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## SUPERIOR COURT OF THE STATE OF CALIFORNIA

### FOR THE COUNTY OF LOS ANGELES

<b>ANTELOPE VALLEY</b>	)	Judicial Council Coordination Proceeding
<b>GROUNDWATER CASES</b>	)	No. 4408

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

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

### **AGWA’S PHASE IV OPENING TRIAL BRIEF**

1     **I. SUMMARY OF PRIOR TRIAL PHASES**

2             In the first two trial phases of this litigation, the Court established the adjudication  
3 boundaries and determined that there are no hydrologically disconnected sub-basins. After the  
4 Phase One trial, the Court concluded that "the alluvial basin as described in California  
5 Department of Water Resources Bulletin 118-2003 should be the basic jurisdictional boundary for  
6 purposes of this litigation." (Order After Hearing on Jurisdictional Boundaries, filed November  
7 3, 2006, at 4.) In the Phase Two trial, the Court addressed whether sub-basins exist in the  
8 Antelope Valley adjudication area. (Case Management Order for Phase 2 Trial, filed Sept. 9,  
9 2008, at ¶ 2.) The Court concluded that there is sufficient hydraulic connectivity throughout the  
10 Basin such that "ground water actually or potentially moves from one part of the basin to the  
11 other with the potential to affect the water status or condition of the other portion of the basin  
12 aquifer." (Order After Phase Two Trial on Hydrologic Nature of Antelope Valley, filed  
13 November 12, 2008, at 3.)

14             In the Phase Three trial, the Court conducted what it described as a "very general"  
15 determination of the Basin's Safe Yield and whether the Basin was then in a condition of  
16 overdraft. The Court's stated purpose for trying these issues was to establish whether the  
17 required conditions existed for the Court to invoke its equitable jurisdiction in order to impose a  
18 physical solution within the Basin. Apart from making a general determination as to the Basin's  
19 Safe Yield and determining that the Basin was/had been in overdraft, the Court declined to make  
20 more specific determinations as to the individual components of the Basin's Safe Yield.

21     **II. SCOPE OF PHASE 4 TRIAL**

22             The Court originally ordered that the Phase 4 Trial would address the issue of "current"  
23 groundwater production of all parties for the calendar year 2011 and January 1 through November  
24 30, 2012, proof of claimed reasonable and beneficial use of water for each parcel to be  
25 adjudicated, claimed return flows from imported water, and federal reserved rights. (Case  
26 Management Order for Phase 4 Trial, filed December 12, 2012, at ¶ 2.) Based on the concerns of  
27 some parties that calendar year 2011 and eleven months within 2012 might not be representative  
28 of their "current" pumping, the Court revised its description of the topics to be addressed at the

1 Phase 4 trial as follows:

2  
3 The Phase 4 trial will address the issue of the current groundwater  
4 production (or alternative nontributory (sic) waters in lieu thereof)  
5 of all parties, proof of claimed reasonable and beneficial use of the  
6 water for each parcel to be adjudicated, and the claimed return  
7 flows from imported water, for the calendar year 2011 and January  
8 1 through November 30, 2012. Parties that wish to produce  
9 evidence during the years of 2000 through 2012 may do so if they  
10 timely produce such evidence in discovery. Trial of the parties'  
11 claimed reasonable and beneficial uses of water will include the  
12 amount of water used by each party and the identification of the  
13 beneficial use to which that amount was applied, but will not  
14 include any determination as to the reasonableness of that type of  
15 use, of the manner in which the party applied water to that use, or  
16 any determination of a water right. The trial will also address  
17 federal reserved rights. Claims of prescription will be tried  
18 following the decision in Phase Four. (First Amendment to Case  
19 Management Order for Phase Four Trial, at ¶ 1.)

20 On May 13, 2013, the Court held a further Case Management Conference and ordered that  
21 the issue of return flows be excluded from the Phase IV trial, and that the issue of return flows  
22 would be decided at a later date. At the Mandatory Settlement Conference and Pretrial  
23 Conference held on May 17, 2013, the Court ordered that the scope of issues to be determined  
24 during the Phase 4 Trial would be narrowed to determining groundwater pumped during 2011 and  
25 2012. It is AGWA's understanding, that based on this order, the following issues, previously  
26 proposed to be considered during the Phase 4 Trial and for which the parties expended significant  
27 time and resources preparing, will no longer be determined at that time: proof of claimed  
28 reasonable and beneficial use of water for each parcel to be adjudicated for at a minimum the  
years of 2011-2012 and possibly for the period of 2000-2012, claimed return flows from imported  
water, and the existence of any claimed federal reserved rights. (See First Amendment to Case  
Management Order for Phase 4 Trial, dated January 17, 2013 at ¶ 2.)

There is currently no cause of action pled by any party that necessitates a determination of  
current pumping. A determination of specific landowner pumping is relevant to the issue of "self  
help," but this issue is relevant only if prescription is shown to exist, and the claimed prescriptive  
period would not include the years 2011 and 2012. If the purpose of determining current  
pumping is to allow the Court to determine the baseline from which current pumping might have

1 to be limited in order to bring pumping in line with safe yield, then the issue of current pumping  
2 is not relevant until after a trial determining the pumping rights of each party, including a trial of  
3 the issue of prescription.

### 4 **III. AGWA PARTY PUMPING**

5 At the May 17, 2013 and May 24, 2013 conferences, the Court inquired as to the status of  
6 stipulations among the parties regarding those issues within the narrowed scope of the Phase 4  
7 Trial. On May 17, 2013 the Court posted to the website a matrix, prepared by the Public Water  
8 Suppliers, of the status of stipulations among the parties. On May 23, 2013, the Public Water  
9 Suppliers posted to the Court's website an updated version of the summary matrix.

10 At the time of the May 17, 2013 conference, counsel for AGWA indicated that they had  
11 been unable to reach stipulations with the Public Water Suppliers for any of AGWA's 27 parties.  
12 Since that time, counsel for AGWA have been able to reach stipulations with counsel for the  
13 Public Water Suppliers as to all AGWA Parties.

14 Attached hereto as Exhibit "A" is a list of the AGWA Parties and the 2011 and 2012  
15 groundwater pumping to which they have stipulated. Pursuant to the Court's statements during  
16 the May 24, 2013 Pretrial Conference, AGWA will present these stipulations to the Court as the  
17 basis for its request that the Court make Phase 4 findings regarding the AGWA Party pumping  
18 consistent with these stipulations.

19 The AGWA Parties utilize pumped groundwater for various purposes, including the  
20 irrigation of crops and trees, processing of aggregate, and domestic use. They have stipulated to  
21 the current pumping figures for 2011 and 2012 shown in Exhibit "A" only for the purposes of  
22 generally estimating pumping in the Basin during this phase of trial, and AGWA's members  
23 reserve, for a future phase of this action, determination of all other facts and legal issues in this  
24 action, including but not limited to determination of groundwater rights, the ability to introduce in  
25 a alter phase of trial evidence of water use in years other than 2011 and 2012, and the  
26 reasonableness of water use by AGWA members during the period of 2000 to 2012. Based on  
27 the Court's stated purpose of the Phase 4 Trial, many AGWA Parties have compromised their  
28 claims as to 2011 and 2012 pumping, in order to avoid the expenditure of further time and money


1 as to Phase 4. These parties have done so with the understanding that they will not be foreclosed  
2 from argument in future trial phases in this case that certain of the issues as to which they have  
3 compromised may be fully tried at that time. These issues include the issue of the most  
4 appropriate crop water duties for crops grown in the Antelope Valley.

5 **IV. CONCLUSION**

6 As to the sole remaining issue for this Phase 4 Trial, the AGWA Parties have stipulated  
7 regarding their current pumping in 2011-2012 with the Public Water Suppliers, the sole parties  
8 who objected to the AGWA Parties' proof of such pumping. The AGWA Parties request that the  
9 Court find that the AGWA Parties' 2011 and 2012 pumping is as stated in those stipulations.  
10

11 Dated: May 28, 2013

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

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14  
15 By:   
16 MICHAEL T. FIFE  
17 BRADLEY J. HERREMA  
18 Attorneys for Cross-Complainants  
19 ANTELOPE VALLEY GROUNDWATER  
20 AGREEMENT ASSOCIATION  
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**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 28, 2013, I served the foregoing document described as:

**PHASE IV OPENING TRIAL BRIEF**

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on May 28, 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 28, 2013.

**LINDA MINKY**  
**TYPE OR PRINT NAME**

  
**SIGNATURE**