

EXHIBIT “M”

1 **MICHAEL T. FIFE (State Bar No. 203025)**
2 **STEVEN L. HOCH (State Bar No.: 59505)**
3 **STEPHANIE OSLER. HASTINGS (State Bar No.: 186716)**
4 **BRADLEY J. HERREMA (State Bar No. 228976)**
5 **HATCH & PARENT, A LAW CORPORATION**
6 **21 East Carrillo Street**
7 **Santa Barbara, CA 93101**
8 **Telephone No: (805) 963-7000**
9 **Facsimile No: (805) 965-4333**

10 **Attorneys for:** B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri
11 2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence
12 A. Godde, Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen
13 Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family
14 Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Edgar C. Ritter Paula E.
15 Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, Hines Family Trust , Malloy
16 Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as
17 Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas
18 Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Dennis L. & Marjorie E.
19 Groven Trust, Scott S. & Kay B. Harter, Habod Javadi, Eugene V., Beverly A., & Paul S. Kindig,
20 Paul S. & Sharon R. Kindig, Jose Maritorena Living Trust, Richard H. Miner, Jeffrey L. & Nancee J.
21 Siebert, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Beverly Tobias, Leo Simi, White
22 Fence Farms Mutual Water Company, William R. Barnes & Eldora M. Barnes Family Trust of 1989,
23 collectively known as the Antelope Valley Ground Water Agreement Association (AGWA)
24

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26 **FOR THE COUNTY OF SANTA CLARA**

27 **ANTELOPE VALLEY**
28 **GROUNDWATER CASES**

Included 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-254-348Wm. 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 No. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination Proceeding
No. 4408

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

**CROSS-COMPLAINT OF ANTELOPE
VALLEY GROUNDWATER
AGREEMENT ASSOCIATION**

CROSS-COMPLAINT OF ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION

SB 415015 V1:007966 0001

1 B.J. Calandri, John Calandri, John Calandri as)
2 Trustee of the John and B.J. Calandri 2001)
3 Trust, Forrest G. Godde, Forrest G. Godde as)
4 Trustee of the Forrest G. Godde Trust,)
5 Lawrence A. Godde, Lawrence A. Godde and)
6 Godde Trust, Kootenai Properties, Inc., Gailen)
7 Kyle, Gailen Kyle as Trustee of the Kyle Trust,)
8 James W. Kyle, James W. Kyle as Trustee of)
9 the Kyle Family Trust, Julia Kyle, Wanda E.)
10 Kyle, Eugene B. Nebeker, R and M Ranch,)
11 Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter)
12 as Trustee of the Ritter Family Trust, Trust, ,)
13 Hines Family Trust , Malloy Family Partners,)
14 Consolidated Rock Products, Calmat Land)
15 Company, Marygrace H. Santoro as Trustee for)
16 the Marygrace H. Santoro Rev Trust, Marygrace)
17 H. Santoro, Helen Stathatos, Savas Stathatos,)
18 Savas Stathatos as Trustee for the Stathatos)
19 Family Trust, Dennis L. & Marjorie E. Groven)
20 Trust, Scott S. & Kay B. Harter, Habod Javadi,)
21 Eugene V., Beverly A., & Paul S. Kindig, Paul)
22 S. & Sharon R. Kindig, Jose Maritorena Living)
23 Trust, Richard H. Miner, Jeffrey L. & Nancee J.)
24 Siebert, Barry S. Munz, Terry A. Munz and)
25 Kathleen M. Munz, Beverly Tobias, Leo Simi,)
26 White Fence Farms Mutual Water Company,)
27 William R. Barnes & Eldora M. Barnes Family)
28 Trust of 1989 collectively known as the)
Antelope Valley Ground Water Agreement)
Association ("AGWA"))

19 **Cross Complainants,**

20 vs.

21 Los Angeles County Waterworks District No.)
22 40, Palmdale Water District, The City of)
23 Palmdale, City of Lancaster, Littlerock Creek)
24 Irrigation District, Palm Ranch Irrigation)
25 District, Quartz Hill Water District, California)
26 Water Service Company, Rosamond)
27 Community Services District, Antelope Valley)
28 East Kern Water District, County Sanitation)
Districts Nos. 14 and 20, DOES 1 through 100)

27 **Cross-Defendants**

1 This Cross-Complaint for declaratory and injunctive relief seeks a judicial determination of
2 rights to all water and associated resources in the Antelope Valley, including but not limited to
3 priority rights to water imported to the region. This Cross-Complaint also seeks to promote proper
4 management of the Antelope Valley through the imposition of a Physical Solution and seeks to
5 prevent further degradation of the quality of the groundwater supply and to protect those who
6 depend on the groundwater supply from wasteful practices that may impair that supply. Such judicial
7 determination is necessary in order to ensure that the resources of the Antelope Valley are managed
8 and utilized for the long-term benefit of the people of the Antelope Valley.

9 JURISDICTION AND VENUE

10 1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
11 Sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order issued
12 by the Judicial Council.

13 PARTIES

14 2. Cross-Complainants are a diverse group of individuals and businesses who own
15 property in the Antelope Valley. Some Cross-Complainants pump water from the groundwater basin,
16 some utilize imported or recycled water, and some do not use any water at all. However, each Cross-
17 Complainant is the owner or beneficial interest holder of real property within the geographic
18 boundaries of the Basin and each shares a concern for the community in the Antelope Valley and
19 recognizes that proper management of the water resources of the Valley is essential for the future
20 health of the community. Some Cross-Complainants own businesses that were founded in the
21 Antelope Valley two and three generations ago.

22 3. Cross-Complainants are informed and believe and thereon allege that the Los Angeles
23 County Waterworks District No. 40 is a public agency which extracts water from and provides water
24 to customers located within the geographic boundaries of the Basin.

25 4. Cross-Complainants are informed and believe and thereon allege that Palmdale Water
26 District is a public agency which extracts water from and provides water to customers located within
27 the geographic boundaries of the Basin.
28

1 5. Cross-Complainants are informed and believe and thereon allege that The City of
2 Palmdale is a municipal corporation located in the County of Los Angeles.

3 6. Cross-Complainants are informed and believe and thereon allege that the City of
4 Lancaster is a municipal corporation located within the County of Los Angeles, and within the
5 geographic boundaries of the Basin.

6 7. Cross-Complainants are informed and believe and thereon allege that Littlerock
7 Creek Irrigation District is a public agency which provides water to customers located within the
8 geographic boundaries of the Basin and which extracts water from the Basin.

9 8. Cross-Complainants are informed and believe and thereon allege that Palm Ranch
10 Irrigation District is a public agency which provides water to customers located within the
11 geographic boundaries of the Basin and which extracts water from the Basin.

12 9. Cross-Complainants are informed and believe and thereon allege the Quartz Hill
13 Water District is a public agency which provides water to customers located within the geographic
14 boundaries of the Basin and which extracts water from the Basin.

15 10. Cross-Complainants are informed and believe and thereon allege that California
16 Water Service Company is a California corporation which provides water to customers located
17 within the geographic boundaries of the Basin and which extracts water from the Basin.

18 11. Cross-Complainants are informed and believe and thereon allege that Rosamond
19 Community Services District is a public agency which provides water to customers located within
20 the geographic boundaries of the Basin and which extracts water from the Basin.

21 12. Cross-Complainants are informed and believe and thereon allege that Antelope
22 Valley East Kern Water District ("AVEK") is a public agency which provides imported water to
23 customers located within the geographic boundaries of the Basin.

24 13. Cross-Complainants are informed and believe and thereon allege that County
25 Sanitation Districts Nos. 14 and 20 of Los Angeles County ("Sanitation Districts") are independent
26 special districts that serve, among other things, the wastewater treatment and reclamation needs of
27 Los Angeles County.

28

14. Cross Complainants are presently unaware of whether other parties in the adjudication assert claims adverse to Cross-Complainants rights as overlying landowners or whether there are parties not involved in the adjudication who may assert claims adverse to Cross-Complainants. Cross-Defendants Does 1 through 100 include any party, other than the Cross-Defendants specifically named herein, who assert claims adverse to Cross-Complainants rights as overlying landowners. Since Cross-Complainants are unaware of the true names and identities of Does 1 through 100, Cross-Complainants hereby sue them by such fictitious names and will seek leave to amend this Cross-Complaint to add their true names and capacities when they are ascertained.

FACTUAL ALLEGATIONS

15. The Antelope Valley is a topographically closed watershed in the Western part of the Mojave Desert, about 50 miles northeast of Los Angeles. Dry lake beds have formed at the "bottom" of the Valley which are currently used as runways by Edwards Air Force Basin. Also contained in the Valley is a large alluvial groundwater basin ("Basin").

16. The Antelope Valley is situated at a cross-roads of major water supply infrastructure that serves the entire Los Angeles area: the East Branch of the State Water Project runs along the entire Southern side of the Valley and the Los Angeles aqueduct runs along the Northeast side of the Valley.

17. The Basin contains a large amount of vacated underground space which can be used for the storage of water. Cross-Complainants are informed and believe that there is as much as eight million acre-feet of available storage capacity in the Basin. Utilization of this storage capacity will be an essential component to the resolution of the water supply issues in the adjudication. This storage capacity, in combination with the ready access to water transportation infrastructure, also presents the risk that the resources of the Antelope Valley could be used to serve interests outside the Valley in a manner that does not contribute to a solution to the problems of the Valley.

/ / /

///

///

1 **CONTROVERSY**

2 18. Cross-Complainants are informed and believe, and thereon allege, that there are
3 conflicting claims of rights to the water resources of the Valley, including the water storage capacity
4 of the Basin.

5 **FIRST CAUSE OF ACTION**

6 **(Declaratory Relief Water Rights Against All Cross-Defendants)**

7 19. Cross-Complainants re-allege and incorporate by reference each and all of the
8 preceding paragraphs as though fully set forth herein.

9 20. An actual controversy has arisen between Cross-Complainants and each of the Cross-
10 Defendants as to the nature, extent, and priority of each party's right to produce groundwater from
11 the Basin. As overlying landowners, Cross-Complainants allege that their water rights are superior in
12 priority to those of any Cross-Defendant.

13 21. On information and belief, Cross-Complainants believe that Cross-Defendants
14 dispute these contentions.

15 22. Cross-Complainants seek a declaration and judicial determination as to the validity of
16 their contentions set forth herein, the amount of Basin water to which each party is entitled to
17 produce from the Basin and the priority and character of each party's respective rights.

18 **SECOND CAUSE OF ACTION**

19 **(Damages Trespass Against All Cross-Defendants Except Sanitation Districts)**

20 23. Cross-Complainants re-allege and incorporate by reference each and all of the
21 preceding paragraphs as though fully set forth herein.

22 24. On information and belief, each Cross-Defendant alleges that it produces or threatens
23 to produce more water from the Basin than it has a right to produce. Cross-Defendants allege that
24 this production forms the basis for claims of prescriptive rights. To the extent Cross-Defendants fail
25 to prove any element of their claim for prescriptive rights, and to the extent that the alleged
26 production in excess of rights actually occurred, this alleged production of water constitutes a
27 trespass against Cross-Complainants.
28

25. On information and belief, Cross-Complainants believe that Cross-Defendants dispute these contentions.

26. Cross-Complainants request the Court to award monetary damages to compensate for any past injury that may have occurred to Cross-Complainants by Cross-Defendants' trespass in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Damages 42 USC §1983/Taking Against All Cross-Defendants Except Sanitation Districts)

27. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

28. On information and belief, each Cross-Defendant alleges that it produces or threatens to produce more water from the Basin than it has a right to produce. Cross-Defendants allege that this production forms the basis for claims of prescriptive rights. To the extent Cross-Defendants fail to prove any element of their claim for prescriptive rights, this alleged production of water constitutes an invasion of Cross-Complainants property interests and is therefore a taking in violation of the Fifth Amendment to the United States Constitution.

29. Every person who, under color of any custom or usage, subjects or causes to be subjected any citizen of the United States to the deprivation of any rights or privileges secured by the Constitution and laws, shall be liable to the party injured in an action at law. (42 USC § 1983.)

30. On information and belief, Cross-Complainants believe that Cross-Defendants dispute these contentions.

31. Cross-Complainants request the Court to award monetary damages, including attorney's fees, to compensate for any past injury that may have occurred to Cross-Complainants by Cross-Defendants' taking in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Injunctive Relief Water Rights Against All Cross-Defendants Except Sanitation Districts)

32. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

33. Each Cross-Defendant alleges that it produces or threatens to produce more water from the Basin than it has a right to produce. If allowed to continue, this production in excess of rights will interfere with the right of Cross-Complainants to produce groundwater and will cause injury to Cross-Complainants.

34. Cross-Complainants have no adequate remedy at law.

35. On information and belief, Cross-Complainants believe that Cross-Defendants dispute these contentions.

36. Unless the Court orders that Cross-Defendants cease production of water in excess of their rights, Cross-Complainants will suffer irreparable harm in that the supply of groundwater will become depleted and other undesirable effects will occur.

FIFTH CAUSE OF ACTION

(Declaratory Relief Imported Water Against All Defendants Except Sanitation Districts)

37. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

38. An actual controversy has arisen between Cross-Complainants and each of the Cross-Defendants as to the priority of each party's right to receive imported water. Agriculture has a long history of water resources use in the Antelope Valley, and the economy of the Antelope Valley is intimately tied to and dependant on agriculture. It has only been with the relatively recent increases in municipal demand that the water resources problems of the Antelope Valley have resulted in litigation.

39. The use of imported water will be a necessity to alleviate the stress on the groundwater Basin. The Court has broad equitable powers under Article X, section 2, to fashion a physical solution for the Antelope Valley that ameliorates impacts associated with the loss of common law water right priorities. If the Court finds that any overlying landowner has lost any portion of its water rights, then one element of the physical solution should be to recognize a priority right of those parties to receive and purchase imported water.

40. Basin on information and belief, Cross-Complainants believe that Cross-Defendants dispute these contentions.

1 41. Cross-Complainants seek a declaration and judicial determination as to the validity of
2 their contentions set forth herein.

3 **SIXTH CAUSE OF ACTION**

4 **(Declaratory Relief Imported Water Against All Cross-Defendants**
5 **Except Sanitation Districts)**

6 42. Cross-Complainants re-allege and incorporate by reference each and all of the
7 preceding paragraphs as though fully set forth herein.

8 43. As an element of their claim for prescriptive rights, Cross-Defendants allege that their
9 pumping from the Basin is wrongful.

10 44. Cross-Complainants seek a judicial determination that any imported water purchased
11 by Cross-Defendants for recharge into the Basin for any purpose, either through direct recharge or
12 through return flows, must first be used to offset Cross-Defendants wrongful pumping from the
13 Basin. Cross-Complainants seek a further judicial declaration that any imported water that has
14 heretofore been purchased by Cross-Defendants and recharged into the Basin either through direct
15 recharge or through return flows, must be considered as an offset against any past wrongful pumping
16 by Cross-Defendants from the Basin.

17 45. Basin on information and belief, Cross-Complainants believe that Cross-Defendants
18 dispute these contentions.

19 46. Cross-Complainants seek a declaration and judicial determination as to the validity of
20 their contentions set forth herein.

21 **SEVENTH CAUSE OF ACTION**

22 **(Declaratory Relief Waste/Nuisance Against All Cross-Defendants)**

23 47. Cross-Complainants re-allege and incorporate by reference each and all of the
24 preceding paragraphs as though fully set forth herein.

25 48. The Antelope Valley is a closed hydrologic region. While infrastructure exists to
26 import water to the Valley, there is no infrastructure to export wastes from the Valley. These wastes
27 are primarily the sewage that is the result of the water use of customers of Cross-Defendants. It is an
28

1 unavoidable feature of the nature of the water use of Cross-Defendants that such wastes will be
2 produced.

3 49. Based on information and belief, to the extent that wastewater services are provided
4 by entities other than the water service providers, officials from these water service providers
5 compose the governing bodies of the waste disposal entities.

6 50. Disposal of this waste into the groundwater Basin has resulted in degradation of
7 groundwater quality and threatens to impair the ability to use portions of the Basin for water supply
8 and storage purposes. Based on information and belief, Cross-Complainants believe that the waste
9 disposal entities allege that there is no other way to handle the wastes from Cross-Defendants except
10 disposal into the Basin.

11 51. Based on information and belief, Cross-Complainants believe that Cross-Defendants
12 dispute these contentions.

13 52. Cross-Complainants seek a judicial determination that Cross-Defendants use of water
14 results in an unavoidable degradation of the Basin, which, if allowed to continue, will one day render
15 the Basin unusable and that therefore this use constitutes a continuing nuisance and waste in
16 violation of Article X, section 2 of the California Constitution.

17 EIGHTH CAUSE OF ACTION

18 (Injunctive Relief Waste Against All Defendants)

19 53. Cross-Complainants re-allege and incorporate by reference each and all of the
20 preceding paragraphs as though fully set forth herein.

21 54. On information and belief, each Cross-Defendant disposes or allows to be disposed
22 wastewater which is a result of its water use to the detriment of the Basin. On information and belief,
23 Cross-Defendants intend to increase the amount of wastewater that they dispose or allow to be
24 disposed into the Basin. This disposal interferes with the right of Cross-Complainants to produce
25 groundwater.

26 55. Cross-Complainants have no adequate remedy at law.

27 56. On information and belief, Cross-Complainants believe that Cross-Defendants
28 dispute these contentions.

1 57. Unless the Court orders that Cross-Defendants cease disposing of wastewater into the
2 groundwater Basin, Cross-Complainants will suffer irreparable injury because their use of the
3 groundwater Basin for water supply and for water storage purposes will be impaired.

4 **NINTH CAUSE OF ACTION**

5 **(Declaratory Relief Waste Against All Cross-Defendants Except Sanitation Districts)**

6 58. Cross-Complainants re-allege and incorporate by reference each and all of the
7 preceding paragraphs as though fully set forth herein.

8 59. On information and belief, the Cross-Defendants intend to pump and sell water
9 primarily for domestic use. On information and belief, most of this water will be used for outside
10 landscape irrigation. On information and belief, the landscape features irrigated with this water will
11 be non-native plant species unsuited to the arid conditions of the Antelope Valley.

12 60. On information and belief, Cross-Complainants believe that Cross-Defendants
13 dispute these contentions.

14 61. Cross-Complainants seek a judicial determination that Cross-Defendants use of water
15 in this manner constitutes waste under Article X, section 2 of the California Constitution.

16 **TENTH CAUSE OF ACTION**

17 **(Declaratory Relief Physical Solution Against All Cross-Defendants)**

18 62. Cross-Complainants re-allege and incorporate by reference each and all of the
19 preceding paragraphs as though fully set forth herein.

20 63. In order to prevent irreparable injury to Cross-Complainants and other parties, it is
21 necessary and appropriate that the Court exercise and retain continuing jurisdiction to develop and
22 enforce a physical solution that protects, manages and conserves the water resources of the Antelope
23 Valley.

24 64. The physical solution for the Valley should include the appointment of a Watermaster
25 that is representative of all interests in the Valley, including landowners.
26 The physical solution should include the establishment of a water transfer program that will permit
27 the transferability of Basin pumping rights between any Basin users.
28

65. If the physical solution involves groundwater banking, then the physical solution must ensure that the benefits of such banking will be used for the benefit of the Antelope Valley and will be spread equitably amongst all interests in the Valley with proper recognition given to the priority rights of overlying landowners..

Prayer for Relief

WHEREFORE, Cross-Complainants pray for judgment as follows:

1. Judicial declarations consistent with Cross-Complainants' contentions in the First, Fifth, Sixth, Seventh, Ninth, and Tenth Causes of Action in this Cross-Complaint.
2. Judicial award of damages, including punitive damages, consistent with Cross-Complainants' contentions in the Second and Third Causes of Action in this Cross-Complaint.
3. For preliminary and permanent injunctions consistent with the Fourth and Eighth Causes of Action in this Cross-Complaint.
4. For prejudgment interest as permitted by law.
5. For attorney, appraisal, and expert witness fees and costs incurred in this action.
6. For such other relief as the Court deems just and proper.

Dated: January 2, 2007

HATCH & PARENT, A LAW CORPORATION

By:

MICHAEL T. FIFE
ATTORNEYS FOR AGWA

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On January 2, 2007, I served the foregoing document described as:

CROSS-COMPLAINT OF ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION

on the interested parties in this action.

By posting it on the website at 3:30 p.m./a.m. on January 2, 2007. This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on January 2, 2007.

Rachel Roberts
TYPE OR PRINT NAME

Richard Roberts
SIGNATURE