

**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 and Julie Barnes, William R. Barnes & Eldora M. Barnes Family Trust of 1989, Thomas M. Bookman, B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri 2001 Trust, Son Rise Farms, Calmat Land Company, Sal and Connie L. Cardile, Efren and Luz Chavez, Consolidated Rock Products, Del Sur Ranch LLC, Steven Godde as Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Robert and Phillip Gorrindo, Gorrindo Family Trust, Laura Griffin, Healy Farms, Healy Enterprises, Inc., 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, Maritorena Living Trust, Jose and Marie Maritorena, Richard H. Miner, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Eugene B. Nebeker, R and M Ranch, Inc., Richard and Michael Nelson, Robert Jones, John and Adrienne Reca, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Sahara Nursery, Mabel Selak, Jeffrey L. & Nancee J. Siebert, Dr. Samuel Kremen, Tierra Bonita Ranch Company, Beverly Tobias, Triple M Property FKA and 3M Property Investment Co., Vulcan Materials Co. and Vulcan Lands Inc., Willow Springs Company, Donna and Nina Wilson, Ramin Zomorodi, Genz Development and Castle Ranch Estate, **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-254-348 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

) Judicial Council Coordination Proceeding  
) No. 4408  
)

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

) **AGWA’S OPPOSITION TO MOTION FOR**  
) **LEGAL FINDINGS ON WATER CODE**  
) **REQUIREMENTS TO REPORT**  
) **EXTRACTIONS OF GROUNDWATER IN**  
) **LOS ANGELES COUNTY**

) **Date: February 14, 2012**  
) **Time: 9:00 am**  
) **Room: 1515**  
)

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The Antelope Valley Groundwater Agreement Association (“AGWA”) hereby files this Opposition to the Los Angeles County Waterworks District No. 40 Motion for Legal Findings on Water Code Requirements to Report Extractions of Groundwater in Los Angeles County filed January 17, 2012 (“County Motion”). The Court and the parties are without the benefit of any existing guidance or precedent with regard to these statutes because they have never been interpreted by any Court, and do not appear to have ever been enforced in any manner. While Waterworks District No. 40 (“County”) claims its proposed findings result from the plain reading of the statutes, the statutes do not evince the conclusions the County requests the Court to make. In fact, an attempt to answer the County’s questions raises more questions than the answers it provides. While the effect of the statutes in this case is not clearly determinable from a plain reading of the statutes themselves, the Court should not attempt to determine their effect at this time, because application of the statutes would only be relevant if a finding of prescription was made and until that time any finding by the Court would be entirely advisory.

**I. A PLAIN READING OF THE STATUTES DOES NOT SUPPORT THE COUNTY’S PROPOSED FINDINGS**

The County Motion poses three questions regarding the requirements of Water Code section 4999, *et seq.* As described below, with the exception of the County’s first question, a plain reading of the statutes does not support the County’s proposed findings, nor does it address the most critical issue regarding section 4999 *et seq.*: What the actual effect of the application of the statutes in this case would be.

Initially, it must be pointed out that the sections at issue in the County Motion have never been validated, interpreted, nor applied. (Littleworth and Garner, California Water II (2nd ed. 2007) 2007, p. 78 [“No case has determined the validity of [section 5004]”].) Accordingly, there is no guidance or precedent to guide the Court in its interpretation of these provisions of the Water Code. While the County correctly states that the Court should adopt a literal or plain meaning of a statute when such a meaning is clear, the meaning and effect of this statute is far from clear.

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1           **A.     The County’s Proposed Findings Misread and Misinterpret the Statutes**

2                   1.       The County’s First Question

3           The County’s first question asks, “Does Water Code section 4999 et seq. require a party  
4 extracting more than 25 afy in Los Angeles County to file an annual notice with the State Water  
5 Resource (sic) Control Board?” (County Motion, at ii.) The County’s proposed response to this  
6 question is that “All parties who used more than 25 afy in Los Angeles County are subject to Water  
7 Code section 4999 et seq, unless exempted by Water Code Section 5001.” (County Motion, at 5.)  
8 Section 5001<sup>1</sup> speaks for itself as to which persons must file annual notices and during which years  
9 and under which circumstances this filing must be done. The Court need not make a legal  
10 determination that the language of the statute is what it is. This will not resolve the more critical  
11 questions as to section 4999 *et seq.* – how those statutes would apply in this case.

12                   2.       The County’s Second Question

13           The County’s second question asks, in regard to parties required to file annual notices  
14 pursuant to section 5001, “is a party’s failure to file the notice deemed a party’s non use of water for  
15 a reasonable and beneficial purpose under Water Code sections 5003 and 5004?” (County Motion,  
16 at ii.) In response, the County requests that the Court find that the “party’s failure to file the Notice  
17 as required by Water Code section 5001, is deemed to be a non use of ground water, a non use of  
18 ground water for reasonable and beneficial use, and a loss of ground water right for each year in  
19 which the Notice was required.” (County Motion, at 5.) The County bases its proposed finding on  
20 what it describes as the clear conclusion resulting from a plain reading of the statutes:

21                               Stated simply, Sections 5003, 5004 and 5005 state the failure to file  
22                               the Notice is deemed the non use of ground water for the reporting  
23                               year, the amount of ground water extracted is deemed not be used for a  
24                               reasonable and beneficial purpose, and that no claim of right has been  
25                               made for that year.

26           (County Motion, at 4.) However, the statues are not clearly susceptible to an interpretation  
27 consistent the County’s proposed finding.

28           <sup>1</sup> All further references are to sections of the Water Code, unless specifically noted otherwise.

a. The Statutes do not Explain the Effect of “Non Use”

The County requests that the Court find that the failure by a party required to file a notice pursuant to section 5001 is a non use of groundwater and a non use of groundwater for reasonable and beneficial<sup>2</sup> purposes. Again, the County claims that the language in the statutes themselves is clear. (County Motion, at 4 [“Here, the statutory language is not ambiguous and the consequence for failing to file the Notice required by Water Code section 5001 is clear and unequivocal: Water Code section 5004 provides that failure to file the required Notice ‘shall be deemed equivalent *for all purposes to nonuse.*’ (Water. Code § 5004 [emphasis added].)”] Putting aside the question of why this Court’s determination would be necessary if this was the case, again, the County does not address what the impact of such a finding is and when it applies.

Two sections within section 4999 *et seq.* address the effect of a failure to file a required notice on water use – sections 5003 and 5004. While the County quotes from section 5003 regarding a failure to file a notice and a claim of right regarding the extraction of groundwater, nowhere does the County Motion address the context of section 5003’s statements in this regard – the perfection of a prescriptive right. (Wat. Code, § 5003 [“No prescriptive right that might otherwise accrue to extract ground water shall arise or accrue to, nor shall any statute of limitations operate in regard to the ground water in the four counties after the year 1956 in favor of any person required to file a notice of extraction and diversion of water, until...”].) While the plain meaning of a statute is to be given when possible, “The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible.” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) The County Motion’s proposed findings do not take into account this important aspect of the statutes.

The most important determination in regard to section 4999, *et seq.* would be the effect of section 5004’s statement that failure to file a notice for a prior year “shall be deemed equivalent for all purposes to nonuse for such year.” (Wat. Code, § 5004.) The County requests a finding that is

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<sup>2</sup> Nowhere in any section of section 4999 *et seq.* is reasonable use mentioned, and beneficial use is only mentioned in section 5003, which, as described further herein, expressly deals with the perfection of a prescriptive right.

1 repetitive of the statutory language, but neither the statute nor the County’s proposed findings  
2 explain, beyond the application to the establishment of a prescriptive right discussed in section 5003,  
3 what are “all purposes” to which section 5004 should apply. Clearly, the application of the statute  
4 would not result in the failure to report being considered non-use for *all purposes*. For example, if  
5 no water user within the Los Angeles County portion of the Basin has filed any notice within recent  
6 years, would the effect of the Court’s finding that failure to report is considered non-use mean that  
7 the Court must revisit its findings as to overdraft in the phase 3 trial, disregarding any pumping by  
8 parties that did not properly report? Without any guidance from the statute or any precedent  
9 explaining what “all purposes” are, the Court must make its own determination, and the County  
10 Motion does not provide any explanation of how a plain reading of the statutes explains this – as the  
11 statutes do not.

12 In addition, the County Motion further fails to address the juxtaposition of sections 5004 and  
13 5007’s State Water Resources Control Board (“Board”) investigation procedure. Section 5007  
14 provides that in the event of an investigation, initiated through any person’s application to the Board,  
15 the notices are not considered evidence of any fact stated therein, but that the Board’s determination  
16 after its investigation is prima facie evidence. (Wat. Code, § 5007.) Section 5007 clearly states that  
17 the result of the Board’s investigation may be a determination, which is materially different from the  
18 facts as stated in the notices. (*Id.*) Pursuant to section 5007’s procedure, the Board’s investigation  
19 could result in a determination that water had been used in a year for which a notice was not filed.

20 b. The County Misreads the Statutes’ Provisions as to any Loss of a  
21 Groundwater Right

22 The County requests that the Court find that the failure to file a Notice is deemed to be non-  
23 use and a “loss of a ground water right” for each year in which filing of the Notice was required.  
24 While the statute makes clear that a prescriptive right cannot be perfected for a period including a  
25 year in which a party has not filed the required Notices (Wat. Code, § 5003), it does not follow that  
26 any party who is not attempting to establish a prescriptive right would “lose its groundwater right” in  
27 any year that it did not file a Notice as required. Contrary to the County’s casting of section 5005,  
28 the section does not say that “there is a loss of ground water rights unless there has been

performance or excuse from performance as provided by Part 5.” (County Motion, at 4). Rather, it states that “Except as specified in Section 5004, failure to file the notice or delay in filing the same shall not cause the loss of rights to ground water which existed on January 1, 1956.” The better reading of this section may be that it grandfathered in property rights existing prior to the 1956 date, and this is consistent with section 5003’s concern with prescriptive claimants, as it should be read to clarify that prescriptive rights established prior to the 1956 date are not lost, though section 5003 provides that the failure to file required notices can prevent the perfection of prescriptive rights. Moreover, as the language in section 5005 regarding no loss of a right refers to section 5004, the section does not explain how, if at all, a loss of groundwater rights may be caused under the section.

Unless the statute can be clearly read to demonstrate an intended forfeiture of overlying rights, then the Court should avoid such a reading. The law disfavors forfeitures, and statutes imposing them are to be strictly construed in favor of the persons against whom they are sought to be imposed. (*People v. \$17,522.08 United States Currency* (2006) 142 Cal. App. 4th 1076, 1081-82; see also, *Tamalpais Land & Water Co. v. Northwestern Pac. R. Co.* (1946) 73 Cal.App.2d 917, 929; *County of Los Angeles v. Granite State Ins. Co.* (2004) 121 Cal. App. 4th 1, 3.) Whenever it can possibly be avoided, the courts will not allow a forfeiture to be enforced on purely technical grounds. (*Associated Engineers, Inc. v. American Nat. Fire Ins. Co.* (1959) 175 F. Supp. 352.) For the same underlying policy reasons, forfeiture of contract rights is also disfavored, and conditions or ambiguities will be construed to avoid a forfeiture if at all possible. (See Civil Code, § 1442; *Ballard v. MacCallum* (1940) 15 Cal.2d 439, 444; *City of Palm Springs v. Living Desert Reserve* (1999) 70 Cal.App.4th 613, 622.)

As applied to sections 4999 *et seq.*, unless the statutes can be clearly read to demonstrate an intended forfeiture of overlying rights, then the Court should avoid such an interpretation. As explained above, while the statutes clearly preclude the accrual of a prescriptive property right in the case of the failure to file notices, contrary to the County’s proposed findings, they do not explain when any other “loss of a groundwater right” should occur. The County’s proposed finding might result in forfeiture of overlying property rights for periods of sustained non-use. Because the law abhors forfeiture, (*Ballard, supra*, 15 Cal.2d at 444), to the extent any ambiguities exist in Water



1 Code section 4999 et seq., the court must resolve any and all ambiguities in the statute to avoid the  
2 harsh result of a potential forfeiture of property rights. All ambiguities must be resolved in the favor  
3 of those holding the property rights at issue, and in the case that the statutes are not clear, as here, the  
4 Court should not find that the failure to file a notice would result in the forfeiture of an overlying  
5 right.

6 3. The County's Third Question

7 Finally, the County asks, as to each party who files a notice, "is the stated amount of ground  
8 water extraction deemed to be the use of groundwater by that party for that reporting year?"  
9 (County Motion, at ii.) The County proposes that a plain reading of the statutes would lead the  
10 Court to make the following finding: "A party's filing of the Notice as required by Water Code  
11 Section 5001, is deemed to be the party's use of groundwater in the amount stated in the Notice."  
12 (County Motion, at 5.) However, this is contrary to the plain language of the statute as it does not  
13 state that the amount reported in the Notice is considered the amount of water actually placed to  
14 reasonable and beneficial use, but rather provide that beneficial use "shall be deemed *not to exceed*  
15 the quantity reported in the notice filed for that year." (Wat. Code, § 5003 (emphasis added).)  
16 Pursuant to the County's proposed finding, no matter how much water was actually placed to use,  
17 the quantity stated in the Notice would be deemed to be the amount actually used.<sup>3</sup>

18 That the County's reading is incorrect is further supported by the State Water Resources  
19 Control Board investigation process described in section 5007. As described above, in such  
20 proceedings, the State Board's determination of the facts – which the statute explicitly provides may  
21 result in a determination that materially differs from what is stated in the Notice – is considered  
22 prima facie evidence of the facts the Board determines and a Notice is not to be considered evidence  
23 of the facts stated therein. (Wat. Code, § 5007.)

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26 \_\_\_\_\_  
27 <sup>3</sup> While sections 5006 and 5008 provide that Notices shall be sworn and that the making of willful  
28 misstatements within a Notice is a misdemeanor, under the County's reading, a party filing a Notice  
could exaggerate its reported use and, absent a Board investigation under section 5007, that amount  
would be deemed the amount actually used.

**B. The County's Questions and Proposed Findings do not Resolve the Issues  
Arising from Section 4999 et seq.**

That a plain reading of section 4999, et seq. does not support the Court's proposed findings is the result, in part, of the statutes' failure to describe with any detail their effect. Accordingly, the findings requested by the County are not sufficient to serve the County's stated purposes of resolving the alleged impasse in safe yield allocation negotiations. Setting aside that there are other questions the majority of the parties believe will lead to the resolution of the settlement's allocation of safe yield, the Court's determination of the specific questions asked by the County will only result in additional questions that would arise out of the Court's answers, and the County's proposed findings to not address these questions. As a result, the questions presented by the County are incomplete and if the Court determines to make findings in response to the County's motion, it should additionally address the following questions:

- If water users within the County of Los Angeles who claim overlying rights failed to file the required Notices for five years, should they be considered to have forfeited any previously existing rights?
- If water users within the County of Los Angeles are found to have never used groundwater based on a failure to file Notice, should they then be considered dormant overliers and members of the Willis Class?

**II. THE COURT NEED NOT RESOLVE THE COUNTY'S MOTION AT THIS TIME<sup>4</sup>**

**A. Any Ruling on the County Motion Would be Advisory**

The County presents its motion as necessary to resolve what the County describes as an impasse on the safe yield allocation aspect of the present settlement negotiations. The County describes this particular issue as the "largest and most divisive allocation dispute" remaining in settlement negotiations.

Contrary to the County's statements, it is not AGWA's position, or that of many other

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<sup>4</sup> AGWA has filed three of its own motions requesting that the Court make legal findings. However, as indicated in those motions, AGWA concedes that the issues raised may not be ripe for resolution at this time. These motions were filed based on the Court's direction at the December 13, 2011 Case Management Conference and because they should be decided at the same time as the County Motion.

1 parties, that the present settlement negotiations are at an impasse. Settlement discussions were held  
2 on January 25 and 26 with Justice Robie in Sacramento, and Justice Robie has scheduled further  
3 negotiations for February 29. While the County may believe that resolution of this issue is necessary  
4 for *it* to continue with settlement negotiations, it is clear that the vast majority of parties who are  
5 participating in the negotiations do not agree.<sup>5</sup> AGWA believes that resolution of issues related to  
6 the quantification of return flows from imported water will be far more significant to the ultimate  
7 safe yield allocation settlement. In fact, resolution of this issue alone could eliminate any remaining  
8 barriers to settlement.

9 The County's questions regarding the effect of Water Code sections 4999 *et seq.* are relevant  
10 in regard to a single issue: groundwater extractions during a prescriptive period. There are  
11 significant evidentiary showings that must be made to establish the conditions under which a  
12 prescriptive right may be perfected prior to the need for the court to address the issues the County  
13 raises.

14 At present, the Court has set no further trial phases. There is no evidence pending before the  
15 Court regarding any prescriptive period. There is no evidence before the Court as to any party's  
16 claimed reasonable and beneficial use within a particular year, whether any landowner within Los  
17 Angeles County did or did not file a Notice of Groundwater Extraction, and what the effect of filing  
18 or non-filing might have on the party's claimed use.<sup>6</sup> Accordingly, the questions the County has  
19 presented are not ripe for this Court's determination and any ruling on them would be advisory.

20 **B. The County Overstates the Court's Powers in Complex Proceedings**

21 The court is precluded from issuing advisory opinions. (*City of Santa Monica v. Stewart*

22 <sup>5</sup> These parties meet regularly in addition to the sessions facilitated by Justice Robie in order to focus  
23 the discussion for those sessions. If the County were to also regularly participate in these sessions, it  
24 might have a better awareness of the remaining parties' position as to whether the negotiations  
25 toward an allocation are at an impasse.

26 <sup>6</sup> Exhibit A to the County Motion includes a Notice of Groundwater and Extraction form, which was  
27 presented during the Phase 3 trial for the purposes of demonstrating the water duties the California  
28 State Water Resources Control Board utilizes for estimating water use for crops within the Antelope  
Valley. This was not presented for the purposes of establishing any party's claimed reasonable and  
beneficial water use within any particular year. Further, it is not clear to AGWA what the value of  
the State Water Resources Control Board's form is in interpreting the effect of the statutes. This is  
particularly true in regard to parties who have not filed Notices, as the Notice form is only seen by  
groundwater users who have requested a form or sent to groundwater users who have previously  
filed Notices.

(2005) 126 Cal.App.4th 43, 64.) The rendering of advisory opinions falls within neither the functions nor the jurisdiction of the courts. (*Hill v. Hill* (1947) 79 Cal.App.2d 368, 369-70.) Declaratory relief is not available to determine hypothetical or abstract questions. “The ‘actual controversy’ requirement referred to in [Code Civ. Proc., § 1060] is one which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion based upon a particular or hypothetical state of facts.” (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.) The controversy must be such as to be capable of resolution by a judgment that decrees, rather than suggests, the rights of the parties. (*Id.*)

As there is not a need for the Court to resolve the County’s questions at this time and such resolution may be outside the Court’s powers, the County argues that the Court’s broad powers in complex proceedings include the ability to make such determinations absent any present controversy necessitating that it do so. However, the County misstates the law regarding the Court’s powers in complex proceedings in order to persuade the Court that it may issue the advisory opinion the County requests. While it is true that the Court is given broad powers of management of a complex case, basic principles of judicial process must be observed, such as ripeness and the avoidance of advisory opinions. Moreover, judicial management of cases does not include the issuance of advisory legal opinions.

The County bases its motion on what it describes as the Court’s “statutory and equitable authority of the Court to determine legal issues in complex Judicial Council coordination proceedings.” (County Motion, at ii.) The County posits that this power arises out of “Code of Civil Procedure sections 187 and 591, Rule 3541<sup>7</sup> of the California Rules of Court, and the inherent powers granted to the Court to manage complex coordination proceedings.” (*Id.*) However, the cited statutes, rules and cases do not support the Court’s ability to make legal determinations of an advisory nature. Code of Civil Procedure section 591 simply provides that issues of law must be tried by the court. (Code Civ. Proc., § 591.) While AGWA agrees with the County that the questions it has presented to the Court are legal issues that should be decided by the court, as

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<sup>7</sup> No such Rule of Court exists. However, AGWA believes the County intended to refer to Rule of Court 3.541, which relates to the duties of a coordination trial judge.

1 opposed to the factual issues that will be determined by a jury, this does not support the Court's  
2 determination of a legal issue that is not ripe for resolution. While Code of Civil Procedure section  
3 187 and Rule 3.541 of the California Rules of Court provide that the Court has broad powers of  
4 judicial management in consolidated complex cases, these powers do not override the constitutional  
5 prohibition that a case be in controversy to allow the court to issue opinions.

6 In further support of its position, the County cites to *Asbestos Claims Facility v. Berry &*  
7 *Berry* (1990) 219 Cal.App.3d 9, which discusses the inherent managerial power of the courts to  
8 create new procedures if necessary in pending cases.<sup>8</sup> The quotation the County ascribes to that  
9 case, however, is actually found in *Litmon v. Superior Court* (2004) 123 Cal.App.4th 1156, 1174.  
10 Moreover, while the quotation discusses the court's managerial powers, the case itself has no  
11 application here, as the *Litmon* case dealt with whether consolidation was consistent with the  
12 Sexually Violent Predator Act. (*Litmon, supra*, 123 Cal.App.4th at 1166-68.) Further, the court in  
13 *Litmon* discussed the "limits on the court's inherent power" and acknowledged that courts must  
14 exercise their power consistent with the law. (*Id.*, at 1175.)

15 As for the *Asbestos Claims Facility* case, while it too speaks generally of the court's  
16 management powers, the issue in that case was the court's ability to appoint liaison counsel to  
17 schedule discovery matters for all defendants in complex asbestos litigation, and to compel payment  
18 of attorney fees from a group of defendants. (*Asbestos Claims Facility, supra*, 219 Cal.App.3d at  
19 14-15.) The court in *Asbestos Claims Facility* explained that the courts "...have inherent  
20 supervisory or administrative powers which enable them to carry out their duties." (*Id.*, at 19.) But  
21 the powers discussed in *Asbestos Claims Facility* are powers to "adopt any suitable method of  
22 practice," or "exercise reasonable control over all proceedings," and to engage actively in "judicial  
23 management." (*Id.*) The court in *Asbestos Claims Facility* recognized that this managerial power  
24 must be exercised consistent with constitutional law. "However, a rule or procedure adopted by a  
25 trial court must be consistent with constitutional due process." (*Id.*, at 24.) A court's inherent  
26 managerial power in complex cases does not allow the court to disregard the case and controversy  
27 requirement and issue an advisory opinion. (*Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576,

28 <sup>8</sup> The County Motion cited to this case as 218 Cal.App.3d 9.

591 [court may not render an advisory opinion in complex litigation].) Thus, the Court may be without the power to issue the requested legal determinations at this time.

**III. CONCLUSION**

For the reasons stated herein, the Court should not make the legal determinations the County requests. Water Code section 4999 *et seq.* does not support the requested findings, they are unnecessary at this time and such a ruling may be outside the Court's power. Settlement discussions are progressing well under the direction of Justice Robie, and if the Court feels it necessary to resolve any issue in order to further prompt the parties toward settlement, the Court and the parties' time and resources would be better spent on the resolution of the issues regarding municipal return flows.

Dated: January 31, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:   
MICHAEL T. FIFE  
BRADLEY J. HERREMA  
ATTORNEYS FOR AGWA