

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 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., John Javadi and Sahara Nursery, Juniper Hills Water Group, 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, Maritorea Living Trust, Jose and Marie Maritorea, 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, Mabel Selak, Jeffrey L. & Nancee J. Siebert, Dr. Samuel Kremen and 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 Wilson, **collectively known as the Antelope Valley Groundwater 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**
) **AN ORDER CLARIFYING AND**
) **MODIFYING THE ORDER RE: MOTION**
) **FOR AN ORDER AUTHORIZING COURT-**
) **APPOINTED EXPERT WORK, ENTERED**
) **DECEMBER 11, 2012**

) **Date: July 29, 2013**
) **Time: 10:30 a.m.**
) **Dept: 48**
)

AGWA hereby joins in the Opposition and Objection filed by Diamond Farming Co. et al. on July 16, 2013, to the *Motion For An Order Clarifying And Modifying The Order Re: Motion For An Order Authorizing Court-Appointed Expert Work, Entered December 11, 2012* (“Motion”) filed by Littlerock Creek Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, and Desert Lake Community Services District (collectively, “Moving Parties”).

The Motion is a procedurally defective motion for reconsideration and should be denied on that basis, as described in the Opposition of Diamond Farming Co. et al. In addition, AGWA notes the following in further opposition to the Motion:

1. When the Wood Class and Willis Class cases were proposed for consolidation with the adjudication, the landowners objected based on both procedural and substantive grounds. (See *Opposition to Motion to Transfer and Consolidate for All Purposes* (Aug. 3, 2009); *Supplemental Opposition to Purveyors’ Motion to Transfer and to Consolidate for All Purposes* (Sept. 18, 2009); *Objection to Proposed Order Transferring and Consolidating Actions for All Purposes* (Feb. 1, 2010).) Procedurally, the landowners objected based on a lack of precedent for consolidating a class action with a regular civil suit involving litigants who are not parties to the class action. From a substantive standpoint, the landowners objected based on the potential that the consolidation would be used as a justification for imposing costs for the class actions on the landowners. (*Objection to Proposed Order Transferring and Consolidating Actions for All Purposes* (Feb. 1, 2010), at pp. 3-4.) The Court consolidated the cases but stated clearly that the consolidation was not to create adversity where none previously existed:

The biggest problem is nobody wants to be brought in to a lawsuit involving another party that they did not sue and who is not suing them. And that has never been my intent to modify that principle or to create an order that would impose a liability to a third party who is not a party to a lawsuit involving any particular action. Now, the same is true with regard to the issue that the class members –I should say that the objectors who do not wish to pay attorney fees to the class actions lawyers based upon the fact that they are not parties to that lawsuit, and I understand that, also. Nothing in this order is intended to create a situation wherein any party is liable to another party whether for attorney fees or anything else to the extent that they have not brought an action or been sued by those other parties, and the order has to make that abundantly clear.

(Transcript of Feb 5, 2010 Hearing, at 4:18 – 5:8.)

Absent consolidation, there would be no mechanism by which costs in the class action could be imposed on parties who are not involved in the class action. To grant the Motion will therefore create adversity contrary to the conditions articulated for the original consolidation.

2. On September 22, 2011, the Court approved the Willis Class settlement. The Purveyors asked that fees of that action be assessed against all parties in the case, not just the Purveyors. On the basis of the reasoning as described above, the Court rejected this argument and directed the Purveyors to pay the Willis Class legal fees. (*Amended Final Judgment Approving Willis Class Action Settlement* (Sept. 26, 2011), ¶ 21.)

3. Even if the Motion did not suffer from these fatal procedural and substantive flaws, it is flawed in proposing that the costs be apportioned based on 2011-2012 pumping. The Court and the parties were very clear that the purpose of the Phase IV determination of pumping amounts in 2011-12 was limited as described in the Court's Case Management Order as amended, and in the stipulations between the parties. (See *Fifth Amended Case Management Order for Phase IV Trial* (May 23, 2013); see also, *Stipulation Regarding Pumping During Calendar Years 2011 and 2012* (June 15, 2013).) There is no legal significance to these pumping amounts beyond the boundaries of what was set forth in Phase IV. These amounts cannot serve as the basis for an allocation of water rights and do not function to establish any rational basis for an allocation of costs.

Dated: July 16, 2013

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 July 16, 2013, I served the foregoing document described as:

**AGWA's OPPOSITION TO MOTION FOR AN ORDER CLARIFYING AND
MODIFYING THE ORDER RE: MOTION FOR AN ORDER AUTHORIZING COURT-
APPOINTED EXPERT WORK, ENTERED DECEMBER 11, 2012**

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on July 16, 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 July 16, 2013.

**LINDA MINKY
TYPE OR PRINT NAME**


SIGNATURE