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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Date: May 24, 2013
Time: 9:00 am
Dept: 6

PRETRIAL CONFERENCE STATEMENT

1 **I. SCOPE OF PHASE FOUR TRIAL**

2 At the Mandatory Settlement Conference and Pretrial Conference held on May 17, 2013,
3 the Court ordered that the scope of issues to be determined during the Phase 4 Trial would be
4 narrowed to the determining of groundwater pumped during 2011 and 2012.¹ It is AGWA's
5 understanding, that based on this order, the following issues, previously proposed to be
6 considered during the Phase 4 Trial, will no longer be determined at that time: proof of claimed
7 reasonable and beneficial use of water for each parcel to be adjudicated for at a minimum the
8 years of 2011-2012 and possibly for the period of 2000-2012, claimed return flows from imported
9 water, and federal reserved rights. (See First Amendment to Case Management Order for Phase 4
10 Trial, dated January 17, 2013 at ¶ 2.)

11 As a result of the Court's May 17, 2013 bench order and in the absence of a signed order,
12 there remains uncertainty among some of the parties as to the scope of the determination that will
13 be made regarding groundwater pumped during 2011 and 2012. In order to be able to come to
14 stipulations in lieu of putting on evidence at Phase 4 Trial, the parties would benefit from further
15 clarity as to two additional subissues:

- 16 • the extent to which the Court wishes to make any determination regarding the
17 correlation between the property from which water is pumped and the property on
18 which that water is put to use; and,
- 19 • the precision with which the Court desires to make its determination on the amount
20 of groundwater pumped during 2011 and 2012.

21 Based on the discussion at the May 17, 2013 conference, AGWA believes the Court does
22 not wish to hear evidence regarding the first of these issues. The second issue is described in
23 further detail below.

24 **II. STATUS OF STIPULATIONS REGARDING AGWA MEMBER PUMPING**

25 At the May 17, 2013 conference, the Court inquired as to the status of stipulations among
26 the parties regarding those issues within the narrowed scope of the Phase 4 Trial. The Court

27 ¹ The Court requested that counsel for Los Angeles County Waterworks District No. 40 prepare
28 and circulate a proposed order effecting this change in scope, and this was done on Monday, May
20, 2013. At the time of this filing, the Court has yet to sign the proposed order.

1 additionally posted to the website a summary, prepared by the Public Water Suppliers, of the
2 status of stipulations among the parties. The Court further asked that the parties keep the Court
3 informed as to their progress in reaching agreement as to further stipulations.

4 At the time of the May 17, 2013 conference, counsel for AGWA indicated that they had
5 been unable to reach stipulations with the Public Water Suppliers for any of AGWA's 27 parties.
6 Since that time, counsel for AGWA have been able to reach stipulations with counsel for the
7 Public Water Suppliers as to more than half of its members and, based on discussions, believe
8 that, with resolution of the first subissue described above and given a few more days for
9 discussions among counsel, they may be able to reach stipulations as to the 2011 and 2012
10 groundwater pumping of nearly all of its members. While the parties composing AGWA posted
11 to the Court's website their responses to the Court's Phase 4 Discovery Order in December 2012,
12 and posted to the Court's website completed versions' of the Public Water Suppliers' Declaration
13 in lieu of Deposition Testimony for Phase 4 Trial in late January 2013, given the scope of
14 discovery in this Phase and the number of depositions the Public Water Suppliers believed
15 necessary, their counsel have not until the past couple weeks been able to evaluate the AGWA
16 parties' claims for the purposes of potential stipulation.

17 As counsel for AGWA and the Public Water Suppliers have initiated discussions toward
18 stipulation, it is becoming apparent that the one issue on which they may not be able to reach
19 agreement is in the case that a party relies on a crop water duty to determine the amount of water
20 pumped for the acreages of the crops the party farmed. As the Court is likely well aware, there is
21 disagreement among certain of the parties who are members of AGWA and the Public Water
22 Suppliers as to the proper crop duties for some of the primary crops grown within the Basin.
23 However, as further described herein, AGWA questions whether it is necessary that a
24 determination on this issue be made in Phase 4.

25 The relevance of a crop water duty to the issues set for inclusion of the Phase 4 Trial may
26 be best understood by way of example. In estimating water pumped based on a crop water duty,
27 the crop water duty (in acre-feet per acre per year) is multiplied by the number of acres grown,
28 and the resultant product is the number of acre feet estimated to have been pumped. In the case

1 of alfalfa farmed in the Antelope Valley, the Public Water Suppliers believe the proper crop water
2 duty is 6.5 acre feet per acre, arising from the Summary Expert Report. Many AGWA parties
3 believe the proper crop water duty is 7.6 acre-feet per acre, based on analysis conducted by the
4 University of California Cooperative Extension for agriculture and the figures utilized by the
5 State Water Resources Control Board in its Notices of Groundwater Extraction ("UC Extension
6 Crop Water Duties"). If a farmer within the Basin farmed 10 acres of alfalfa, the amount of water
7 pumped would be estimated at 65 acre-feet using the Public Water Suppliers' crop water duty and
8 at 76 acre-feet using the crop water duty that the AGWA parties believe is more accurate. The
9 difference in total pumping for the cultivation of the 10 acres of alfalfa in question would be 11
10 acre-feet.

11 However, because the majority of the AGWA parties do not rely on crop water duties for
12 the estimation of their 2011 and 2012 groundwater pumping, counsel for AGWA believes that the
13 vast majority of the members of AGWA that pumped the vast majority of groundwater among the
14 AGWA parties will be able to stipulate with the Public Water Suppliers as to their claimed 2011
15 and 2012 pumping. As a result, the remaining amount of 2011 and 2012 groundwater pumping
16 by AGWA parties that remains in dispute – like the 11 acre-feet described above, the difference
17 between the product of the non-stipulating AGWA parties' crop acreages² as multiplied by the
18 UC Extension Crop Water Duties and the same crop acreages as multiplied by the crop water
19 duties in the Summary Expert Report – ranges between 250-300 acre-feet for each of 2011 and
20 2012.

21 After the Phase 3 Trial in this matter, the Court found the Safe Yield of the Antelope
22 Valley Groundwater Basin to be 110,000 acre-feet per year. The 250-300 acre-feet of pumping in

23
24 ² By way of its Third Amendment to Case Management Order for Phase Four Trial, the Court
25 required that for notices of deposition of non-expert parties who filed declarations in lieu of
26 deposition testimony by January 31, 2013, that the deposition notices specify by declaration item
27 number which topics within the party's declaration required further testimony by the declarant
28 and the nature of such inquiry. The Fourth Amendment to Case Management Order for Phase
Four Trial required parties to indicate whether they disputed information provided by other
parties in response to the Court's prior Phase 4 orders or to state the reason they were unable to
do so. At no time during the Phase 4 discovery process has any party identified any with
specificity disputes as to the number of acreages claimed to have been irrigated by the AGWA
parties relying on crop water duties for estimation of their 2011 and 2012 pumping.

2011 and 2012, which is in dispute, equates to less than one quarter of one percent, or 0.0025 of the 110,000 acre-feet per year safe yield the Court determined after Phase 3 Trial.

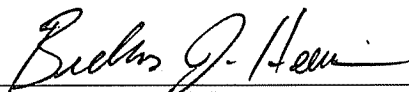
As a means of conserving judicial resources and the resources of the parties through the avoidance the presentation of unnecessary evidence during Phase 4 Trial, AGWA desires clarification as to whether the Court is seeking to determine a single number as the pumping in each year, or might consider making a determination that the 2011 and 2012 pumping fell within a range, such that a stipulation could be entered that the pumping of certain parties falls within a range estimated by applying both of the UC Extension Crop Water Duties and the crop water duties in the Summary Expert Report to a party's farmed acreage. Based on the minimal effect on the *total* Basin groundwater pumping of using one crop duty versus the other (the Court's stated inquiry), AGWA requests clarification as to the degree of precision the Court desires.

III. CONCLUSION

As described above, in the short time that counsel for AGWA have been able to discuss with counsel for the Public Water Suppliers the potential barriers to stipulation regarding the sole remaining topic at issue for the Phase 4 Trial, they have been able to reach stipulations regarding the claimed pumping of a number of the AGWA parties and believe stipulation is possible regarding the majority of the AGWA parties. With the Court's clarification of the issues described above, including an indication of the level of precision as to which it wishes to make a finding at the conclusion of the Phase 4 Trial, all of the AGWA parties may be able to reach stipulations obviating the need for their Phase 4 Trial testimony.

Dated: May 22, 2013

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: 
MICHAEL T. FIFE
BRADLEY J. HERREMA
Attorneys for Cross-Complainants
ANTELOPE VALLEY GROUNDWATER
AGREEMENT ASSOCIATION

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 22, 2013, I served the foregoing document described as:

PRETRIAL CONFERENCE STATEMENT

on the interested parties in this action.

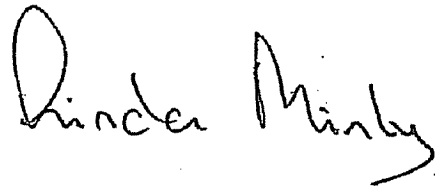
By posting it on the website by 5:00 p.m. on May 22, 2013.

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 22, 2013.

**LINDA MINKY
TYPE OR PRINT NAME**



SIGNATURE