

**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  
)

) **TRIAL SETTING CONFERENCE**  
) **STATEMENT**  
)

) **Date: April 17, 2012**  
) **Time: 9:00 am**  
) **Room: 1515**  
)

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) provides this case  
2 management statement as to its position on the need for and the possible issues to be addressed in a  
3 Phase 4 trial.

4 The majority of the parties are participating in the settlement negotiations. Settlement  
5 discussions most recently took place on April 2 and 3 with Justice Robie in Sacramento, and Justice  
6 Robie has scheduled a further session on April 30. As predicted by the landowners during the Phase  
7 3 trial, an allocation of rights based on a safe yield of 110,000 acre-feet per year (AFY) is anything  
8 but conservative when the social and economic consequences of that allocation are considered.  
9 While the Phase 3 Statement of Decision found that pumping ranged from 130,000 to 150,000 AFY  
10 yield, the actual pumping reported by the parties is much greater. Approximately 175,000 AFY of  
11 pumping has needed to be cut down to 110,000 AFY. In addition, even though the Court  
12 specifically declined to allocate the 110,000 AFY between native water and return flows from  
13 imported water, the current proposed allocation attributes a large portion of the safe yield to return  
14 flows from imported water, with the result that the burden of the proposed allocation falls primarily  
15 on the local businesses that use water in the Valley. The disruption to the local community resulting  
16 from this allocation will likely be significant. It appears that the landowners have been given the  
17 choice to accept the allocation that has been proposed, or to go to another phase of trial.

18 The next stage of the settlement discussions is now to address all of the other issues that will  
19 be necessary to resolve the adjudication. AGWA is pessimistic that there will be any attempt made  
20 through the settlement to soften the impact that the settlement would have on the local farming  
21 community. For this reason, AGWA is not confident that the allocation that has been proposed will  
22 successfully resolve the litigation.

23 The Phase 3 Statement of Decision was clear that, “It should not be assumed that the safe  
24 yield management number may not change as climate circumstances and pumping may change, or as  
25 the empirical evidence based on experience in managing the basin suggests it is either too high or  
26 too low.” Since empirical evidence now suggests that the pumping numbers used in the Summary  
27 Expert Report to calculate the safe yield were erroneous, and since pumping was one of the major  
28 terms in the safe yield calculation, one reasonable option for another phase of trial would be to

reevaluate the Phase 3 safe yield. Since the Phase 3 Statement of Decision was explicit that, “. . . the findings here have no application to other phases, such as prescription or rights of appropriators . . . ,” such a reevaluation would be appropriate in any event so that the Court will have a basis to evaluate the appropriateness of any submitted settlement.

Alternatively, one of the main reasons that the proposed allocation results in such a harsh result for the landowners is that a significant component is attributed to return flows from imported water. The issue of the quantity of the return flows from imported water is a discrete technical issue that was not resolved by the Court in Phase 3. A Phase 4 hearing on this issue could therefore definitively decide whether a settlement is possible that does not result in harsh impacts to the local community.

In addition, return flows from imported water only result in a pumping right if those return flows result in a net augmentation of the water supply in the Basin. The proposed allocation in effect makes the technical determination that the return flows from imported water have augmented the supply and that this augmentation is equivalent to a potable groundwater supply that can be used by the purveyors.<sup>1</sup> However, as the Court is aware from Phase 3, the return flows from imported water in the Antelope Valley have resulted in significant water quality degradation that has resulted in enforcement orders from the Regional Water Quality Control Board. If, rather than augmenting the water supply, the return flows from imported water have actually rendered part of the supply unavailable, then it would be contrary to law to approve a settlement that assumes that such augmentation has occurred.

Both of these issues -- the true quantity of return flows from imported water and whether such return flows have augmented the water supply in the Basin -- will need to be addressed in any prove-up hearing regarding the terms of a settlement. Thus, since the Court will need to address both of these issues whether there is a settlement or not, AGWA recommends that the Court proceed to identify these issues as the next to be heard whether as a prove-up or as a Phase 4.

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<sup>1</sup> Prior to the Phase 3 trial, a small number of parties refused to settle on the question of the safe yield of the Basin, arguing in part that technical issues could not be resolved through stipulation.

1 Dated: April 10, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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3 By:



4 MICHAEL T. FIFE  
5 BRADLEY J. HERREMA  
6 ATTORNEYS FOR AGWA  
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