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November 20, 2012

2455-2

Via E-mail and E-Filing

Honorable Jack Komar
Superior Court of California, County of Santa Clara
Old Courthouse
191 N. First Street
San Jose, CA 95113

Re: Antelope Valley Groundwater Cases
Judicial Council Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV 049053

Dear Judge Komar:

This correspondence is in response to the Proposed Order filed on November 16, 2012 attached hereto for convenient reference. The United States in our recent drafting conference call indicated that it disagrees with this form of order on the grounds that the Court simply requested statements from the parties clarifying their claims during the 2011 to 2012 time frame and 2000 to 2004 time frame, that the United States was to provide a statement as to the basis for its Federal reserve right, and that parties claiming a return flow right are required to file a statement supporting the basis for any claims for return flow rights. Bolthouse agrees that the attached form of order appears to be much more detailed than the statement of claims discussed with the Court at the last Case Management Conference. The attached Proposed Order will require a great deal of party time to respond to and is likely to derail the current settlement discussions. At the Case Management Conference, the Court suggested that a party representative file a statement identifying water use, location and type of use during the 2000 to 2004 and 2011 to 2012 time periods. The Court also requested the parties provide a statement regarding the basis for any claims, return flow rights and for any Federal reserve right. Based upon these more general statements, the Court advised that parties may then evaluate whether to contest another party's claims. If so, the Court advised that follow up discovery can then be accomplished.

Honorable Jack Komar
Superior Court of California, County of Santa Clara
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Attached hereto is a more general list of questions which can be answered in the parties' statement. This more simple draft apparently was circulated prior to the attorneys making the Proposed Order more detailed and time consuming. It is suggested that this prior version would be more acceptable to the United States and the other parties. Additionally, the more general statement can possibly be addressed in the short time period available for a response. The more detailed version cannot possibly be meaningfully responded to in the time frame available.

Respectfully submitted,

Richard G. Zimmer

RGZ/nm
Enclosures

cc: All Counsel
(w/encls.)

BL/BOLTHOUSE/ANTELOPE VALLEY/SANTA CLARA/KOMAR-10

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

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

**[PROPOSED] COURT ORDERED
DISCOVERY FOR PHASE 4 TRIAL**

Hon. Jack Komar

All parties, excepting the members of the Wood Class, are hereby ordered to provide the following information and materials on or before December 21, 2012, by posting the same to the Court's website (www.scefiling.org) for this matter.

FOR ALL PARTIES CLAIMING AN OVERLYING GROUNDWATER RIGHT

1. For each parcel of real property the responding party owns or occupies or otherwise controls in the Antelope Valley Adjudication Area, please state with particularity the following information:

(A) The Kern County Treasurer Tax Collector's "Assessor Tax Number" or the Los Angeles County Office of the Assessor "Assessor's Identification Number" of the parcel. If the identifying parcel number has changed since 1999, please state both the current and previous number and the date the new identifying parcel number was assigned.

1 (B) All record title owners of the parcel from 2000 to the present.

2 (C) Whether a groundwater well existed on the parcel in any or all of calendar years
3 2000, 2001, 2002, 2003, 2004, 2011 or 2012.

4 (D) Whether a groundwater well was operated on the parcel in any or all of calendar
5 years 2000, 2001, 2002, 2003, 2004, 2011 or 2012.

6 (E) The amount of groundwater produced from the parcel for calendar years 2000,
7 2001, 2002, 2003, 2004, 2011, and/or 2012.

8 (F) The use(s) to which the groundwater produced from the parcel was put on said
9 parcel in any or all of calendar years 2000, 2001, 2002, 2003, 2004, 2011, or 2012.

10 (G) If groundwater produced from another parcel was used on the parcel during any
11 or all calendar years 2000, 2001, 2002, 2003, 2004, 2011, or 2012, please state the Kern
12 County Treasurer Tax Collector's "Assessor Tax Number" or the Los Angeles County
13 Office of the Assessor "Assessor's Identification Number" of the parcel(s) from which the
14 subject groundwater was produced and identify the owner thereof.

15 (H) The use(s) to which the parcel was put during each of calendar years 2011, and
16 2012.

17 (I) The crop type, if any, grown on the parcel during each of the calendar years
18 2000, 2001, 2002, 2003, 2004, 2011, and 2012.

19 (J) If the responding party contends the parcel has groundwater rights based upon
20 something other than groundwater production or use, please state the amount of that claim
21 for each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011, and 2012, and its legal
22 and factual basis therefor.

23 (K) At the responding party's election any other facts that the responding party
24 contends will assist the Court in determining the amount of groundwater produced from
25 each parcel of land owned or controlled by the responding party in any or all calendar years
26 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

27 2. For each parcel of real property the responding party owned in the Antelope
28 Valley Adjudication Area during calendar years 2000, 2001, 2002, 2003, 2004, 2011 or

1 2012, please state with particularity the following information:

2 (A) Whether the responding party leased any or all of the parcel.

3 (B) The name of the lessee.

4 (C) If the parcel was leased, the Kern County Treasurer Tax Collector's "Assessor
5 Tax Number" or the Los Angeles County Office of the Assessor "Assessor's Identification
6 Number" of the parcel. If the identifying parcel number has changed since 1999, please
7 state both the current and previous number and the date the new identifying parcel number
8 was assigned.

9 (D) How, if at all, the lease or other written agreement allocated credits for the
10 groundwater produced by the lessee.

11 (E) How much, if any, groundwater was produced by the lessee and delivered to
12 another parcel. If so, the Kern County Treasurer Tax Collector's "Assessor Tax Number"
13 or the Los Angeles County Office of the Assessor "Assessor's Identification Number" of
14 the parcel for the year(s) in which such groundwater was produced and delivered.

15 (F) If known, the use(s) to which groundwater was put on the leased parcel for
16 calendar years 2011 and 2012.

17 3. For all parcels of land identified in response to Request No. 1 above, please
18 state with particularity the following information:

19 (A) All materials constituting the responding party's *prima facie* showing of the
20 amount of groundwater produced from each parcel of land owned or controlled by the
21 responding party in calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

22 (B) All materials constituting the responding party's *prima facie* showing of the
23 use(s) to which the responding party put each parcel of land controlled by the responding
24 party in calendar years 2011 and 2012.

25 (C) At the responding party's election, any additional materials that will assist the
26 Court in determining the amount of groundwater produced from each parcel of land by the
27 responding party in any or all calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

28 ///

**FOR ALL PARTIES CLAIMING A NON-OVERLYING RIGHT, INCLUDING
APPROPRIATIVE, PRESCRIPTIVE OR OTHERWISE**

4. Please state with particularity the following information:

(A) The amount of groundwater the responding party produced in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011, and 2012.

(B) The Kern County Treasurer Tax Collector's "Assessor Tax Number" or the Los Angeles County Office of the Assessor "Assessor's Identification Number" of the parcel(s) from which the subject groundwater was produced and identify the owner thereof. If the identifying parcel number has changed since 1999, please state both the current and previous number and the date the new identifying parcel number was assigned.

(C) The well identification number(s) for each well that the responding party used to produce groundwater in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(D) The amount of groundwater produced from each well identified on the responding party's parcels in calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(E) The methodology used in determining the amount of groundwater produced on the responding party's parcels in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012, e.g. pump tests, meter records).

(F) For all groundwater pumping in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012 for parcels in Los Angeles County, copies of notices of groundwater extraction filed with the State Water Resources Control Board pursuant to Water Code section 4999 et seq. for each year filed.

(G) State whether the groundwater produced during the identified years was used for any purpose other than municipal supply. If so, state the use(s) to which such water was put in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011, and 2012.

(H) The amount of groundwater produced that was used for outdoor irrigation.

///

FOR ALL PARTIES CLAIMING RETURN FLOW CREDITS

5. Please state with particularity the following information:

(A) The amount of the responding party's groundwater pumping that constitutes the production of return flows from water imported into the Basin.

(B) The amount of return flows from imported water the responding party claims to have had a right to pump for each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(C) The methodology used for determining the amount of return flows from imported water the responding party claims to have had a right to pump for each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(D) The total amount of water imported by the responding party in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(E) Water quality information and water constituents for any and all imported water for which the responding party claims a right in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(F) Identify the use(s) to which imported water was(were) put in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(G) The date(s) on which any and all imported water was imported to the Basin in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(H) The geological conditions below the parcels for which the responding party claims return flow credits/rights from imported water in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

(I) The distance to the groundwater aquifer from the point any and all claimed imported water was deposited and the soil types under the deposition point.

(J) The amount of time the responding party contends the claimed return flows took to reach the groundwater aquifer from the time of importation to the Antelope Valley.

(K) Any physical evidence in the responding party's custody, control or possession that return flows augmented the Basin. If such information is in the possession of others,

1 and not produced by the responding party, please provide the contact information of such
2 party.

3 (L) The geographic location(s) claimed by the responding party that return flows
4 enter the groundwater aquifer.

5 (M) The portion, if any, that the responding party's claimed return flows water
6 entered a municipal sewer system.

7 (N) The geographic location(s) that municipal wastewater from local public
8 wastewater systems augment the Basin?

9
10 **FOR THE FEDERAL PARTIES**

11 6. Consistent with security concerns, please state with particularity the following
12 information:

13 (A) The federal reservation --

14 (1) The Congressional Act that created the federal reservation supporting your claim
15 to groundwater in the Antelope Valley Adjudicated Area (AVAA)

16 (2) Whether the claimed reservation of groundwater by the Federal Government is
17 expressed or implied.

18 (3) The purpose of any reservation of any parcels by the Federal Government.

19 (4) The identity of all lands set aside for the reservation by the Federal Government,
20 including the Kern County Treasurer Tax Collector's "Assessor Tax Number" or the Los
21 Angeles County Office of the Assessor "Assessor's Identification Number" of the parcel(s).

22 (4) Whether the Federal Government claims any portion of Edwards Air Force Base
23 is an original reservation of land that never entered the public domain. If so, describe such
24 portion(s) and why it (they) never entered the public domain.

25 (5) The intended use of any property that the Federal Government claims was part
26 of an original reservation of land for Edwards Air Force Base.

27 ///

28 ///

1 (6) When the remainder of Edwards Air Force Base property was acquired by the
2 Federal Government. Please provide specific acquisitions of property and the dates of such
3 acquisitions.

4 (7) How the remainder of Edwards Air Force Base was acquired by the Federal
5 Government and what portion was purchased from private landowners. Please provide the
6 historical Kern County Treasurer Tax Collector's "Assessor Tax Number" or the Los
7 Angeles County Office of the Assessor "Assessor's Identification Number" for each parcel
8 purchased by the United States.

9 (8) When was Edwards Air Force Base formally created?

10 (9) The amount of surplus groundwater the Federal Government contends remained
11 in the AVAA at the time of the reservations of land by the Federal Government for
12 Edwards Air Force Base.

13 (10) The factual basis supporting your contention that there was surplus
14 groundwater in the AVAA at the time of the reservations of land by the Federal
15 Government for Edwards Air Force Base.

16 (11) Identify all documents supporting the Federal Government's contention that
17 there was surplus groundwater in the AVAA at the time of the reservations of land by the
18 Federal Government for Edwards Air Force Base.

19 (12) The amount claimed by the Federal Government, in acre-feet of water, to
20 constitute the Federal Reserved Right?

21 (13) The basis for the Federal Government's estimation of the Federal Reserved
22 Right?

23 (B) Historical Water Use --

24 (1) The amount of water used by Edwards Air Force Base in each of calendar years
25 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

26 (2) The amount of groundwater used by Edwards Air Force Base in each of calendar
27 years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

28 ///

1 (3) The amount of groundwater used on the reserved lands for Edwards Air Force
2 Base in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

3 (4) The amount of groundwater used on Edwards Air Force Base that are not part of
4 the original reserved lands in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011
5 and 2012.

6 (5) The amount of groundwater used to irrigate and operate Muroc Lake Golf
7 Course in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

8 (6) The amount of water used on Edwards Air Force Base by all persons and entities
9 other than the Federal Government in each of calendar years 2000, 2001, 2002, 2003, 2004,
10 2011 and 2012.

11 (7) In general narrative terms, the uses to which water has been put on Edwards Air
12 Force Base in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

13 (8) Identify each tenant on Edwards Air Force Base in each of calendar years 2000,
14 2001, 2002, 2003, 2004, 2011 and 2012.

15 (9) All writings that reflect the amount of water used on Edwards Air Force Base in
16 each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

17 (10) All writings that reflect the types of water uses on Edwards Air Force Base in
18 each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

19 (11) All writings that reflect domestic, industrial, and irrigation water demands on
20 Edwards Air Force Base in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and
21 2012.

22 (12) Whether Edwards Air Force Base sold water to any private or public entity or
23 private contractor in each of calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.

24 (C) Future Water Requirements --

25 (1) The amount of water the Federal Government contends is necessary to
26 accomplish the purpose of the reservation of rights for Edwards Air Force Base.

27 (2) The minimum amount of water required to accomplish the purpose of the federal
28 reservation of rights.

1 (3) The factual basis supporting the Federal Government's contention regarding
2 future water needs to accomplish the purpose of the reservation.

3 (4) All writings supporting the Federal Government's contention regarding the
4 future water needs to accomplish the purpose of the reservation.

5 (5) All writings that evidence the anticipated future water needs of Edwards Air
6 Force Base.

7
8 **FOR ALL RESPONDING PARTIES**

9 7. For each of the items above, please identify the person(s) most qualified to
10 testify on its behalf to the facts alleged and materials produced.

11 8. The responding party's responses must be accompanied by an executed
12 verification by an individual authorized to do so.

13
14 Dated: _____

Judge of the Superior Court

PROOF OF SERVICE

I, Kelley Herrington, declare:

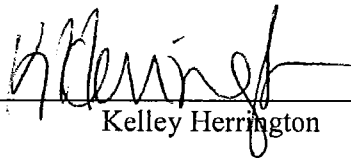
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On November 16, 2012, I served the within documents:

[PROPOSED] COURT ORDERED DISCOVERY FOR PHASE 4 TRIAL

- ☐ by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

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

Executed on November 16, 2012.


Kelley Herrington

1. Pumping Information

- (a) How much groundwater do you claim you pumped for each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011, and 2012?
- (b) State the Kern County Treasurer Tax Collector's "Assessor Tax Number" or the Los Angeles County Office of the Assessor "Assessor's Identification Number" of the parcel(s) from which the subject groundwater was produced and identify the owner thereof. If the identifying parcel number has changed since 1999, please state both the current and previous number and the date the new identifying parcel number was assigned.
- (c) Provide the well identification number(s) for each well that you used to produce groundwater in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.
- (d) How much of your claimed pumping in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012 comes from each well identified on your parcels?
- (e) What is your methodology for determining how much groundwater you pumped in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012 (pump tests, meter records, etc.)?
- (f) Was the water that you pumped during the identified years used for any purpose other than municipal supply?
- (g) How much of the water that you pumped in the identified years is used for outdoor irrigation?

2. Return Flows

- (a) How much of your pumping do you claim included pumping of return flows from water imported into the Basin?
- (b) How much return flow from imported water do you claim you have a right to pump for each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012?
- (c) What is your methodology for estimating the return flow from imported water you claim you have a right to pump for each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012?
- (d) What is the total amount of water that you imported in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012 ?

- (e) Please provide water quality information and water constituents for any and all imported water for which you claim a right in each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.
- (f) Identify the fate of any imported water, e.g. whether it was used as irrigation, in-house use, became municipal wastewater, other nonpotable water, etc.
- (g) Provide the dates any and all imported water was imported to the Basin.
- (h) Identify the geological conditions under the parcels for which you claim return flow rights from imported water.
- (i) Identify the distance to groundwater from the point any and all claimed imported water was deposited and the soil types under the deposition point.
- (j) How long does it take claimed return flows to reach the Basin from the time of importation to the Antelope Valley?
- (k) Provide any physical evidence in your possession or in the possession of others that return flows augmented the Basin. If such information is in the possession of others, please provide the contact information of such party.
- (l) At what geographic location do claimed return flows enter the Basin?
- (m) Was any portion of claimed return flows water that went into a municipal sewer system?
- (n) At what geographic location does municipal wastewater from local public wastewater systems augment the Basin?

3. Reserved Rights

- (a) How much do you claim is the Federal Reserved Right?
- (b) What is your basis for your claim estimation of the Federal Reserved Right?
- (c) Do you claim any portion of Edwards Airforce Base an original reservation of land that never entered the public domain? If so, please describe such portion and why it never entered the public domain.
- (d) What was the intended use of any property that you claim was part of an original reservation of land for Edwards Air Force Base.
- (e) When was the remainder of Edwards Air Force Base property acquired by the United States? Please provide specific acquisitions of property and the dates of such acquisitions.

- (f) How was the remainder of Edwards Air Force Base acquired by the United States and what portion was purchased from private landowners? Please provide the historical Kern County Treasurer Tax Collector's "Assessor Tax Number" or the Los Angeles County Office of the Assessor "Assessor's Identification Number" for each parcel purchased by the United States.
- (g) When was Edwards Air Force Base formally created?