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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

* * *

COORDINATION PROCEEDING) Judicial Council Coordination Proceeding
SPECIAL TITLE (Rule 1550(b))) No. 4408

ANTELOPE VALLEY GROUNDWATER)
CASES) CASE NO. 1-05-CV-409053

INCLUDED ACTIONS:

LOS ANGELES COUNTY)
WATERWORKS DISTRICT NO. 40 v.)
DIAMOND FARMING COMPANY, et al.,) **BOLTHOUSE PROPERTIES, LLC'S**
Los Angeles Superior Court Case No.) **AND WM. BOLTHOUSE FARMS,**
BC325201) **INC.'S CASE MANAGEMENT**
) **CONFERENCE STATEMENT**

LOS ANGELES COUNTY)
WATERWORKS DISTRICT NO. 40 v.)
DIAMOND FARMING COMPANY, et al.,)
Kern County Superior Court Case No. S-)
1500-CV-254348) **DATE: July 29, 2010**
) **TIME: 9:00 a.m.**
) **DEPT: 12**

DIAMOND FARMING COMPANY, and)
W.M. BOLTHOUSE FARMS, INC., v.)
CITY OF LANCASTER, et al.,)
Riverside Superior Court)
Case No. RIC 344436 [c/w case no. RIC)
344668 and 353840])

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.
3 (hereinafter collectively referred to as "Bolthouse") file this Case Management Conference
4 Statement.

5 BOLTHOUSE PROPERTIES, LLC, and WM. BOLTHOUSE FARMS, INC., hereby
6 joins in the Case Management Conference Statements filed by City of Lancaster and AGWA
7 on July 13, 2010.

8 **STATUS OF SETTLEMENT NEGOTIATIONS**

9 The Antelope Valley Accord, the result of the principals' Waldo mediation process,
10 now has been made public and provided to the Court. It is apparent that almost all of the
11 parties in the case, including the vast majority of pumping in the Basin, agree that the Antelope
12 Valley Accord will provide a potential basis for a comprehensive settlement of the case. The
13 Robie process which has been much more narrow in scope and involves only a few of the
14 parties, cannot by itself resolve the case. It is clear that a comprehensive settlement agreement
15 and stipulated judgment is the appropriate way to resolve the case. Most all the parties are
16 planning on attending, either personally or by representative, a mediation with Judge Robie in
17 hopes of combining the ideas in the Robie process with the Waldo Accord to reach a
18 comprehensive resolution of the case.

19 Bolthouse has been involved in this litigation since it began in approximately 1999.
20 Over those ten (10) years, many attempts have been made to resolve this case. No other
21 settlement negotiations ever came close to settling the case. To the contrary, the Waldo
22 Accord is the first meaningful settlement proposal reduced to writing and supported by
23 independent scientific review. Additionally, The Classes now are parties and have in place
24 agreements potentially agreeable to the Public Water Suppliers. In sum, there has never been a
25 better chance to resolve this case than right now.

26 It is true that cases do not settle until they are ripe to settle and that the threat of trial
27 often stimulates settlement. The Court well understands this and has encouraged the parties to
28 reach a settlement which the parties are diligently trying to accomplish in an expedited manner.

1 On the other hand, pushing parties into trial mode when a settlement might otherwise be
2 achievable, often times derails settlement of cases which should have been settled. Often
3 times, this also leads to a point where the parties have no alternative but to litigate the matter to
4 conclusion.

5 It is true there is significant disagreement about the safe yield of the Antelope Valley
6 Groundwater Basin. It also is true that expert opinions are divergent. Finally, it is true that
7 better documentation and scientific analysis can occur within the context of an overall
8 agreement to resolve the case with an agreement to ramp down to a scientifically supportable
9 safe yield. If the safe yield is set at an artificially low level, this most certainly will ensure a
10 long and protracted litigation process, may destroy the livelihood of some parties and will
11 further polarize the parties. On the other hand, a brief continuance will give the parties the
12 opportunity to craft a settlement agreement which will work for all parties, one which probably
13 cannot be achieved by litigation.

14 Los Angeles County, and possibly Littlerock, appear to be the only parties strongly
15 opposing a brief continuance. The suggestion that there is some immediate need to determine
16 safe yield is without merit. This litigation began in 1999. The case began trial in
17 approximately 1984. Los Angeles County filed two actions, one in Los Angeles County and
18 one in Kern County, effectively ending the trial. Now we find ourselves in 2010, ten (10) years
19 later. Why there is now suddenly a need to proceed immediately to trial on the issue of safe
20 yield is unknown. Certainly a sixty (60) day continuance could have no meaningful effect on
21 the groundwater basin.

22 Los Angeles County suggests that Article X, Section 2 requires that water resources be
23 used to the "fullest extent to which they are capable to protect the public interests." Bolthouse
24 agrees. It is precisely for this reason that the Accord makes logical sense. Rather than starting
25 at an artificially low safe yield, the Accord process created by the principals, appears to provide
26 for a starting point which will not harm the Basin, and which can be tested and adjusted over
27 time to maximize water extractions while not harming the Basin. This is consistent with
28 Article X, Section 2.

1 This Court requested the parties use their best efforts to resolve this matter. The parties
2 have done so in good faith. The Waldo process appears to be a very thorough evaluation of the
3 issues, scientifically supported by independent experts. The Robie process also appears to have
4 made substantial progress. Proceeding to trial in Phase 3 will likely derail any settlement hopes
5 and will commit the parties to a lengthy and protracted legal battle. This is undoubtedly why
6 the principals took action in a meaningful and expeditious attempt to bring this matter to
7 resolution. A sixty (60) day continuance of the trial cannot possibly be prejudicial to any party
8 and clearly is in the best interest of the public and the parties.

9 **REQUEST FOR CLARIFICATION OF PHASE 3 ISSUES IF THE COURT DENIES**

10 **THE MOTION TO CONTINUE THE TRIAL AND EXPERT DEPOSITIONS**

11 If the court denies the motion to continue trial and expert depositions related thereto, the
12 Bolthouse parties request clarification of Phase 3 issues as follows. Discussions between
13 various parties suggests there is confusion regarding the scope of Phase 3 issues. The
14 Declaration of Robert Kuhs, attorney for Tejon Ranch, indicates that one of its experts, E. John
15 List, will testify to “the safe yield of that portion of the Antelope Valley Groundwater Basin
16 lying westerly of the Bedrock Ridge and southerly of the Willow Springs Fault (West Antelope
17 Valley Basin or WAVB) and whether the WABV is in a state of overdraft.” Further, the
18 Declaration of Bob Joyce, attorney for Diamond Farming, indicates that its expert, Steven
19 Bachman, will testify to the “hydrological connection of the Willow Springs subarea to the
20 main Antelope Valley subarea and the extent to which pumping in the Willow Springs subarea
21 affects groundwater elevations in the main area of adjudication.” A review of the Court’s
22 Order regarding Phase 3 Trial compared with the Case Management Conference which
23 preceded the Court’s Order, sheds light on the reason for the confusion.

24 A lengthy discussion occurred regarding Phase 3 Trial issues during the Case
25 Management Conference on June 14, 2010. A wide variety of potential issues were discussed
26 at length. A copy of the pertinent portion of that transcript is attached hereto as Exhibit “A.”
27 Following the June 14, 2010 discussion, this Court issued its Order regarding the issues to be
28 tried in Phase 3. A copy of the Order is attached hereto as Exhibit “B.” It appears the Court

1 considered the discussion of potential issues at the June 14, 2010 Case Management
2 Conference and set forth in the Order the limited issues the Court decided would be tried at the
3 Phase 3 Trial. The pertinent portion of the Order, Page 4, Lines 3 through 14 is quoted below:

4 “The public water provider parties have essentially alleged that the basin is in
5 overdraft, that extraction of water on an annual basis exceeds recharge, and that
6 the basin will suffer serious degradation and damage unless the Court exercises
7 its equitable jurisdiction. In this third phase of trial, the Court will hear evidence
8 to determine whether the basin, as previously defined by the Court in trial
9 phases one and two, is in such overdraft and to determine whether there is a
10 basis for the Court to exercise its equitable jurisdiction, including the
11 implementation of a “physical solution,” as prayed for by the public water
12 provider parties. The public water providers have the burden of proof.

13 “The Court will not hear any evidence concerning prescription claims nor does it
14 expect to hear evidence of individual pumping of water by any party within the
15 basin; rather, it expects to hear evidence concerning total pumping and total
16 recharge from all sources, with a further breakdown showing the amount of
17 imported water on an annual basis.”

18 This Order indicates that the court will litigate alleged overdraft for the purpose of
19 determining whether the Court should exercise equitable jurisdiction. The Court specifically
20 advised that it would not hear evidence regarding prescription claims or evidence of individual
21 pumping of any party within the Basin. The Court further advised that it intended to hear
22 “evidence concerning total pumping and total recharge from all sources, with a further
23 breakdown showing the amount of imported water on an annual basis.”

24 Based upon the Order, it appears the court only intends to hear evidence regarding
25 whether the Basin is in overdraft to determine whether a physical solution is necessary and
26 regarding total pumping and total recharge from all sources, including imported water, to
27 determine the safe yield. As is evident from the transcript attached as Exhibit “A,” the issues
28 earlier discussed were much broader and are unnecessary to a determination of overdraft and
safe yield. The expert declarations indicate an intention to present evidence of inter-basin
pumping and the effects thereof. While this type of testimony potentially would be relevant to
prescription and/or management issues, based upon the Court’s Order, it does not appear the
Court intends to hear this evidence in the Phase 3 Trial.

In summary, this request for clarification requests the Court clarify the scope of its
Phase 3 Order. It is respectfully submitted that failure to clarify these issues will result in a

1 rather confused expert deposition process and rebuttal process, as well as confusion at trial with
2 multiple parties presenting evidence on a variety of different issues.

3
4
5 DATED: July 28, 2010

Respectfully submitted.

6 CLIFFORD & BROWN

7
8 By:



9 RICHARD G. ZIMMER, ESQ.
10 Attorneys for BOLTHOUSE PROPERTIES,
11 LLC and WM. BOLTHOUSE FARMS, INC
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EXHIBIT “A”

1 LOS ANGELES, CALIFORNIA; MONDAY, JUNE 14, 2010

2 9:10 A.M.

3 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

4 THE COURT: GOOD MORNING, EVERYBODY. THIS IS THE CASE
5 MANAGEMENT CONFERENCE AND HEARING ON A NOTICED MOTION IN THE
6 ANTELOPE VALLEY CASE. I'M ASSUMING ALL COUNSEL HAS CHECKED
7 IN WITH THE CLERK, AND SO WE ARE NOT GOING TO ASK YOU THAT
8 AGAIN. ONE THING I WILL ASK YOU TO DO IS PLEASE AS YOU SPEAK
9 IDENTIFY YOURSELF BY NAME, AND WE'LL PROCEED IN THAT FASHION.

10 THERE ARE ESSENTIALLY TWO THINGS THAT I WANT TO
11 TAKE UP HERE THIS MORNING. ONE IS THE MOTION NOTIFICATION OF
12 TRANSFEREES AND OBTAINING JURISDICTION. THAT WAS FROM THE
13 ORIGINAL PROPOSED MOTION THAT WAS FILED BY TEJON IN 2008.
14 AND I'D LIKE AN UPDATE WITH REGARD TO SOME OF THE ISSUES THAT
15 HAVE BEEN BROUGHT TO MY ATTENTION WITH REGARD TO JUSTICE
16 ROBIE.

17 SO LET'S FIRST TALK ABOUT THE PROPOSED ORDER AND
18 JURISDICTION. I HAVE READ EVERYBODY'S OPPOSITION AS WELL AS
19 THE REPLY AND THE RESPONSE TO THE REPLY THAT A COUPLE OF YOU
20 HAVE FILED. IS THERE ANYTHING NEW THAT ANYBODY WANTS TO
21 ADDRESS AT THIS POINT?

22 ALL RIGHT. HEARING NONE, LET ME JUST MAKE AN
23 OBSERVATION ABOUT THIS.

24 WITH REGARD TO THE ORIGINAL PROPOSED ORDER, IT
25 MAKES SENSE TO ME THAT THAT ORDER BE MODIFIED AND SIGNED.
26 THE ONLY ISSUE THAT I'M CONCERNED ABOUT WITH REGARD TO THAT
27 IS FIRST OF ALL, INCLUDING THE REQUIREMENT THAT THE
28 CROSS-COMPLAINANT SHOULD THEN BE SERVED UPON ANY TRANSFER AND

1 NOTICE, BUT SECONDLY, THE CLASS MEMBERS.

2 AND IT DOES SEEM TO ME THAT GIVEN THE STATE OF
3 FLUX WITH REGARD TO THE SETTLEMENT OR SETTLEMENTS OF THE
4 CLASS MEMBERS, I REALLY DON'T WANT TO MAKE AN ORDER
5 CONCERNING TRANSFEREES AT THIS POINT WITH REGARD TO THE CLASS
6 MEMBERS.

7 AND RECOGNIZING THAT, UNDOUBTEDLY, IN PARTICULAR
8 WITH REGARD TO THE NUMBERS OF DORMANT CLASS MEMBERS
9 UNDOUBTEDLY HAVE BEEN TRANSFERRED AND PROBABLY A SIGNIFICANT
10 NUMBER OF THEM, THOSE PEOPLE MAY WELL BE CLASSIFIED FOR
11 PURPOSES OF THIS ADJUDICATION AS DE MINIMUS INSOFAR AS THE
12 MCCARRAN ACT AND OTHER ISSUES THAT ARE CONCERNS.

13 SO AT THIS POINT, I WANT TO RESERVE MAKING ANY
14 ORDERS CONCERNING THOSE CLASS MEMBERS AND NOTIFICATION TO
15 TRANSFEREES.

16 IN TERMS OF THE WOOD CLASS, HOW MANY ROUGHLY DO
17 WE BELIEVE ARE MEMBERS OF THAT CLASS?

18 MR. MCLACHLAN, ARE YOU ON THE LINE?

19 MR. MCLACHLIN: YES, YOUR HONOR. THIS IS MIKE
20 MCLACHLAN SPEAKING. I JUST RECENTLY, I THINK ACTUALLY ON
21 FRIDAY RECEIVED FROM BEST, BEST & KRIEGER THE DOWNLOADED
22 DATABASE WE HAVE. THAT SHOULD BE FINE. MY PARALEGAL'S
23 OFFICE IS ANALYZING THAT TO FIGURE OUT THE EXACT NUMBER.
24 THERE IS QUITE A BIT OF WORK TO BE DONE TO BE ABLE TO WEED
25 OUT PEOPLE THAT EXCLUDED THEMSELVES FROM THE CLASS.

26 SO I DON'T KNOW. ROUGHLY, IT'S SOMEWHERE
27 BETWEEN 4,000 AND 5,000. THE EXACT NUMBER I CAN'T TELL YOU.
28 AND I PROBABLY WON'T BE ABLE TO TELL YOU FOR PROBABLY FIVE OR

1 SIX DAYS, I GUESS.

2 THE COURT: OKAY. I AM ASSUMING THAT THOSE PEOPLE
3 THAT EXCLUDED THEMSELVES FROM THAT CLASS HAVE BEEN SERVED?

4 MR. MCLACHLAN: MY UNDERSTANDING IS MOST OF THEM HAVE
5 BEEN, ALTHOUGH WE WILL KNOW THE EXACT ANSWER TO THAT WHEN WE
6 GO TO THE DATABASE. AND AFTER I HAVE LOOKED THROUGH THE
7 THING MYSELF, I FIND A PILE OF DECLARATIONS SETTING FORTH THE
8 INFORMATION RELATIVE TO SERVICE AND WHO'S IN THE CLASS
9 NUMBERS AND SO FORTH AFTER, OF COURSE, I DISCUSS WITH BEST,
10 BEST & KRIEGER TO MAKE SURE THAT WE DON'T HAVE ANY GLITCHES.

11 THE COURT: YEAH, OKAY. ALL RIGHT. WELL, MY
12 TENTATIVE DECISION HERE IS TO SIGN AN ORDER THAT IS
13 ESSENTIALLY THE ORDER THAT WAS FILED BY TEJON, PROPOSED BY
14 TEJON IN 2008, EXCLUDING AND RESERVING THE ISSUE AS TO CLASS
15 MEMBERS AND NOTIFICATION OF CLASS MEMBERS, TRANSFEREES AND
16 SERVICE AS TO THOSE PEOPLE.

17 AGAIN, I THINK THERE IS A DIFFERENCE BETWEEN THE
18 LOWEST CLASS AND THE WOOD CLASS IN THAT REGARD IN TERMS OF
19 OUR ABILITY TO DO A PROPER AND COMPREHENSIVE ADJUDICATION.

20 ALL RIGHT. SO THAT'S MY TENTATIVE. AND I AM
21 GOING TO ASK MR. DUNN, ARE YOU ON THE LINE?

22 MR. DUNN: YES, I AM, YOUR HONOR.

23 THE COURT: I'M NOT SURE WHICH OF THE LAWYERS PREPARED
24 YOUR RESPONSE. BUT WHAT I WOULD LIKE YOU TO DO IS TO GO BACK
25 TO THE TEJON PROPOSED ORDER AND ESSENTIALLY, YOU CAN
26 ELIMINATE ALL OF THE PRELIMINARY LANGUAGE DEALING WITH
27 DISCUSSIONS AND SO ON, AND ESSENTIALLY, IN THE LANGUAGE OF
28 THE COURT FIND GOOD CAUSE AND ESSENTIALLY ADOPT THE LANGUAGE

061410 Hearing
1 FROM THAT ORDER, EXCLUDING CLASS MEMBERS.
2 MR. DUNN: YES, YOUR HONOR.
3 THE COURT: IF YOU CAN GET THAT AND POST IT WITHIN THE
4 NEXT FIVE DAYS, THEN I WILL SIGN IT.
5 MR. DUNN: YES.
6 THE COURT: ALL RIGHT. NOW --
7 MR. DUBOIS: YOUR HONOR, THIS IS MR. DUBOIS. ARE THE
8 REST OF THE PARTICIPANTS GOING TO HAVE AN OPPORTUNITY TO SEE
9 THAT PROPOSED REVISED ORDER BEFORE IT ACTUALLY GETS SIGNED
10 AND GOES FINAL?
11 THE COURT: YOU'LL SEE IT WHEN I SEE IT. AND I'LL
12 WAIT A COUPLE OF DAYS BEFORE I SIGN IT.
13 MR. DUBOIS: THANK YOU, YOUR HONOR.
14 THE COURT: OKAY.
15 MR. KUNEY: YOUR HONOR, THIS IS SCOTT KUNEY.
16 THE COURT: YES.
17 MR. KUNEY: I APPRECIATE THAT, YOUR HONOR. IF I
18 UNDERSTAND YOU CORRECTLY, BACK IN THE ORIGINAL TEJON ORDER,
19 THE 7TH PARAGRAPH HAD EXPRESSED DIRECTIVES THAT THEY WOULD
20 PROMPTLY SERVE THE CROSS-COMPLAINT ON THESE TRANSFEREES. AND
21 IT IS THAT LANGUAGE THAT YOU ARE REINSTATING AS COMPARED TO
22 THE CURRENT PROPOSAL?
23 THE COURT: YES.
24 MR. KUNEY: THANK YOU. AND THEN WHAT DO WE DO -- THIS
25 WILL BE A GOING FORWARD ORDER, OF COURSE, TO AFFECT AND
26 NOTIFY PEOPLE. BUT WHAT DO WE DO ABOUT THE HIATUS THAT HAS
27 OCCURRED THIS LAST YEAR AND A HALF WITH TRANSFEREES? AND WE
28 PRESENTED TO THE COURT EVIDENCE THAT OBVIOUSLY, THERE HAVE

5

1 BEEN SUBSTANTIAL TRANSFERS. HOW ARE WE GOING TO RECTIFY THAT

061410 Hearing
2 DEFICIENCY IN OUR JURISDICTION?

3 THE COURT: HOW WOULD YOU LIKE TO RECTIFY IT?

4 MR. KUNEY: I THINK IT IS THE COUNTY'S OBLIGATION TO
5 IDENTIFY THOSE PARTIES AND TO SERVE THEM. THEY HAVE TO
6 RECEIVE SERVICE OF THE COMPLAINT.

7 THE COURT: LET ME ASK YOU THIS, MR. KUNEY. ALL OF
8 THOSE PEOPLE THAT YOU ARE TALKING ABOUT FOR THE MOST PART ARE
9 REPRESENTED BY COUNSEL IN THIS PROCEEDING. THOSE ARE THE
10 PEOPLE WE'RE TALKING ABOUT BECAUSE IT SEEMS TO ME WITH THE
11 EXCEPTION OF A COUPLE THAT HAVE FALLEN THROUGH THE CRACKS,
12 THERE HAS BEEN SERVICE ON VIRTUALLY ALL OF THE SIGNIFICANT
13 LAND OWNERS IN THE VALLEY. AND MOST OF THOSE PEOPLE, ONCE
14 THEY HAVE BEEN SERVED, HAVE FILED AN ANSWER THROUGH COUNSEL,
15 PARTICULARLY I'M TALKING ABOUT SIGNIFICANT PARCELS OF LAND.

16 AND I'M ASSUMING THAT IF COUNSEL REPRESENTS A
17 PARTY WHO HAS TRANSFERRED THE PROPERTY, SO THAT THEY ARE NO
18 LONGER A PARTY TO THIS LAWSUIT, COUNSEL WOULD BE UNDER SOME
19 OBLIGATION TO NOTIFY THE COURT; IS THAT CORRECT?

20 MR. KUNEY: I DON'T KNOW IF THAT'S CORRECT OR NOT.
21 BUT I MEAN --

22 THE COURT: WELL, AS AN OFFICER OF THE COURT, DON'T
23 YOU THINK THAT COUNSEL HAS AN OBLIGATION TO NOTIFY THE COURT
24 WHEN THE PARTIES THEY REPRESENT ARE NO LONGER INTERESTED IN
25 THE LAWSUIT?

26 MR. FIFE: MICHAEL FIFE, YOUR HONOR. IF I CAN COMMENT
27 ON THAT?

28 THE COURT: I WANT MR. KUNEY TO COMMENT ON IT FIRST.

6

1 MR. KUNEY: WELL, I DON'T KNOW THAT THAT'S BEEN THE
2 CASE. I HAVE NEVER SEEN IN THIS PROCEEDING ANY SUCH

3 NOTIFICATION BY ANY COUNSEL IN THIS CASE OF THAT KIND OF A
4 NOTIFICATION, YOUR HONOR. SO I'M NOT CERTAIN OF THAT.

5 THE COURT: WELL, I HAVEN'T EITHER. AND THAT'S WHY
6 I'M ASSUMING THAT THERE HAS BEEN NO SUCH REMOVAL.

7 MR. FIFE, YOU WANT TO SAY SOMETHING?

8 MR. FIFE: YES, YOUR HONOR. I REPRESENT A NUMBER OF
9 LARGE LAND OWNERS WHO OWN MULTIPLE PARCELS OF PROPERTY. AND
10 OVER THE COURSE OF THE PAST COUPLE YEARS, MANY OF THEM HAVE
11 SOLD PORTIONS OF THEIR PROPERTY TO OTHER PEOPLE. THEY ARE
12 STILL PARTIES TO THIS CASE. THEY STILL OWN PROPERTY. THEY
13 ARE STILL MY CLIENTS. BUT THERE ARE NOW OTHER PEOPLE WHO ARE
14 PROPERTY OWNERS WHO OWN PROPERTY WHERE WATER PRODUCTION HAS
15 OCCURRED AND IS CONTINUING TO OCCUR WHO ARE NOT PARTIES TO
16 THE CASE.

17 AND I NOTICE THAT THAT'S THE CASE WITH SOME OF
18 MY CLIENTS. AND I BELIEVE THAT THAT'S THE CASE WITH OTHER
19 LAND OWNERS WHO ARE NOT MY CLIENTS. SO JUST BECAUSE THERE
20 HAS BEEN A TRANSFER AND THERE ARE NOW PARTIES OUT THERE WHO
21 ARE NOT PARTIES TO THIS CASE, THAT WOULDN'T NECESSARILY
22 APPEAR IN THE FORM OF AN ATTORNEY WITHDRAWING FROM THE CASE
23 BECAUSE THEIR CLIENT IS NO LONGER --

24 THE COURT: NOT TALKING ABOUT NECESSARILY WITHDRAWING.
25 BUT WHEN YOUR REPRESENTATION CHANGES AND THERE ARE NEW
26 PARTIES INVOLVED IN A LAWSUIT, IT SEEMS TO ME THAT FIRST OF
27 ALL, THE TRANSFEROR OF THE PROPERTY, THE GRANTOR IS UNDER
28 SOME OBLIGATION TO NOTIFY THE BUYER OF ANY SUCH PROPERTY.

7

1 AND CERTAINLY, I THINK COUNSEL, AS AN OFFICER OF
2 THE COURT PROBABLY OUGHT TO NOTIFY THE COURT OR AT LEAST THE
3 OTHER PARTIES THAT THERE HAS BEEN THE ELIMINATION OF SOME OF

4 THE PROPERTY. HOW ABOUT IF I MAKE AN ORDER THAT DO YOU THAT?

5 MR. FIFE: WELL, UNTIL THE FINDING OF THE COURT'S
6 ORDERS TODAY, AND I THINK IT IS THE SUBSTANCE OF MR. KUNEY'S
7 QUESTIONS, GOING FORWARD NOW, THAT'S THE CASE. BUT
8 PREVIOUSLY, THAT'S NOT BEEN THE CASE.

9 AND THERE HAVE BEEN A NUMBER OF VERY LARGE LAND
10 TRANSACTIONS, NOT ALL FROM MY CLIENTS, BUT FROM OTHER LAND
11 OWNERS SO THAT THERE ARE NOW VERY LARGE LAND OWNERS OUT THERE
12 WHO HAVE NOT BEEN MADE PARTIES TO THIS CASE.

13 THE COURT: WELL, THEY NEED TO BE, DON'T THEY?

14 MR. FIFE: I BELIEVE SO. AND I THINK MR. KUNEY HAS
15 IDENTIFIED SOME OF THOSE. IN OUR PLEADINGS, I BELIEVE MARCH
16 15TH, WE PROVIDED ANECDOTAL EVIDENCE OF SEVERAL LARGE SOLAR
17 PROJECTS, FOR EXAMPLE.

18 THE COURT: THOSE HAVE SUBSEQUENTLY BEEN SERVED, AS I
19 UNDERSTAND IT, BASED UPON THE DECLARATION OF THE
20 CROSS-COMPLAINANT.

21 ALL RIGHT. I THINK THAT YOU'VE RAISED A GOOD
22 POINT. I THINK THERE IS AN ISSUE THAT WE NEED TO ADDRESS BY
23 COURT ORDER. AND WHAT I'M GOING TO DO IS INQUIRE OF EACH
24 COUNSEL WHO REPRESENTS A LAND OWNER WHO HAS TRANSFERRED
25 PROPERTY TO A THIRD PARTY WHO IS NOT A PARTY TO THIS
26 LITIGATION TO FIRST OF ALL, POST NOTICE OF THAT TRANSFER.
27 AND I'M GOING TO DIRECT THAT THE CROSS-COMPLAINANT SERVE EACH
28 PARTY.

8

1 MR. DUBOIS: YOUR HONOR, I ASSUME THAT THIS ADDITIONAL
2 PROVISIO WILL BE INCLUDED IN THE PROPOSED ORDER?

3 THE COURT: YES.

4 MR. DUBOIS: THANK YOU.

5 MR. ZIMMER: RICHARD ZIMMER, YOUR HONOR.

6 THE COURT: YES, MR. ZIMMER.

7 MR. ZIMMER: I THINK PART OF THE PROBLEM, AT LEAST
8 FROM MY PERSPECTIVE, IS I'M NOT SURE ANYBODY REALLY KNOWS WHO
9 IS NOT INCLUDED. THE COURT MADE THE COMMENT EARLIER THAT YOU
10 THINK THAT ALL SIGNIFICANT PARTIES ARE IN THE CASE AND
11 THEREFORE, THE LAWYERS WOULD KNOW IF THEIR PROPERTY HAS BEEN
12 TRANSFERRED.

13 BUT I HAD ASKED SOMETIME AGO IF THE SUPPLIERS OR
14 THE COUNTY SPECIFICALLY WOULD PROVIDE AN INDICATION OF WHO
15 HASN'T BEEN SERVED, HOW MANY PIECES OF PROPERTY ARE THERE OUT
16 THERE AND WHO HASN'T BEEN SERVED.

17 THE COURT ALSO MADE THE COMMENT THAT ANYBODY
18 WITH ANY SIGNIFICANT INTEREST HAS BEEN SERVED AND THAT
19 DE MINIMUS PEOPLE MAY EXIST OUT THERE. BUT THE PROBLEM IS NO
20 ONE, I DON'T THINK ANYONE REALLY KNOWS WHO HASN'T BEEN
21 SERVED.

22 I HAVEN'T SEEN ANYTHING FROM THE COUNTY THAT
23 INDICATES HOW MANY PIECES OF PROPERTY THERE ARE OUT THERE,
24 HOW MANY PEOPLE OWN THOSE PROPERTIES, AND HOW MANY OF THOSE
25 PEOPLE HAVE BEEN SERVED WHO ARE EITHER IN THE CLASS OR HAVE
26 BEEN SERVED INDEPENDENTLY. AND I JUST DON'T THINK WE HAVE
27 ANY IDEA OF WHO HASN'T BEEN SERVED. THAT'S JUST A
28 FUNDAMENTAL PROBLEM.

9

1 THE COURT: WELL, THE QUESTION OBVIOUSLY AROSE VERY
2 EARLY ON IN THIS LITIGATION AND INDICATED THAT WE RECEIVED
3 INFORMATION FROM THE CROSS-COMPLAINANTS REPRESENTING TO THE
4 COURT THAT THEY BELIEVE THAT THEY HAVE IDENTIFIED AND SERVED
5 EVERY SIGNIFICANT WATER PRODUCER IN THE VALLEY.

6 NOW IF SOMEBODY HAS EVIDENCE TO THE CONTRARY, IT
7 SEEMS TO ME THAT THE BURDEN SHIFTS AT THAT POINT. AND I'D
8 LIKE TO HEAR IF THERE ARE PEOPLE WHO ARE SIGNIFICANT WATER
9 PRODUCERS WHO HAVE NOT BEEN SERVED.

10 YOU TRIED, WE TRIED TO MAKE IT DOWN SO THAT WE
11 HAVE A COMPREHENSIVE ADJUDICATION, VIRTUALLY, AND I SAY
12 VIRTUALLY BECAUSE YOU ARE NEVER GOING TO BE 100 PERCENT.
13 WE'VE GOT THE DORMANT CLASS, AT SOME POINT WE THOUGHT MIGHT
14 HAVE TO BE THE INCENTIVE CLASS. BUT WE HAVE THE GOOD FORTUNE
15 OF MISS WILLIS OR COUNSEL INITIATING THAT CLASS REPRESENTING
16 ALL OF THOSE PEOPLE.

17 MR. MCLACHLAN HAS INITIATED CLASS ACTION ON
18 BEHALF OF THE SMALL CLASS. AND I AM ASSUMING THAT EVERYBODY
19 ESSENTIALLY ABOVE THAT LEVEL HAS NOW BEEN SERVED AS AN
20 INDIVIDUAL DEFENDANT. THOSE PEOPLE WHO DECIDED THAT THEY
21 WANTED TO OPT OUT OF THE CLASS, I'M ASSUMING BASED UPON THE
22 INFORMATION THAT'S PROVIDED TO THE COURT, WERE SERVED. AND A
23 NUMBER OF THEM DECIDED TO OPT BACK INTO THE CLASS.

24 AND SO IT SEEMS TO ME AT THIS POINT THAT ABSENT
25 SOME EVIDENCE, FOR EXAMPLE, AS PROVIDED TO THE COURT,
26 VIRTUALLY EVERYBODY WHO SHOULD HAVE BEEN SERVED IS IN THE
27 LITIGATION. AND THOSE THAT MR. KUNEY INDICATED HAVE NOT BEEN
28 SERVED HAVE NOW BEEN SERVED.

10

1 MR. ZIMMER: YOUR HONOR, ONE MORE COMMENT. WHEN YOU
2 SAY THAT EVERYONE THAT IS SIGNIFICANT HAS BEEN NAMED AND
3 SERVED, I DON'T THINK -- EVEN IF THE COUNTY DID DO A
4 DECLARATION THAT SAID ANYONE WHO IS SIGNIFICANT HAS BEEN
5 NAMED AND SERVED, IT WOULDN'T MEAN ANYTHING. WHAT'S
6 SIGNIFICANT? WHAT'S DE MINIMUS?

7 I HAVEN'T SEEN ANYTHING FROM THE COUNTY
8 INDICATING HOW MANY LAND OWNERS ARE OUT THERE AND WHAT THE
9 PERCENTAGE IS OF THOSE THAT THEY SERVED, AND IF THEY ARE
10 EXCLUDING THEM, WHETHER THEY ARE EXCLUDING THEM BASED UPON A
11 CERTAIN AMOUNT OF PUMPING OR A CERTAIN AMOUNT OF ACREAGE.

12 I DO RECALL WHEN THIS ISSUE FIRST CAME UP THAT
13 THE LAND OWNERS WERE PRESENTED WITH THE OPPORTUNITY TO DO
14 DISCOVERY TO FIND OUT HOW MANY LAND OWNERS ARE THERE, HOW
15 MANY HAVE YOU SERVED, HAVE YOU MADE ANY EXCLUSIONS. AND THAT
16 DISCOVERY WAS NEVER ALLOWED. AND WE KEEP GETTING AROUND IT,
17 SO THESE BIG DECLARATIONS.

18 BUT THERE HAS NEVER BEEN -- I MEAN CERTAINLY A
19 LOT OF LAND OWNERS HAVE BEEN SERVED, THERE IS NO QUESTION.
20 BUT WE HAVE NO IDEA WHAT THAT IS PERCENTAGE-WISE TO THE WHOLE
21 BASIN. WE HAVE NO IDEA WHAT THAT BEARS ON IN TERMS OF THEIR
22 WATER USAGE OR ACREAGE IN COMPARISON TO THE WHOLE BASIN.

23 THE COURT: I THINK COUNSEL MADE REPRESENTATIONS TO
24 THE COURT ABOUT WHO HAS BEEN SERVED AND CATEGORIES OF THE
25 PARTIES WHO HAVE BEEN SERVED. AND IF THERE IS CONTRARY
26 EVIDENCE, THAT NEEDS TO BE PRODUCED TO THE COURT.

27 AS I INDICATED, MR. KUNEY DID PROVIDE SOME.
28 BOTH BLANKS WERE FILLED IN, I THINK, OF THE PARTIES SERVED.

11

1 AND I THINK THAT I'M SATISFIED THAT WE HAVE A SUFFICIENT
2 NUMBER OF PARTIES TO DO A VERY COMPREHENSIVE ADJUDICATION IN
3 THIS MATTER. SO I'M NOT GOING TO MAKE FURTHER ORDERS BEYOND
4 WHAT I'VE JUST INDICATED.

5 MR. KUNEY: YOUR HONOR, THIS IS SCOTT KUNEY AGAIN, AND
6 I APPRECIATE THIS. WHAT WE WERE ABLE TO DO IS IDENTIFY FOUR
7 LAND OWNERS THAT WE WERE AWARE OF IN THE COURSE OF OUR

8 BUSINESS, AND IT AMOUNTED TO OVER 5,000 ACRES. BUT I CAN'T
9 REPRESENT TO THE COURT THAT THOSE ARE THE ONLY FOUR. THOSE
10 ARE SIMPLY THE FOUR THAT I KNEW OF.

11 BUT I THINK IT IS INDICATIVE OF THE PROBLEM THAT
12 SOME OF THESE WERE TRANSFEREES. BUT THE MAJORITY OF THAT
13 ACREAGE WAS NOT THE SUBJECT OF TRANSFEREES. SO I THINK IT IS
14 EVIDENCE INDICATING THAT THERE IS DEFICIENCY IN THE SERVICE,
15 NOTWITHSTANDING THE GOOD FAITH EFFORTS AND REPRESENTATIONS OF
16 THE COUNTY'S COUNSEL.

17 AND IT REALLY IS INCUMBENT ON THE COUNTY TO
18 IDENTIFY WITH SOME CERTAINTY THAT THEY HAVE, IN FACT, SERVED
19 EVERYONE THAT IS NECESSARY FOR THIS PROCEEDING. AND WE JUST
20 HAVEN'T RECEIVED, AND WE HAVE NO WAY OF VERIFYING THE ACTUAL
21 SERVICE OF THE OTHER PARTIES. AND I THINK THAT'S --

22 THE COURT: AS I INDICATED, MR. KUNEY, I'M NOT GOING
23 TO MAKE ANY FURTHER ORDERS CONCERNING THAT AT THIS TIME. NOW
24 WE'VE HAD VARIOUS INDICATIONS THAT THERE ARE SETTLEMENT
25 CONFERENCES GOING FORWARD, THAT THERE IS A MEDIATOR WHO IS
26 ASSISTING THE PARTIES. AND BASED UPON THOSE REPRESENTATIONS
27 AND THE REPRESENTATION THAT THERE WAS SOME VERY GREAT
28 LIKELIHOOD OF SUCCESSFUL SETTLEMENT NEGOTIATIONS, I'VE

12

1 MODIFIED THE CASE MANAGEMENT ORDER REGARDING THE DISCLOSURES
2 AND SO ON AT THAT HEARING.

3 AND I'D LIKE TO KNOW IF THOSE SETTLEMENT
4 NEGOTIATIONS ARE STILL GOING ON, NUMBER ONE. NUMBER TWO, I
5 DID AUTHORIZE JUSTICE ROBIE TO ENGAGE IN FURTHER MEDIATION
6 AND SETTLEMENT DISCUSSIONS WITH -- I'M ASSUMING IT WAS THE
7 CLASS MEMBERS OR THE CLASS COUNSEL THAT ASKED FOR THAT
8 SETTLEMENT.

9 061410 Hearing
10 AND THEN I WAS INFORMED BY JUSTICE ROBIE THAT
11 THERE WAS ANOTHER INQUIRY CONCERNING THE POTENTIAL OF
12 EXPANDING HIS ROLE IN BEYOND JUST THE CLASS MEMBERS. HIS
13 CONCERN IS THAT IF THERE IS ANOTHER MEDIATION GOING ON, HE
14 DOESN'T WANT TO DO ANYTHING THAT WOULD IMPACT ON THAT UNTIL
15 THAT MEDIATION HAS BEEN CONCLUDED SUCCESSFULLY OR OTHERWISE.
16 SO MAYBE COUNSEL CAN ADVISE THE COURT AS TO
17 WHAT'S GOING ON IN THAT REGARD.
18 MR. ZLOTNICK: YOUR HONOR, THIS IS DAVID ZLOTNICK. AS
19 CLASS COUNSEL, I HAVE BEEN PARTICIPATING IN THAT WHAT'S KNOWN
20 AS THE WALDO MEDIATION PROCESS ON BEHALF OF THE CLASS. I AM
21 SPEAKING BECAUSE MOST OTHER COUNSEL HAVE NOT PARTICIPATED.
22 GENERALLY, THAT PROCESS HAS INVOLVED PRINCIPALS
23 OR REPRESENTATIVES OF PRINCIPALS RATHER THAN COUNSEL OF
24 RECORD IN THE LITIGATION. BUT THAT PROCESS HAS BEEN
25 CONTINUING. VIRTUALLY ALL OF THE PARTICIPANTS MET THIS PAST
26 WEDNESDAY AND THURSDAY IN PALMDALE. AND THERE IS ANOTHER
27 SESSION SCHEDULED NOT THIS WEEK, BUT NEXT WEEK IN PALMDALE.
28 THE COURT: ARE YOU SPEAKING EXCLUSIVELY OF THE WILLIS
 CLASS?

13

1 MR. ZLOTNICK: NO. THAT INVOLVES A LARGE NUMBER OF
2 PARTIES, INCLUDING MANY OF THE PUBLIC WATER SUPPLIERS,
3 INCLUDING MANY OF THE OVERLYING LAND OWNERS. THE UNITED
4 STATES HAS PARTICIPATED AT TIMES IN THAT. AND YOU KNOW, MOST
5 OF THE MAJOR LAND OWNERS HAVE SOME OF THE PUBLIC WATER
6 SUPPLY, SO IT'S BEEN A TENSE COMPREHENSIVE RESOLUTION.
7 OBVIOUSLY I CAN'T TALK ABOUT THE SUBSTANCE OF
8 THINGS BECAUSE OF THE MEDIATION PRIVILEGE AND BECAUSE OF THE
9 FACT THAT CERTAIN PARTIES ARE NOT PARTICIPATING. BUT I WILL

10 SAY THAT I THINK THERE HAS BEEN SUBSTANTIAL PROGRESS. IT IS
11 FAR FROM COMPLETE. THERE HAS BEEN SIGNIFICANT PROGRESS ON A
12 NUMBER OF MAJOR ISSUES AMONG THE PARTICIPANTS.

13 THE COURT: NOW THIS DOES NOT INCLUDE JUSTICE ROBIE'S
14 MEDIATION EFFORTS; IS THAT CORRECT?

15 MR. ZLOTNICK: THAT'S CORRECT. THIS IS TOTALLY
16 INDEPENDENT OF JUSTICE ROBIE'S MEDIATION EFFORTS. THIS
17 EFFORT STARTED IN MARCH OF THIS YEAR WITH A GROUP OF LAWYERS
18 FROM A WASHINGTON LAW FIRM GORDON -- FORGET THE FULL NAME OF
19 THE FIRM. BUT JIM WALDO IS THE LEAD LAWYER. HE HAS
20 SUCCESSFULLY MEDIATED A NUMBER OF CALIFORNIA BASINS. SO HE'S
21 FAMILIAR WITH CALIFORNIA WATER LAW.

22 AND ALSO, A NUMBER OF THE PARTIES HAVE WORKED
23 WITHIN THE PUBLIC ENTITIES, SOME OF THE PUBLIC ENTITIES IN
24 THE PAST, IN ANY EVENT.

25 SO THERE HAVE BEEN THREE ATTORNEYS FROM HIS FIRM
26 WHO HAVE BEEN ACTIVELY MEETING WITH THE PARTIES EVERY OTHER
27 WEEK AND MEETING IN PALMDALE SINCE MARCH. AND THEY ARE BEING
28 PAID A SIGNIFICANT AMOUNT BY A NUMBER OF PARTICIPANTS. NOT

14

1 EVERYONE HAS AGREED TO PAY THEM, BUT I THINK 14 OR 15 OF THE
2 PARTICIPANTS ARE PAYING A SIGNIFICANT AMOUNT ON A MONTHLY
3 BASIS TO THAT LAW FIRM TO TRY TO GET TO A RESOLUTION OF THIS
4 ON A COMPREHENSIVE BASIS. AND THERE HAS BEEN SUBSTANTIAL
5 PROGRESS.

6 I CAN'T SAY THAT, YOU KNOW, I MEAN IT'S
7 CERTAINLY FAR FROM CONCLUDED AT THIS POINT. BUT THE HOPE IS
8 THAT IT WILL BE RESOLVED AT LEAST IN PRINCIPLE ON MAJOR
9 ISSUES WELL BEFORE THE UPCOMING TRIAL DATE.

10 THE COURT: OKAY. I'M ASSUMING THAT THESE DISCUSSIONS

11 AND THESE POTENTIAL SETTLEMENTS IF THEY COME TO PASS WILL
12 THEN FLOW RIGHT INTO THE NECESSITY OF ADJUDICATION?

13 MR. LEMIEUX: YOUR HONOR, THIS IS KEITH LEMIEUX. TO
14 MY KNOWLEDGE, THE COUNTY IS NOT PARTICIPATING. THE
15 LITTLEROCK CREEK GROUP IS NOT PARTICIPATING. I DON'T BELIEVE
16 THE FEDERAL GOVERNMENT IS PARTICIPATING. SO I DON'T THINK
17 ANYTHING WITH THIS WALDO PROCEDURE IS GOING TO HAVE ANY
18 BEARING ON THE TRIAL DATE.

19 THE COURT: WELL, THAT'S WHAT I MEANT. WE WOULD THEN
20 PROCEED WITH THE TRIAL BECAUSE THAT'S GOING TO BE AN
21 IMPORTANT FINDING OF FACT THAT NEEDS TO BE MADE BY THE COURT.

22 MR. FIFE: YOUR HONOR, MICHAEL FIFE. AND I WOULD
23 DISAGREE WITH THAT. I BELIEVE THAT PART OF THE MEDIATION
24 THAT'S GOING ON IS A TECHNICAL MEDIATION ALSO CONCERNING THE
25 BASIC FACTS THAT WOULD BE THE SUBJECT OF PAGE 3, AND THAT ONE
26 POSSIBILITY COMING OUT OF THIS MEDIATION PROCESS IS THAT THE
27 PHASE 3 TRIAL WOULD NOT BE NECESSARY.

28 MR. DUNN: THIS IS MR. DUNN, YOUR HONOR. AS MR.

15

1 LEMIEUX INDICATED, THE COUNTY OF LOS ANGELES AND OTHER KEY
2 PARTIES IN THIS LITIGATION ARE NOT PARTICIPATING IN THE WALDO
3 MEDIATOR PROCESS. WE WILL GO FORWARD WITH THE PHASE 3 TRIAL
4 AND WE WOULD OPPOSE ANY EFFORT ON THE PART OF ANY PARTY --

5 MR. EVERTZ: YOUR HONOR, DOUG EVERTZ FOR THE CITY OF
6 LANCASTER. I AGREE WITH MR. FIFE. MOST OF THE PARTIES ARE
7 PARTICIPATING IN WHAT WE CALL THE WALDO PROCESS. FROM OUR
8 STANDPOINT, I THINK THAT WE SHOULD HAVE MOST OF THE PARTIES
9 STIPULATE TO THE PROPOSED JUDGMENT, BRING IT TO THE COURT AND
10 AT LEAST FROM THE PARTIES PARTICIPATING, OBVIATE THE NEED FOR
11 THIS UPCOMING TRIAL.

12 THE COURT: WELL, WE'LL DEAL WITH THAT IF AND WHEN WE
13 REACH THAT POINT, OKAY? SO INsofar AS JUSTICE ROBIE'S
14 FURTHER INVOLVEMENT HEREIN, HE SET ASIDE A COUPLE OF DATES
15 TOWARD THE END OF THE MONTH. AND I'M ASSUMING THAT THE ONLY
16 PARTIES THAT ARE GOING TO BE INVOLVED IN THOSE DISCUSSIONS
17 ARE THE CLASS MEMBERS; IS THAT CORRECT?

18 MR. BUCK: MIKE BUCK, YOUR HONOR. WHEN THOSE DATES
19 WERE OBTAINED, THEY WERE OBTAINED -- MY UNDERSTANDING IS I
20 INQUIRED OF MR. DUNN ABOUT THAT. NOW I'M TOLD THAT THOSE
21 DATES WERE NOT FOR THE CLASS. THEY WERE RESERVED FOR SOME
22 COMPETING PROCESS FOR THE WALDO, FOR OTHER LAND OWNERS IF
23 THEY WANTED TO MEDIATE WITH JUSTICE ROBIE.

24 SO AS FAR AS I KNOW, THE CLASSES ARE NOT
25 MEDIATING ANY FURTHER, AND WE HAVE NO INDICATION OF THAT. IT
26 SOUNDS TO ME LIKE -- NOTHING IS GOING ON WITH IT. TRYING TO
27 PROCEED, BUT IT'S NOT GOING ANYWHERE. SO I WOULD NOT COUNT
28 ON THE SMALL MEMBER CLASSES SETTling OUT. (TELEPHONIC STATIC

16

1 INTERRUPTION)

2 MR. KALFAYAN: RALPH KALFAYAN, YOUR HONOR. WITH
3 RESPECT TO THE MEDIATION THAT WAS INITIATED BEFORE JUSTICE
4 ROBIE, I BELIEVE WE ARE STILL, WE ARE WAITING FOR WORD FROM
5 THE PUBLIC WATER SUPPLIERS AS TO WHETHER OR NOT THAT DEAL
6 WILL BE FINALIZED AND EXECUTED.

7 THE COURT: OKAY.

8 MR. KALFAYAN: SO WE'RE STILL WAITING ON THAT PROCESS.
9 BUT WE WON'T BE GOING IN FRONT OF JUSTICE ROBIE FOR ANYTHING
10 FURTHER ON THAT.

11 MR. DUNN: JEFF DUNN, YOUR HONOR. COUNSEL IS CORRECT.
12 FUTURE MEDIATION DATES ARE ANTICIPATED, MEDIATION WITH

061410 Hearing
13 PRIVATE LAND OWNER PARTIES. OTHER KEY PLAYERS WHO ARE NOT
14 PARTICIPATING IN THE WALDO PROCESS THAT ARE LOOKING FOR
15 ANOTHER APPROACH TO --

16 THE COURT: WELL, NOT EVERYBODY HAS TO SETTLE ON THE
17 SAME BASIS. WHAT I'M GOING TO DO IS TELL JUSTICE ROBIE TO GO
18 AHEAD, WITH THE UNDERSTANDING HE'S NOT REALLY INTERFERING
19 WITH THE WALDO PROCESS. HE'S SEPARATE FROM IT. AND IF HE'S
20 WILLING TO DO THAT, I WOULD ENCOURAGE YOU TO PARTICIPATE WITH
21 HIM.

22 ALL RIGHT. IS THERE ANYTHING FURTHER WE SHOULD
23 TAKE UP THIS MORNING?

24 MR. MCLACHLAN: YOUR HONOR, THIS IS MIKE MCLACHLAN. I
25 HAVE ONE OTHER POINT I WANTED TO BRING UP WHICH I THINK I
26 FAILED TO RAISE IN MY BRIEF, BUT IT DIDN'T DAWN ON ME UNTIL
27 FRIDAY.

28 THE COURT: YES.

17

1 MR. MCLACHLAN: WE DID TWO ROUNDS OF MAIL BECAUSE WE
2 HAD THAT ADDRESS AND SO FORTH. QUITE A NUMBER OF PEOPLE WE
3 WERE ABLE TO ULTIMATELY GET SERVICE ON. THERE ARE 160 SMALL
4 UPPER CLASS MEMBERS THAT NEVER RECEIVED ANY NOTICE. AND I
5 HAVE BEEN WRESTLING IN MY HEAD WHAT TO DO ABOUT THAT.

6 IT STRIKES ME THAT GIVEN THE IMPORTANCE OF THIS
7 CASE, THIS IS NOT LIKE, YOU KNOW, A SMALL BANK FRAUD CASE,
8 CONSUMER CLASS ACTION OR SOMETHING LIKE THAT INVOLVING, YOU
9 KNOW, A \$25 ISSUE OR SOMETHING. IT'S A PRETTY SIGNIFICANT
10 ISSUE.

11 AND I HAVE A GREAT CONCERN ABOUT INCLUDING THOSE
12 160 PEOPLE IN THE CLASS AND CONSIDERING THEM BOUND TO
13 JUDGMENT WITHOUT FURTHER STEPS BEING TAKEN AND ACTUALLY

061410 Hearing
14 NOTIFYING THEM. SO WHEN I FILE MY PAPERS, MY POSITION IS
15 THAT THOSE PEOPLE SHOULD BE EXCLUDED FROM THE CLASS, ABSENT
16 ADDITIONAL EFFORTS TO NOTIFY THEM. AND THE NUMBER AGAIN IS
17 160.

18 THE COURT: MR. DUNN, DO YOU WANT TO RESPOND?

19 MR. DUNN: I'M NOT SURE I FOLLOWED THE WHOLE COMMENT.
20 BUT IF IT'S A QUESTION OF SENDING OUT CLASS NOTICE TO AN
21 ADDITIONAL 160 MEMBERS OF THE CLASS, WE SHOULD BE ABLE TO GET
22 THAT CLASS NOTICE OUT TO THEM. THOSE ARE --

23 MR. MCLACHLAN: WE HAD NOTICES RETURNED BECAUSE OF BAD
24 ADDRESSES. THAT'S AFTER WE DID THE TITLE COMPANY SEARCH. SO
25 IT MAY TAKE A LITTLE BIT MORE THAN JUST A POSTAGE STAMP.

26 MR. DUNN: I HAVE TO THINK ABOUT THAT. MAYBE WE CAN
27 TALK WITH MR. MCLACHLAN:

28 MR. MCLACHLAN: YEAH, WE CAN TALK. I WANTED TO RAISE

18

1 THE ISSUE TO THE COURT JUST TO SEE IF WE HAD ANY STRONG
2 FEELINGS ON THAT ISSUE.

3 THE COURT: WELL, I THINK THEY OUGHT TO BE SERVED AND
4 GIVEN NOTICE. WELL, WHY DON'T YOU DISCUSS THAT WITH THE
5 OTHER WATER PRODUCERS AND SEE HOW THAT CAN BE RESOLVED.

6 LET ME ASK THIS OTHER QUESTION WITH REGARD TO
7 THE WALDO MEDIATION EFFORTS. IS THE COUNTY OF LOS ANGELES
8 GOING TO PARTICIPATE IN THAT MEDIATION WITH JUSTICE ROBIE?

9 COUNSEL: YOUR HONOR, WE WILL PARTICIPATE IN MEDIATION
10 WITH JUSTICE ROBIE, BUT NOT WITH MR. WALDO.

11 THE COURT: OKAY, THAT'S FINE. THEN I THINK, THE
12 OTHER THING THAT I WOULD URGE TO HAPPEN, WHEN YOU TELL ME
13 THAT THE WOODS CLASS IS BASICALLY STATIC AND NOTHING IS
14 HAPPENING, I THINK THAT FURTHER DISCUSSIONS NEED TO GO

15 FORWARD WITH REGARD TO THAT CLASS AND AT LEAST MAKE AN
16 EFFORT.

17 JUSTICE ROBIE IS CERTAINLY AVAILABLE AND WILLING
18 TO PARTICIPATE IN THAT DISCUSSION. SEE IF HE CAN ASSIST THE
19 PARTIES IN COMING TO A SOLUTION. AND GIVEN THE OTHER
20 SETTLEMENT DISCUSSIONS, THAT MAY BE OCCURRING WITH MR. WALDO.
21 AND SEEMS TO ME THAT'S AN IMPORTANT THING TO DO. IT WOULD BE
22 A REAL SHAME TO HAVE TO LITIGATE A SMALL PORTION. BUT OF
23 COURSE WE'RE WILLING TO DO THAT IN THE EVENT IT'S NECESSARY.

24 WITH THAT, MR. DUNN, IF YOU'LL GET THAT ORDER
25 PREPARED FOR THE COURT AND POST IT WITHIN FIVE DAYS, I'LL
26 APPRECIATE IT.

27 MR. DUBOIS: MR. DUBOIS SPEAKING, YOUR HONOR. WITH
28 RESPECT TO THE 160 SMALL MEMBERS THAT APPARENTLY HAVE NOT

19

1 EFFECTIVELY BEEN GIVEN NOTICE OR OTHERWISE SERVED, CAN THE
2 COURT REQUIRE THAT THE REST OF US PARTICIPANTS BE KEPT
3 APPRISED AS TO THE SOLUTION OF THAT PROBLEM SO THAT WE AT
4 LEAST HAVE SOME SENSE OF HOW IT'S GOING TO BE RESOLVED?

5 THE COURT: THAT'S APPROPRIATE.

6 MR. DUBOIS: THANK YOU, YOUR HONOR.

7 THE COURT: MR. DUNN, YOU CAN DO THAT?

8 MR. DUNN: YES, YOUR HONOR. THANK YOU.

9 THE COURT: ALL RIGHT. THANK YOU.

10 ALL RIGHT. I'M SURE THAT SOMEWHERE ALONG THE
11 LINE HERE, I'LL BE SCHEDULING ANOTHER CMC, AND I INVITE
12 COUNSEL TO PARTICIPATE. UNFORTUNATELY, IT'S PROBABLY GOING
13 TO HAVE TO BE, AT LEAST FOR THE NEXT COUPLE OF WEEKS,
14 TELEPHONICALLY IF IT OCCURS THEN. I'M NOT ABLE TO TRAVEL AND
15 I CANNOT -- I'M NOT VERY AMBULATORY AT THIS POINT.

16 061410 Hearing
17 SO MY APOLOGIES FOR THAT BECAUSE I HAD HOPED
18 THAT WE COULD HAVE AN IN-PERSON CASE MANAGEMENT CONFERENCE.
19 AND I'M GOING TO TRY AND SET ONE OF THOSE CERTAINLY WELL IN
ADVANCE OF THE TRIAL DATE.

20 OKAY. ANYTHING FURTHER?

21 MR. DUNN: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

23 ALL COUNSEL: THANK YOU, YOUR HONOR.

24 THE COURT: THAT'S THE CONCLUSION.

25 (PROCEEDINGS CONCLUDED)
26
27
28

EXHIBIT “B”

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 01 2010

John A. ...

BY RAUL SANCHEZ

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated 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 Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

Judge: Honorable Jack Komar

2
3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on May 6, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk
6 of Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 **ORDERS AMENDING THE MARCH 22, 2010 ORDER AFTER CASE**
10 **MANAGEMENT CONFERENCE**

11 The Third Phase of Trial remains scheduled for September 27, 2010 at 9:00 a.m. in
12 Department One of this Court. The time of trial remains estimated at 10 court days. The Court
13 will be in session for trial Monday through Thursday of each week. If additional days of trial are
14 required, the Court will schedule such after conferring with the parties.

15 The Request of Grimmway Enterprises, Inc., Lapis Land Company, LLC, Crystal
16 Organics, LLC and Diamond Farming Company to Modify the March 22, 2010 Case
17 Management Order, posted on April 30, 2010, is granted as follows: the time for parties to
18 comply with the provisions of Code of Civil Procedure Section 2034.210 and engage in a
19 simultaneous disclosure and exchange of expert information, including any reports prepared by
20 such experts, is extended from July 1, 2010 to July 15, 2010. The time for any supplemental
21 disclosures and exchange of information is extended from July 15, 2010 to July 29, 2010. The
22 time for expert depositions to be conducted is amended to between July 29, 2010 and
23 September 13, 2010.

24 On July 15, 2010, any party who intends to call non-expert witnesses to provide
25 percipient testimony shall file a statement listing such witness, the subject matter of their
26 testimony, and an estimate of the amount of time required for their testimony on direct.

27 All discovery shall be completed in compliance with the Code of Civil Procedure 30
28 days before trial and all motions shall be heard no later than 15 days before trial.

1 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
2 any responses or opposition shall be filed no later than September 24, 2010.

3 The public water provider parties have essentially alleged that the basin is in overdraft,
4 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
5 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this third
6 phase of trial, the Court will hear evidence to determine whether the basin, as previously defined
7 by the Court in trial phases one and two, is in such overdraft and to determine whether there is
8 a basis for the Court to exercise its equitable jurisdiction, including the implementation of a
9 "physical solution," as prayed for by the public water provider parties. The public water
10 providers have the burden of proof.

11 The Court will not hear any evidence concerning prescription claims nor does it expect
12 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
13 to hear evidence concerning total pumping and total recharge from all sources, with a further
14 breakdown showing the amount of imported water on an annual basis.

15 **WOOD PLAINTIFFS' MOTION TO DISQUALIFY**

16 The Motion by the Wood Plaintiffs to Disqualify the Law Firm of Lemieux & O'Neill is
17 denied based upon the information provided to the Court.

18 **WOOD PLAINTIFFS' MOTION FOR ALLOCATION OF EXPERT WITNESS**
19 **FEES**

20 On March 25, 2010, the Wood Plaintiffs submitted a Proposed Order re Motion for
21 Allocation of Expert Witness Fees, providing that the twelve named "Public Water Suppliers"
22 equally share the costs of Entrix in the amount of \$4,784.68. Objections thereto were filed by
23 the Cities of Lancaster and Palmdale. After considering the pleadings filed by all parties, the
24 Court finds the fees incurred to date by Entrix, in the amount of \$4,784.68 are reasonable, but
25 modifies the order to exclude the Cities of Lancaster and Palmdale from obligation as neither of
26 those parties are making claims against the these landowners.

27 The Court hereby orders the following public water suppliers to pay this bill directly to
28 Entrix within fourteen days (14) of this order. The following ten public water suppliers are

1 ordered to pay this bill, in equal shares: Rosamond Community Services District, Los Angeles
2 County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation
3 District, North Edwards Water District, Desert Lake Community Services District, California
4 Water Service Company, Quartz Hill Water District, Palmdale Water District and Phelan Pinon
5 Hills Community Services District.

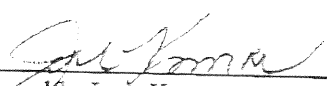
6 Further, the request of Richard Wood to authorize the court-appointed expert to
7 commence the work outlined in the proposal from Entrix, which was attached to the moving
8 papers, is denied without prejudice based on the decision that no evidence of individual
9 pumping will be heard at the Phase III trial, as set forth in the Court's March 22, 2010 Order.

10 **TRANSFeree/TRANSFEROR OBLIGATION**

11 Regarding the Proposed Order submitted by Tejon Ranchcorp on January 4, 2008 re
12 Jurisdiction over Transferees of Property, previously granted by the Court in open hearings, the
13 Court hereby confirms that it will defer signing said Order until further briefing and hearing of
14 the issues by the parties. The Court requests that the proponent of this transfer document file by
15 May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines shall
16 be per Code of Civil Procedure; the hearing date is set for **June 14, 2010 at 9:00 a.m. in**
17 **Department 1, Los Angeles County Superior Court.**

18 SO ORDERED.

19
20 Dated: May 25, 2010

21 
22 Honorable Jack Komar
23 Judge of the Superior Court
24
25
26
27
28

PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

On July 28, 2010, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S CASE
MANAGEMENT STATEMENT**

— by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

X **BY SANTA CLARA SUPERIOR COURT E-FILED IN COMPLEX
LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER
27, 2005.**

Executed on July 28, 2010, at Bakersfield, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


NANETTE MAXEY

2455-2