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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SANTA CLARA**

**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-  
348Wm. 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

**RESPONSE TO PROPOSED CLASS  
ACTION FILED ON BEHALF OF  
REBECCA LEE WILLIS ON JANUARY 4,  
2007; OBJECTION TO PROPOSED  
REVISIONS TO NOTICE FILED BY LA  
COUNTY WATERWORKS AND  
ROSAMOND COMMUNITY SERVICES  
DISTRICT**

1 The Antelope Valley Groundwater Agreement Association ("AGWA") hereby responds to  
2 the form of the proposed Notice of Class Action ("Notice") filed on behalf of Rebecca Lee Willis  
3 on January 4, 2008. On October 8, 2007, AGWA filed a similar response to the Proposed Order  
4 Governing Class Notice ("October Response") as to the proposed Notice of Pendency of Class  
5 Action filed on behalf of Ms. Willis on September 25, 2007 ("September Notice"). In its October  
6 Response, AGWA outlined two deficiencies in the September Notice. Unfortunately, three months  
7 later, AGWA believes that the Notice is subject to these same deficiencies.

8 First, the Notice as drafted is inadequate to make clear how landowners who do not respond  
9 to the Notice will be treated. In connection with this, the Notice should be revised to specify the  
10 consequence if a pumper does not exclude itself from the class. Second, the date given for the  
11 relevant five-year period over which it is to be determined whether a property owner is to be  
12 considered a "pumper" should be reconsidered.

#### 13 I. Disposition of Non-Responsive Landowners

14 The current form of the Notice does not make clear what will happen to the rights of a  
15 landowner receiving the Notice who does nothing in response to it. While the Notice provides that  
16 any party who does not exclude itself from the class will have its rights determined as part of the  
17 class, it should be made clear that this means that the landowner's rights will be determined *as a*  
18 *non-pumper*. This ambiguity creates the risk that parties who pump will remain in the class and will  
19 later attempt to exert rights based on their historical pumping. It is this very conflict which has  
20 motivated the exclusion of pumpers from the class. To eliminate any ambiguity, the Notice should  
21 be revised to include the following statement:

22 Any party who does not exclude itself from the class will be estopped  
23 from later claiming water rights based on historical pumping, either as  
an exercise of self-help or otherwise.

24 This same statement should also be a part of the Court's Order governing class notice.

#### 25 II. Period of Pumping Determination

26 AGWA's October Objection detailed AGWA's concerns as to the period of time in which  
27 pumping must not have taken place on a landowner's property for that landowner to be included

1 within the Class. As described in the October Response, the rationale underlying the use of the  
2 five-year period preceding January 18, 2006 was unclear.<sup>1</sup> At that time, AGWA described its  
3 concerns with the five-year period as follows:

4 Presumably, the five-year period in the Notice is based on California law regarding the  
5 establishment of a self-help defense to a claim of prescription. In order for groundwater pumping to  
6 be relevant in that regard, it must occur during the period that will be claimed as the prescriptive  
7 period. In defining those property owners to be included in the Class, the Notice utilizes the date  
8 from which the five-year period relates back as the filing date of the Los Angeles County  
9 Waterworks District No. 40's cross-complaint. Thus, in order that the Notice be relevant, those  
10 parties claiming prescriptive rights must identify the five year period over which they claim to have  
11 attained prescriptive rights. If the relevant five-year period identified in the Notice is not the five-  
12 year period used by the purveyors as the prescriptive period, then there will be a legal disconnect  
13 between the defined members of the class and the legal claims available to those members. (October  
14 Response, p. 4.)

15 These concerns have not been addressed since AGWA's filing of its October Response and  
16 remain valid as to the Notice now under consideration by the Court.

17 In order to alleviate its concerns, AGWA recommends that either (1) the purveyors should  
18 commit to use the five year period beginning with the date specified in the Notice as the prescriptive  
19 period for the purpose of the adjudication, and this commitment should become a part of the Court's  
20 Order, or (2) the Notice should not use a specific date so that any party that has ever pumped water  
21 is put on notice that it must exclude itself from the class or have its rights determined as a part of the  
22 class.

23  
24  
25  
26 <sup>1</sup> "While this is the date that was included in the Order Certifying the Plaintiff Class, it is not clear  
27 what is the significance of this date. If it is supposed to mark the time when the first of the  
28 adjudication complaints was filed, then the date is erroneous. The first complaint filed by Los  
Angeles County initiating the adjudication was filed on November 29, 2004." (October Objection,  
p. 3.)

### III. Los Angeles County Waterworks/Rosamond Community Services

#### District Filing

Immediately after Ms. Willis' Notice was posted to the Court's website on January 4, 2008, Proposed Changes to the Notice and an independent Proposed Notice were posted on behalf of the LA County Waterworks District No. 40 and the Rosamond Community Services District ("Purveyor Revision"). The Purveyor Revision appears to attempt to alter the class from a non-pumpers class to a class that includes both pumpers and non-pumpers. There is no apparent reason for deleting the language proposed to be deleted except that it gives the appearance that the class is for pumpers and non-pumpers alike. As discussed at the last few hearings, it is the persistent attempts by the purveyors to include pumpers in the non-pumper class that has caused the class certification process to drag on for month after month.

It is similarly unclear why these purveyors wish to limit the Class to landowners owning 100 acres or less. There may be non-pumping landowners who own more than 100 acres who would prefer to be members of the class. In addition, it is not clear whether "ownership" includes ownership of multiple parties that cumulatively total 100 acres or more, or whether the limitation applies only to individual parcels of 100 acres or more.

#### IV. Meet and Confer

Unfortunately, all of the issues AGWA describes herein could likely have been resolved in advance of Plaintiff Willis' filing if the parties had engaged in a meet and confer process as directed by the Court prior to the filing. If such meet and confer did occur, AGWA's counsel was not made aware of it despite AGWA's obvious interest in this issue.

Dated: January 8, 2008

**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 January 8, 2008, I served the foregoing document described as:

**RESPONSE TO PROPOSED CLASS ACTION FILED ON BEHALF OF REBECCA LEE WILLIS ON JANUARY 4, 2008; OBJECTION TO PROPOSED REVISIONS TO NOTICE FILED BY LA COUNTY WATERWORKS AND ROSAMOND COMMUNITY SERVICES DISTRICT**

on the interested parties in this action.

By posting it on the website at 3:15 p.m. on January 8, 2008. 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 January 8, 2008

Rebecca Robledo  
TYPE OR PRINT NAME

[Signature]  
SIGNATURE