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**EXEMPT FROM FILING FEES
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SECTION 6103**

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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
21 Court of California, County of Los
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 Proceeding
No. 4408

CLASS ACTION

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

**LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40'S STATEMENT OF
PROPOSED ISSUES FOR PHASE 5 TRIAL**

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1 Pursuant to the Court’s July 12, 2013 order, the Public Water Suppliers hereby submit the
2 following issues to be tried in the Phase 5 trial: All parties’ water rights and priority, including:
3 (a) federal reserve rights; (b) overlying rights; (c) appropriative rights; (d) prescriptive rights; (e)
4 domestic rights; (f) municipal rights; (g) return flow rights; and (h) any other claims of rights
5 raised in these coordinated proceedings.

6 A comprehensive determination of the parties’ water rights is necessary in Phase 5 for
7 many reasons. First, the McCarran Amendment mandates a comprehensive adjudication of water
8 rights in a case not initiated by the United States. (43 U.S.C. §666.) Prior to enactment of the
9 McCarran Amendment, federal water rights could only be adjudicated in actions filed by the
10 United States because there was otherwise no waiver of sovereign immunity providing for the
11 involuntary joinder of the United States to water rights adjudications. The McCarran
12 Amendment waives the sovereign immunity under limited circumstances—such as where the
13 rights of all competing claimants are adjudicated. (*Colorado River Water Conservation Dist. v.*
14 *United States* (1976) 424 U.S. 800, 819 [“The clear federal policy evinced by that legislation is
15 the avoidance of piecemeal adjudication of water rights”]; *see also, Dugan v. Rank* (1963) 372
16 U.S. 609, 618-19; *Miller v. Jennings* (5th Cir. 1957) 243 F.2d 157, 159.)

17 Second, the Court cannot approve a final physical solution without considering the
18 reasonableness of all parties’ water rights. In *City of Barstow v. Mojave Water Agency* (2000) 23
19 Cal. 4th 1224, the California Supreme Court held that a trial court may impose a physical solution
20 to achieve a practical allocation of water only after considering all parties’ water rights. (23 Cal.
21 4th at p. 1250.) “In ordering a physical solution, a court may neither change priorities among the
22 water rights holders nor eliminate vested rights in applying the solution without first considering
23 them in relation to the reasonable use doctrine.” (*Id.*) The Supreme Court’s statement goes
24 directly to the issue of why prescriptive rights, or any water right, cannot be tried in isolation.
25 The reasonableness of all water rights is contextual. Thus, even if all of the water uses in the
26 Basin are proven to be beneficial, their relative priorities cannot be determined without
27 considering their reasonableness in relation to each other right. Stated simply, the reasonableness
28 of any water right, whether overlying, prescriptive or domestic priority, depends on the

1 reasonableness of the other uses of water being made in the Basin.

2 Third, "it is well-established public policy in this state that settlements of litigations are
3 favored and should be encouraged." (*Villa v. Cole* (1992) 4 Cal.App.4th 1327, 1338.) As the
4 California Supreme Court stated, "from the standpoint of the public interest and the legal process,
5 a prime value in encouraging settlement lies in '[removing] [the case] from the judicial system,
6 and this occurs only **when all claims relating to the loss are settled.**'" (*Tech-Bilt, Inc. v.*
7 *Woodward-Clyde & Associates* (1985) 38 Cal. 3d 488, 500 [citation omitted] [emphasis added].)
8 A trial focusing on merely prescriptive rights will not be sufficient to resolve all water rights
9 claims in these coordinating actions. Consequently, such a limited trial will not encourage global
10 settlement of the parties' claims, and may, in fact, discourages parties from participating in
11 settlement.

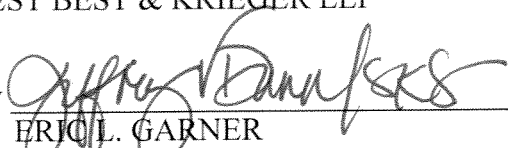
12 Finally, the Court and parties are aware that the complexity and number of parties have
13 sometimes caused the proceedings to be delayed. Already, the parties are many years in this
14 litigation and trials take sometimes several years to schedule and complete. A failure now to
15 include all parties' claims of water rights and priority will inevitably lead to several years of
16 additional time before the rights and claims will be decided.

17 For the reasons stated above, the Public Water Suppliers respectfully request the Court to
18 determine in Phase 5 all parties' water rights and priority, including: (a) federal reserve rights; (b)
19 overlying rights; (c) appropriative rights; (d) prescriptive rights; (e) domestic rights; (f) municipal
20 rights; (g) return flow rights; and (h) any other claims of rights raised in these coordinated
21 proceedings.

22
23 Dated: July 22, 2013

BEST BEST & KRIEGER LLP

24
25 By


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PROOF OF SERVICE

I, Sandra K. Sandoval, 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, 300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On July 22, 2013, I served the within document(s):

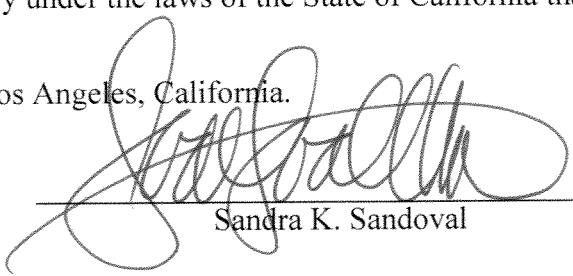
**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S
STATEMENT OF PROPOSED ISSUES FOR PHASE 5 TRIAL**

- ☒ 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 Irvine, 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 July 22, 2013, at Los Angeles, California.


Sandra K. Sandoval