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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT  
16

17 **ANTELOPE VALLEY**  
18 **GROUNDWATER CASES**

19 Included Actions:  
20 Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co., Superior  
Court of California, County of Los  
21 Angeles, Case No. BC 325201;

22 Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co., Superior  
23 Court of California, County of Kern, Case  
No. S-1500-CV-254-348;

24 Wm. Bolthouse Farms, Inc. v. City of  
25 Lancaster, Diamond Farming Co. v. City of  
Lancaster, Diamond Farming Co. v.  
26 Palmdale Water Dist., Superior Court of  
California, County of Riverside, Case Nos.  
27 RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053  
Assigned to The Honorable Jack Komar

**PUBLIC WATER SUPPLIERS' TRIAL  
SETTING CONFERENCE STATEMENT**

Date: November 9, 2012  
Time: 9:00 a.m.  
Dept.: 1

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1     **I.     INTRODUCTION**

2             The Antelope Valley Groundwater Basin ("Basin") is in overdraft and it requires a court-  
3 approved and supervised physical solution. Without a physical solution, the Basin will continue  
4 to lose groundwater in storage causing land subsidence and other harm to the public.<sup>1</sup> In order to  
5 implement a physical solution, a court must first determine the parties' groundwater rights.  
6 Without all parties establishing their respective reasonable and beneficial groundwater uses, the  
7 court cannot adjudicate water rights or subsequently implement a physical solution to the  
8 overdraft. For these reasons, the court should first determine the present and past reasonable and  
9 beneficial use of groundwater, then determine the rights attached to the reasonable and beneficial  
10 uses, and finally, determine an appropriate physical solution to the overdraft that considers the  
11 parties' rights and present groundwater use.

12            The primary component of the physical solution is balancing the Basin's supply and  
13 demand through a court-ordered reduction in groundwater use to a level that does not exceed the  
14 safe yield. Ultimately, each party's reduced groundwater use will depend upon the extent the  
15 party can establish historical and present reasonable and beneficial groundwater use, as well as  
16 the party's use, if any, of supplemental or imported water supplies augmenting the Basin's native  
17 water yield. Only then can the court determine (1) how much of the Basin's native yield can be  
18 used by a party in the physical solution; and (2) the allocation of the supplemental yield from  
19 imported water sources.

20            As the court is aware, these coordinated and consolidated proceedings must be a  
21 comprehensive judicial adjudication of each party's groundwater rights under the McCarran  
22 Amendment. The court will quantify the federal reserve right held by the United States and  
23 necessarily quantify all other parties' groundwater rights. Unless the court adjudicates all parties'  
24 respective water rights, there is no comprehensive adjudication under the McCarran Amendment.  
25 Thus, to both satisfy the McCarran Amendment and to implement the physical solution, trial  
26

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27            <sup>1</sup> Recent public statements by the United States Geological Survey are that there will be  
28 additional land subsidence and loss of groundwater in storage unless the overdraft is stopped  
immediately.

needs to determine the following:

1. Each party's present and past reasonable and beneficial use of water.
2. Each party's respective water right based upon past and present reasonable and beneficial use. All rights should be determined including the federal reserve right, domestic use priorities, overlying rights, prescriptive rights and rights to return flows from supplemental imported water purchases.

The quantification of groundwater rights occurs in groundwater adjudications and, with appropriate case management, will not be the apocalyptic trial that some parties threaten to delay or even stop trial from taking place. As explained below, there are well-established methods for determining groundwater use, and much of that use may not be contested if the court orders its disclosure in advance of the trial.

Finally, the court is on record that the existing trial date is "firm" and that there will be no additional continuances. The Public Water Suppliers oppose any continuance. No party has filed the necessary motion for a continuance of the existing trial date. Any additional delay will add to the ongoing harm to the public. Parties seeking further delay will continue to pump without limitation to the detriment of the public. When parties are ordered to reduce their pumping, some will sell their water rights and then leave the Basin in its further damaged condition.

## **II. A PHYSICAL SOLUTION MUST BE BASED ON THE PARTIES' COURT-DETERMINED WATER RIGHTS**

"A physical solution is an equitable remedy designed to alleviate overdrafts and the consequential depletion of water resources in a particular area consistent with the constitutional mandate to prevent waste and unreasonable water use and to maximize the beneficial use of this state's limited resource."(*Cal. American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.) The physical solution, however, cannot completely disregard the legal priorities arising from the parties' respective historical groundwater uses - a mistake made in the physical solution

1 adopted by the trial court in the Mojave Basin. (*City of Barstow v. Mojave Water Agency* (2000)  
2 23 Cal.4th 1224, 1247). As the *Mojave* court wrote: "Under such circumstances the 1928  
3 constitutional amendment [making all water rights subject to the California Constitution  
4 requirement of reasonable and beneficial use] . . . compels the trial court, before issuing a decree .  
5 . . to ascertain whether there exists a physical solution of the problem presented that will avoid the  
6 waste, and that will at the same time not unreasonably and adversely affect the prior  
7 appropriator's vested property right." (23 Cal.4th at p. 1250 citing *City of Lodi v. East Bay*  
8 *Municipal Utility District* (1936) 7 Cal 2d 316, 341).

9 The *Mojave* decision is consistent with a long line of California Supreme Court decisions  
10 concerning physical solutions. (E.g., *City of Lodi v. East Bay Municipal Utility District, supra*, 7  
11 Cal 2d 316.) For example, in *Peabody v. Vallejo* (1935) 2 Cal.2d 351, the court held that a  
12 physical solution must protect the "substantial enjoyment" of prior rights. As explained below,  
13 the court first determines the parties' respective reasonable and beneficial groundwater uses as the  
14 starting point for determining the parties' water rights. Only when that process is complete can  
15 the court evaluate a proposed physical solution.

16 **III. EACH PARTY MUST FIRST PROVE ITS CURRENT REASONABLE AND**  
17 **BENEFICIAL USE OF WATER**

18 The starting point for a physical solution is the adjudication of each party's water rights  
19 beginning with the quantification of each party's present reasonable and beneficial groundwater  
20 use as established by the California Supreme Court in *Tulare Irrigation District v. Lindsay-*  
21 *Strathmore Irrigation District* (1935) 3 Cal. 2d 489.

22 The amount of groundwater use alone is insufficient because the reasonable and beneficial  
23 use of water, as mandated in Article X, Section 2 of the California Constitution, is the cardinal  
24 principle of California water law. (*United States v. State Water Resources Control Board* (1986)  
25 182 Cal.App.3d 82, 105.) Stated simply, not only must the court determine the amount of  
26 groundwater use, but how much of that use was for a reasonable and beneficial purpose under the  
27 unique facts and circumstances in the Antelope Valley.  
28

1 **IV. IF THERE IS NO SURPLUS NATIVE YIELD, EACH PARTY MUST PROVE ITS**  
2 **HISTORICAL REASONABLE AND BENEFICIAL USE OF WATER DURING**  
3 **THE OVERDRAFT PERIOD**

4 The California Supreme Court stated that, initially, the burden is upon all landowners to  
5 first prove their respective reasonable and beneficial uses of water: "[P]lacing the burden on the  
6 appropriator who seeks to take water from a particular water field to show that there is a surplus  
7 does not relieve the ...[existing users] ...from the burden of proving the quantity of water that they  
8 have been using, and that such amount is necessary for their reasonable and beneficial  
9 purposes...[the] burden [on the appropriator] did not come into existence until after the...riparian's  
10 first proved the amount required by them for reasonable beneficial purposes." (*Tulare Irrigation*  
11 *District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 535, citing *Peabody v.*  
12 *City of Vallejo* (1935) 2 Cal.2d 351, 381.)<sup>2</sup>

13 By all accounts groundwater use has exceeded the safe yield since at least 1945. During  
14 the more than 50 years of overdraft conditions, many of the parties have established their  
15 groundwater rights by pumping groundwater for a reasonable and beneficial use. For example,  
16 the Public Water Suppliers have used groundwater for more than 50 years to meet the public's  
17 need for a safe and reliable supply of water.

18 Here, each party will be required to establish its history of groundwater use during the  
19 overdraft period, from 1945 to the present. For some parties, they will have water meter records  
20 showing actual groundwater use. Other parties will have records of crops grown which can be  
21 used to estimate the crop water requirement. Other parties will have electrical records for their  
22 groundwater pumps.

23 The court can order the parties to disclose information before the trial so that parties can  
24 determine whether or not to contest the reasonable and beneficial use of groundwater. It is  
25 difficult to know for certain but it is believed that many parties' groundwater use evidence will  
26 not be contested. Some parties, however, are expected to contest the groundwater claims by other  
27 users. It is suggested that the court work with the parties to identify what groundwater use claims

28 <sup>2</sup> Although riparian rights were involved in *Tulare, supra*, riparian rights are analogous to  
overlying rights. (*City of Barstow, supra*, 23 Cal.4th 1224 at p. 1240.)

1 are contested, and by whom, in order to determine how to best schedule the presentation of  
2 groundwater use evidence. In the event there is no dispute over a party's groundwater use, it is  
3 further suggested that the court consider the use of stipulations, declarations or another simplified  
4 process for the effective introduction of uncontested groundwater evidence.

5 The following is a general plan for the determination of the various water rights claims:

6 Each party presents evidence of its current reasonable and beneficial groundwater use.  
7 The court can require the parties to identify their evidence well in advance of the next trial phase  
8 so that all parties can evaluate whether to contest any other party's evidence. Additionally, the  
9 court can work with the parties to establish an efficient and orderly manner and schedule for the  
10 presentation of evidence.

11 After hearing evidence of each party's groundwater use, the court will determines the  
12 amount of water used for reasonable and beneficial use by each party. *"What is a beneficial use  
13 depends upon the facts and circumstances of each case, and what would be a reasonable  
14 beneficial use, where water is present in excess of all needs, may not be a reasonable beneficial  
15 use in an area of scarcity and great need, and likewise what is a beneficial use at one time may  
16 be, because of changed conditions, become a waste of water at a later time. (Tulare Irrigation  
17 Dist., supra, 3 Cal 2d at p. 567 [emphasis added].)*

18 To determine the parties' respective groundwater rights, the court will hear evidence of  
19 the parties' respective native yield water rights claims including evidence of historical  
20 groundwater use by the United States, Public Water Suppliers and the private landowner parties.  
21 The court can work with the parties on the effective introduction of evidence. It is anticipated  
22 that the parties will provide legal memoranda or trial briefs to the court to facilitate its decisions.

23 In addition to the court's determination of the parties' rights to the native yield, the court  
24 will determine rights to the supplemental yield from imported water. Most, if not all, of the  
25 evidence concerning the supplemental yield was admitted in the previous trial phase. The court  
26 can work with the parties to identify evidence already admitted to avoid unduly time consuming  
27 and repetitive evidence.

28 In order to quantify groundwater use by each party, the court must receive evidence

1 establishing such use from meters or other flow measuring devices, electrical energy consumption  
2 records, time of usage records or other methods having equivalent accuracy including electrical  
3 consumption records and pump test records maintained by electric utility providers. All parties  
4 should disclose this information before the end of November.

5 It has been claimed by a few parties that proving historical groundwater production and  
6 use would require voluminous discovery and expert analysis. No specifics have been provided to  
7 support these arguments. In fact, the discovery will not be complicated. It will consist primarily  
8 of the evidence referred to above. These coordinated cases have been pending for nearly eight  
9 years. Landowner parties have known for years their groundwater production would be at issue  
10 and have had ample time to gather their evidence.

11 The Public Water Suppliers have long ago responded to extensive discovery requests by  
12 landowner parties. The Public Water Suppliers have provided their groundwater pumping records  
13 and evidence supporting water rights claims. It is important for the court to allow discovery to  
14 proceed. Indeed, the Court has previously ordered all parties to gather and provide evidence of  
15 groundwater use. There is no good cause to continue to limit discovery to the landowners  
16 because their groundwater use is at issue in the next trial phase. All discovery should be  
17 completed by December 15, 2012.

18 **V. THE COURT DETERMINES THE PARTIES' RESPECTIVE GROUNDWATER**  
19 **RIGHTS AFTER THE PARTIES ESTABLISH THEIR REASONABLE AND**  
20 **BENEFICIAL USES**

21 The court will have to resolve the disputes among parties that cannot reach an agreement  
22 on how to allocate the Basin water. There are disputes as to the rights of the parties to the Basin's  
23 groundwater. Some parties contest the rights of the federal government for its use of  
24 groundwater. Other parties contest the rights of the Public Water Suppliers domestic use priority  
25 to continue to use groundwater to meet the public's water needs. There are many disputes  
26 between the private landowners as to their respective use of water including both the amount of  
27 water claimed and whether it was a reasonable and beneficial use of water.

28 There has been an indication that, somehow, the presentation of evidence concerning the  
Public Water Suppliers' prescriptive rights established in the long overdraft period would consist



1 entirely of an examination of each landowner party's groundwater levels during the overdraft  
2 period. That is not true. For there to be a prescriptive right, parties must have had notice of  
3 overdraft. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 282.) Here, there  
4 is ample evidence of basin-wide notice of both overdraft and Public Water Supplier continuous  
5 use of groundwater during decades of overdraft. Most, if not all, of the evidence cannot be  
6 reasonably controverted or disputed and will take only a relatively short amount of time for its  
7 introduction and admission. Evidence of local conditions is not relevant to this determination.

8 Additionally, most of the parties and most of the groundwater use is and has been  
9 concentrated in a few areas of the Basin. Their chronic declines in groundwater levels have  
10 already been presented to the court during the previous phase of trial and it would be wasteful to  
11 repeat the evidence in the next phase of trial. It is suggested that the court work with the parties  
12 to identify what additional evidence of groundwater levels would be needed in the next phase of  
13 trial to avoid unduly repetitive or time consuming testimony.

14 **VI. THE COURT DETERMINES THE RIGHTS TO THE SUPPLEMENTAL YIELD**  
15 **FROM IMPORTED WATER**

16 The court heard exhaustive evidence from both public water suppliers and landowners on  
17 the amount of basin recharge from supplemental water sources, i.e., the importation of water from  
18 the State Water Project that augments the Basin's natural yield. Most, if not all, of the evidence  
19 on the amount of the supplemental yield was not in dispute. It would be both improper and  
20 wasteful for the court to have the evidence repeated in the next phase of trial. The Public Water  
21 Suppliers respectfully request the court enter findings on the rights to the supplemental yield  
22 based on the substantial evidence presented in the previous phase of trial.

23  
24 **VII. EQUITABLE ISSUES ARE TO BE TRIED FIRST BY THE COURT.**

25 There is no jury trial right for equitable issues. Moreover, court determination of  
26 equitable issues can obviate a jury trial. Here, the federal reserve right, the reasonable and  
27 beneficial use of water, domestic use priority, and even the physical solution itself, are only a few  
28 examples of equitable issues to be determined by the court. Stated simply, once the court

determines the equitable issues, there will be little, if any, matters left for a jury.

### **VIII. THE TRIAL DATE SHOULD NOT BE CONTINUED.**

The Court should not continue the trial date and thereby allow the overdrafted Basin to continue to suffer irreparable harm simply because the landowners want to continue to delay the trial due to seemingly never-ending settlement disputes. It is telling that landowners refuse to produce evidence substantiating their claimed pumping. Either they lack sufficient evidence to support their pumping claims or they seek to delay the necessary water rights adjudication so that they can continue, as they have for many years, pumping groundwater without restriction. The court should not reward dilatory conduct at the expense of the Basin and the ongoing prejudice to the Public Water Suppliers and their customers, hundreds of thousands of homes and businesses that depend on the Basin. No one should question the resolve of the Public Water Suppliers to have the groundwater rights adjudicated in the next trial phase, and a physical solution implemented as soon as possible to stop the overdraft of a vital natural resource.

### **IX. CONCLUSION**


The Antelope Valley Groundwater Basin continues to be harmed by overdraft and it is critical that this court implement a physical solution as soon as possible. The starting point for a physical solution is determination of the parties' respective water rights beginning with the federal reserve right. Thus, the next phase must focus on all parties' water production from the Basin. The court will determine whether such use was reasonable and beneficial. After the court determines the reasonable and beneficial uses of groundwater, the court establishes the respective priority for each use.

Much has been written about how the trial may impact settlement discussions. Not all parties will settle even under the most optimistic circumstances. More importantly, the trial will not dissuade those who are interested and capable of settling. Whereas, further delay will insure the decision to settle will be postponed by many. The best way to settle is to proceed to trial as the existing trial date encourages parties to resolve their continuing disagreements including the

1 implementation of the physical solution as well as the allocation of the Basin's groundwater. In  
2 the event the parties reach a comprehensive settlement, they must establish their reasonable and  
3 beneficial use of groundwater as part of the necessary court approval of the physical solution.  
4

5 Dated: November 7, 2012

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**PROOF OF SERVICE**

I, Stefanie D. Hedlund, 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 Best Best & Krieger LLP, 500 Capitol Mall, Suite 1700, Sacramento, California 95814. On November 7, 2012, I served the within document(s):

**COURTCALL APPEARANCE FOR CASE MANAGEMENT  
CONFERENCE ON FRIDAY, NOVEMBER 9, 2012**



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 with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.



by causing personal delivery by ASAP Corporate Services of the document(s) listed above 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.

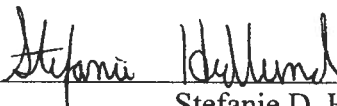


I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on November 7, 2012, at Sacramento, California.



Stefanie D. Hedlund