current subsidence are incorrect, that the safe yield management number may be redetermined.

Dated: May 23, 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 May 23, 2011, I served the foregoing document described as:

AGWA's PROPOSAL RE CONTENT OF STATEMENT OF DECISION

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on May 23, 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 May 23, 2011.

MARIA KLACHKO-BLAIR
TYPE OR PRINT NAME



SIGNATURE