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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY)	Judicial Council Coordination Proceeding
GROUNDWATER CASES)	No. 4408
Included Actions:)	
Los Angeles County Waterworks District No.)	Santa Clara Case No. 1-05-CV-049053
40 v. Diamond Farming Co. Superior Court of)	Assigned to The Honorable Jack Komar
California County of Los Angeles, Case No. BC)	
325 201 Los Angeles County Waterworks)	AGWA's JOINDER IN WOOD CLASS
District No. 40 v. Diamond Farming Co.)	PROPOSED CASE MANAGEMENT
Superior Court of California, County of Kern,)	ORDER FOR PHASE 5 AND 6 TRIALS
Case No. S-1500-CV-254-348 Wm. Bolthouse)	AND MEMORANDUM REGARDING
Farms, Inc. v. City of Lancaster Diamond)	SCOPE OF TRIAL
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)	

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 The Antelope Valley Groundwater Agreement Association ("AGWA") hereby joins in the
3 Wood Class's proposed Case Management Order for Phase 5 and 6 Trials and Memorandum
4 Regarding Scope of Trial, filed September 27, 2013.

5 **1. Rights to Return Flows from Imported Water Have Not Been Adjudicated**

6 The Phase III trial in this matter did not adjudicate return flow rights, and the Court's
7 Statement of Decision for Phase Three Trial did not make a finding on the amount of return
8 flows. The Summary Expert Report presented in the Phase III Trial contained limited analysis of
9 imported water return flows and quantification thereof. In fact, out of the hundreds of pages of
10 the Summary Expert Report, only a page and a half were devoted to the imported water return
11 flow analysis, as demonstrated by the excerpts on return flows attached hereto as Exhibit "A."

12 As previously stated by AGWA in its Objection to Proposed Statement of Decision re
13 Phase III Trial, dated June 21, 2011, the Court based its finding concerning the safe yield on a
14 finding that water levels appear to be declining (loss of storage) and that there is current Basin-
15 wide subsidence that cannot be attributed to residual effects from past overpumping. The Court
16 found that if these phenomena are occurring, then pumping levels when they occur must be too
17 high. While this approach to estimating safe yield is an appropriate method for establishing a
18 rough estimate of safe yield and determining at a qualitative level whether the Basin is in
19 overdraft, it does not support an internal allocation of that yield as between different types of
20 water such as native water, supplemental water, return flows from native water, return flows from
21 supplemental water, subsurface outflow, etc. As pointed out by the Wood Class in its
22 Memorandum Regarding Scope of Trial, the public water suppliers wish to avoid having to meet
23 their burden of proof with regard to establishing total return flow amounts by convincing the
24 Court that it previously tried an issue which it expressly did not.

25 The standard of proof applicable to a determination of rights to return flows must be
26 clearly defined before the Court makes a determination of those rights. Application of the proper
27 standard of proof is vital to protect the parties' rights moving forward towards trial of the issue of
28 quantification of return flows from imported water. In its May 23, 2011 proposal on the contents

1 of the Phase III Statement of Decision, AGWA commented that the Court should either use a
2 higher standard of proof regarding quantification of return flows and other issues, or the Phase III
3 Statement of Decision had to explicitly clarify that the results of Phase III would not be used in
4 any other phase. For example, AGWA stated, “The statement of decision should clarify whether
5 the findings concerning safe yield and overdraft are intended to be used in subsequent phases of
6 trial, in particular for a prescriptive rights phase.” (AGWA’s Proposal Re Content of Statement of
7 Decision (May 23, 2011), at 2:8-10.) Subsequently, in the revised Phase III Statement of
8 Decision, the Court removed the proposed language from the Purveyors related to native safe
9 yield and return flows. (Statement of Decision Phase Three Trial (July 13, 2011).) The Court
10 clarified, “The only issues at this phase of the trial were simply to determine whether the
11 adjudication area aquifer is in a current state of overdraft and as part of that adjudication to
12 determine the safe yield. This Statement of Decision focuses solely on those issues.” (Statement
13 of Decision Phase Three Trial, at 2:10-12.)

14 Significantly, the Court did not make any determination of the proper standard of proof
15 applicable to determination of rights to return flows, and the Phase III Statement of Decision
16 specifically references the need for determination of the applicable standard of proof in further
17 phases. In its final Statement of Decision Phase Three Trial, the Court referred to the
18 preponderance of the evidence standard applied to determine safe yield and overdraft issues in
19 Phase III, and clarified:

20 This burden of proof may or may not be appropriate to other phases
21 of this trial. And since the findings here have no application to other
22 phases, such as prescription or rights of appropriators, and the
23 parties have not briefed those or other issues, the Court makes no
24 conclusions as to what standard of proof might be applicable to
25 such other issues or phases of trial.

26 (Statement of Decision Phase Three Trial, at 3:21-24.) While the limited analysis of return flows
27 in the Summary Expert Report may have been sufficient for the limited purposes of Phase III, as
28 defined by the Court, the Summary Expert Report analysis presented at Phase III is not a
sufficient basis on which to award water rights to a large percentage of the safe yield of the Basin,
particularly where parties such as the Antelope Valley Eastern Kern Water Agency and

landowner parties will offer evidence that the source of this water (i.e., return flows from imported water) may not exist in the quantities assumed by the SER.

2. The Adoption of a CMO Should Not Eliminate the Requirement That the Purveyors Identify their Prescriptive Claims

In its Order after Case Management Conference on July 29, 2013, the Court required the purveyor parties claiming prescriptive rights to identify the legal theory, timeframe, factual and legal basis for each purveyor claim as against each landowner, along with any other purveyor claim to groundwater, such as purveyor overlying rights. (Minute Order from July 29, 2013, p. 3.) At the September 6, 2013 Trial Setting Conference, the purveyor parties acknowledged that they had yet to comply with the Court's order in this regard and the parties discussed the drafting of Court-ordered discovery that would facilitate the purveyor parties' required disclosures. Since that time, the focus has shifted to the development of a Case Management Order that would lay out the procedures and deadlines leading up to the Phase 5 and 6 trials. While each of the proposed CMOs that have been posted would allow for written discovery to proceed at the parties' discretion, AGWA believes it critical that the Court reaffirm the requirement that the purveyor parties disclose the required information and that such requirement exists independent of the discovery the parties may be allowed under a CMO.

Dated: September 30, 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 September 30, 2013, I served the foregoing document described as:

**AGWA's JOINDER IN WOOD CLASS PROPOSED CASE MANAGEMENT ORDER
FOR PHASE 5 AND 6 TRIALS AND MEMORANDUM REGARDING SCOPE OF TRIAL**

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on September 30, 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 September 30, 2013.

**LINDA MINKY
TYPE OR PRINT NAME**


SIGNATURE