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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

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COORDINATION PROCEEDING  
SPECIAL TITLE (Rule 1550(b))

JUDICIAL COUNCIL COORDINATION PROCEEDING  
No. 4408

ANTELOPE VALLEY GROUNDWATER  
CASES

CASE NO. 1-05-CV-049053  
*Action Filed: October 26, 2005*

INCLUDED ACTIONS:

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40 v. DIAMOND FARMING  
COMPANY, et al.,  
Los Angeles Superior Court Case No. BC325201

**PHASE V BRIEF RE JURY TRIAL ISSUES**

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40 v. DIAMOND FARMING  
COMPANY, et al.,  
Kern County Superior Court Case No. S-1500-  
CV-254348

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]

AND RELATED ACTIONS.

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1 Pursuant to the Case Management Conference held on July 29, 2013, the Court requested  
2 briefing regarding “the right to jury issues in the groundwater prescription case and whether jury trial  
3 rights are the same or different in groundwater versus riparian prescriptive claims.” This brief will  
4 summarily discuss these issues with a view toward more extensive future briefing as the Court deems  
5 appropriate.

## 6 **JURY ISSUES IN A GROUNDWATER PRESCRIPTION CASE**

### 7 **GENERALLY**

8 The general right to a jury trial in a groundwater prescription case is articulated in the Joint Case  
9 Management Statement of Landowners regarding issues for Phase V trial filed with the Court in advance  
10 of the July 29, 2013 Case Management Conference, attached hereto as Exhibit “A” for convenient  
11 reference. See Section III.

### 12 **IS IT NECESSARY TO SEPARATE LEGAL ISSUES FROM FACTUAL ISSUES**

13 In order to evaluate jury trial issues, it is necessary to separate legal issues from factual issues.  
14 Legal issues should be identified and determined in advance of jury trial of factual issues. In this way,  
15 legal challenges which may bar claims of prescription, may be tried first in order to avoid, if appropriate,  
16 a lengthy jury trial on factual issues related to prescription. Additionally, determining legal issues at the  
17 outset will assist in defining the scope of discovery and will permit discovery on discrete issues, either  
18 factual or legal.

## 19 **LEGAL ISSUES WHICH SHOULD BE CONSIDERED AND DECIDED**

### 20 **BY THE COURT IN ADVANCE OF JURY TRIAL**

#### 21 **ADVERSITY**

22 Both *Pasadena* and *San Fernando* discuss the issue of adversity in the context of groundwater.  
23 However, both cases involved stipulations to the necessary elements of a prescription claim. Neither  
24 case involved a jury and the decisions were dependent on the stipulations of the parties.

25 One of the legal issues which will need to be decided is whether pumping return flows is legally  
26 adverse in the context of a groundwater prescription claim and whether under Article X, Section 2, a  
27 governmental entity purveyor party is legally pumping return flows during any period of overdraft.  
28

1 Another legal issue regarding adversity will be whether adversity must be proved on a parcel-by-  
2 parcel basis versus on a basin wide basis.

### 3 CONSTITUTIONAL ISSUES

4 Constitutional issues exist regarding whether the government may constitutionally take  
5 groundwater. This issue is discussed by Bob Joyce in Section IV(A) of Exhibit "A."

### 6 NOTICE

7 Legal issues exist regarding the necessary proof of notice in the context of a groundwater  
8 prescription claim. Bob Joyce addresses these issues in Section IV(B) of Exhibit "A."

### 9 TAKINGS ISSUE

10 Whether the government may take groundwater rights without just compensation is a legal issue  
11 which must be determined by the Court. Mr. Joyce discusses this issue in Section IV(C) and (D) of  
12 Exhibit "A."

### 13 THE MEASURE OR SCOPE OF A GROUNDWATER PRESCRIPTION RIGHT

14 Legal issues exist regarding the measure of a groundwater prescriptive right. This issue is  
15 discussed by Richard Zimmer in Section V of Exhibit "A."

### 16 APPORTIONMENT OF A PRESCRIPTION CLAIM

17 The purveyor parties have settled with some landowners (the Willis Class) and it appears all  
18 landowners may not have been properly named or served by the purveyor parties who pleaded  
19 prescription claims. Accordingly, apportionment of prescriptive rights will be necessary as it was in the  
20 Santa Maria case. This issue is discussed by Mr. Zimmer in Section V of Exhibit "A."

### 21 SELF-HELP

22 Legal issues also exist regarding the concept of Self-Help in the context of a groundwater  
23 prescription claim. One of the questions is whether Self-Help defeats a groundwater prescription claim  
24 as a failure of the case in chief or whether self-help operates as an affirmative defense. The distinction is  
25 appropriate because of the burden of proof. Other issues exist regarding the burden of proof, the burden  
26 of production and manner of proof necessary regarding Self-Help in the context of a groundwater  
27 prescription claim. These issues are discussed in Section IV(E) of Exhibit "A."

1                   **LACHES, STATUTE OF LIMITATIONS, ESTOPPEL AND OTHER DELAY RELATED DEFENSES**

2                   The Sixth District Court of Appeal in *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266  
3 at pp.294 to 297 considered the issue of non-use as a potential bar to stale prescription claims. The  
4 appellate court recognized the difficulties in looking back in time numerous decades in an attempt to  
5 prove or defend a prescription claim. Other delay related defenses such statutes of limitations or estoppel  
6 may be appropriately considered by this court to bar stale claims. The appellate court and the trial court in  
7 *Santa Maria* recognized that it would be extremely difficult or impossible for the party with the burden of  
8 proof to prove or defend such claims. In this discussion, the *Santa Maria* court recognized the conclusion  
9 of the Governor's Commission to Review California Water Rights Law, Final Report (1978), which many  
10 years ago recommended eliminating prescription in the context of groundwater. *Santa Maria* at 296.

11                   **WHETHER JURY TRIAL RIGHTS ARE THE SAME OR DIFFERENT IN THE**  
12                   **GROUNDWATER VERSUS RIPARIAN PRESCRIPTIVE CASE**

13                   Groundwater in large measure evolved from riparian water law. Whether a right to jury trial  
14 exists in either the riparian or in the groundwater context, depends upon the procedural context of the  
15 case and how the claim is raised. For example, in the present case the purveyor parties are claiming  
16 prescription of some amount of the groundwater rights of overlying landowners. Under such  
17 circumstances, the right to jury trial clearly must exist to protect landowner groundwater rights as  
18 discussed in case law cited in Exhibit "A."

19                   Case law exists in the riparian context which relates to prioritization of exercised water rights.  
20 See, *Water of Long Valley Creek Stream v. Ramelli; State Water Resources* (1979) 25 Cal.3d 339 at 339-  
21 340. In the present case, certain non-pumping parties (the Willis Class) have entered into a settlement  
22 with the purveyor parties. Pursuant to their settlement, the purveyor parties have agreed not to assert any  
23 prescription claims against these non-pumping parties. As a result of this settlement, these non-pumping  
24 parties do not have any right to jury trial on the prescription issue. However, this does not mean that a  
25 prescription claim was not perfected against these parties or against their land, thereby requiring  
26 apportionment of any prescriptive rights, if any can be proved. Further, even in the absence of  
27 prescription, this court may conduct an equitable hearing to determine whether non-pumping parties  
28 should be allocated any portion of the safe yield, similar to what the court did in *Water of Long Valley* in

1 the riparian context. Depending upon the scope of the matters at issue, this equitable hearing can be  
2 conducted by the court without a jury.

3 **CONCLUSION**

4 Legal issues should be separated from factual issues. Legal issues should be tried first. Jury  
5 trial is required for the purveyor prescription claims against landowners. However, the court may make  
6 other equitable determinations in the absence of a jury. Following court ordered discovery regarding the  
7 scope and extent of prescription claims, legal issues should be identified and briefed prior to jury trial.

8  
9 DATED: August 5, 2013

Respectfully submitted,

10 CLIFFORD & BROWN

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12  
13 By

  
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