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LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

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COUNTY OF LOS ANGELES
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LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40
[See Next Page For Additional Counsel]

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

ANTELOPE VALLEY 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
325201;

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

Wm. 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,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and all
other similarly situated v. A.V. Materials, Inc., et
al., Superior Court of California, County of Los
Angeles, Case No. BC509546

Judicial Council Coordination
Proceeding
No. 4408

CLASS ACTION

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

**DECLARATION OF JEFFREY V.
DUNN IN SUPPORT OF PUBLIC
WATER SUPPLIERS'
OPPOSITION TO WILLIS CLASS'
SECOND MOTION TO ENFORCE
SETTLEMENT**

Date: August 4, 2015
Time: 10:00 a.m.
Place: Superior Court of California
111 N. Hill Street
Los Angeles, CA 90012

RICHARDS WATSON & GERSHON

James L. Markman, Bar No. 43536
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
(213) 626-8484; (213) 626-0078 fax
Attorneys for City of Palmdale

MURPHY & EVERTZ LLP

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(714) 277-1700; (714) 277-1777 fax
Attorneys for City of Lancaster and Rosamond
Community Services District

LEMIEUX & O'NEILL

W. Keith Lemieux, Bar No. 161850
4165 E. Thousand Oaks Blvd., Ste. 350
Westlake Village, CA 91362
(805) 495-4770; (805) 495-2787 fax
Attorneys for Littlerock Creek Irrigation District,
Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water
District, Llano Del Rio Water Company, Llano Mutual Water Company, and Big Rock Mutual
Water Company

LAGERLOF SENECA GOSNEY & KRUSE

Thomas Bunn III, Bar No. 89502
301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
(626) 793-9400; (626) 793-5900 fax
Attorneys for Palmdale Water District

CHARLTON WEEKS LLP

Bradley T. Weeks, Bar No. 173745
1031 West Avenue M-14, Suite A
Palmdale, CA 93551
(661) 265-0969; (661) 265-1650 fax
Attorneys for Quartz Hill Water District

CALIFORNIA WATER SERVICE COMPANY

John Tootle, Bar No. 181822
2632 West 237th Street
Torrance, CA 90505
(310) 257-1488; (310) 325
4605 fax

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. Attached as Exhibit "A" is a true and correct copy of an excerpt from Joseph Scalmanini's Trial Testimony on January 12, 2011.

4. Attached as Exhibit "B" is a true and correct copy of the February 24, 2011 Notice of Proposed Willis Class Action Settlement and Settlement Hearing.

5. Attached as Exhibit "C" is a true and correct copy of the Statement of Decision Phase Three Trial, available at the court's website at http://www.scefiling.org/filingdocs/194/39250/63777_2011x07x13xSODxStatementxofxDecisionxPhasexThreexTrialxxsignedx.pdf.

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

Executed this 24th day of July, 2015, at Irvine, California.



Jeffrey V. Dunn

EXHIBIT A

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

)
) Santa Clara
 ANTELOPE VALLEY GROUNDWATER CASES,) Case No.
) 1-05-CV-049053
) VOLUME III

TRIAL TESTIMONY OF JOSEPH SCALMANINI
WEDNESDAY, JANUARY 12, 2011

PAGES 283-417

1 Q. Mr. Scalmanini, from the time period
2 beginning in 1950 through approximately 1960,
3 approximately how much water was used or estimated
4 as used for agricultural requirements?

5 A. Well, as you can see, it varied a small 10:59:15
6 amount, but it was around 350,000 acre feet per
7 year.

8 Q. If I could direct your attention
9 to the next exhibit marked in order which is
10 Exhibit premarked Exhibit 60. It is labeled 10:59:28
11 "Estimated Historical Agricultural Water
12 Requirements Antelope Valley Area of Adjudication."

13 (Whereupon, Scalmanini Exhibit 60 was
14 introduced for identification.)

15 BY MR. DUNN: 10:59:37

16 Q. Do you have Exhibit No. 60 before you?

17 A. Yes.

18 Q. Who prepared Exhibit No. 60?

19 A. Our office did.

20 Q. And what does Exhibit No. 60 depict? 10:59:47

21 A. Well, basically Exhibit 60 extends the
22 record reflected in Exhibit 59 from 1961 to the
23 present that, as I hopefully described thoroughly,
24 with regard to land use that beginning in 1970 the
25 Los Angeles County Agricultural Commissioner has 11:00:15

Page 310

1 follow, you know, a similar trend. The two curves
2 are not exactly parallel because there are different
3 crops with different water -- individual water
4 duties at different points in time. But in general
5 shape they're about the same. 11:02:18

6 So the answer to your question is that
7 in the 19, say, 50s and continuing into the '60s
8 was a period of highest agricultural water use
9 historically. We just talked about the '50s being
10 around 350,000. Over the 20-year period of 50s and 11:02:37
11 60s it was pretty consistently between about 300,000
12 and about, say, 360,000 acre feet per year.

13 Then you asked about decline. So, you
14 know, water use for agriculture in the 1970s was
15 smaller, it fluctuated somewhat widely, but around 11:02:57
16 250-, 260,000 acre feet, plus or minus, say, 30- or
17 40,000 acre feet per year.

18 And then commencing in the late 1970s, or
19 arguably, you know, at 1980, then there was, for all
20 practical purposes, a linear decline through the 11:03:20
21 1980s that would track that same type of decline
22 in land use reflected in Exhibit 40 to where
23 agricultural water requirements declined, you know,
24 into the range of about 70,000 acre feet. So it
25 declined from, say, you know, in the 1970s, 250-, 11:03:37

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

REBECCA LEE WILLIS, on behalf of)	JUDICIAL COUNCIL COORDINATION
herself and all others similarly situated,)	PROCEEDING NO. 4408
)	
Plaintiff,)	
)	
vs.)	
)	
LOS ANGELES COUNTY)	NOTICE OF PROPOSED WILLIS
WATERWORKS DISTRICT NO. 40;)	CLASS ACTION SETTLEMENT
CITY OF LANCASTER; CITY OF)	AND SETTLEMENT HEARING
PALMDALE; PALMDALE WATER)	
DISTRICT; LITTLEROCK CREEK)	
IRRIGATION DISTRICT; PALM RANCH)	
IRRIGATION DISTRICT; QUARTZ HILL)	
WATER DISTRICT; ANTELOPE)	DATE: February 24, 2011
VALLEY WATER CO.; ROSAMOND)	TIME: 10:00 a.m.
COMMUNITY SERVICE DISTRICT; and)	PLACE: Superior Court of Los Angeles
DOES 1 through 1,000;)	County, Courtroom 1 (5 th Floor)
)	111 N. Hill Street
Defendants.)	Los Angeles, CA
)	

TO: PRIVATE LANDOWNERS WITHIN THE ANTELOPE VALLEY

**THIS LEGAL NOTICE MAY AFFECT YOUR PROPERTY RIGHTS.
PLEASE READ IT CAREFULLY.**

1. Why should I read this Notice?
2. What is this lawsuit about?
3. Who is covered by the proposed settlement?
4. What are the terms of the proposed settlement?
5. What do I need to do?
6. Can I exclude myself from the Class?
7. Why, when and where will the Settlement Hearing take place?
8. Who represents Plaintiff and the Class?
9. Why does Plaintiff's Counsel favor the Settlement?
10. How will Plaintiff's Counsel's fees be paid?
11. Will I have to pay anything?
12. Will I receive any monetary compensation?
13. What happens if the Settlement is approved by the Court?
14. What happens if the Settlement is not approved by the Court?
15. Where can I get additional information?
16. What are the Relevant Dates?
17. May I Pump Water on My Property?
18. What if I sell my property?

1. WHY SHOULD I READ THIS NOTICE

Available records indicate that you may own property in the Antelope Valley Groundwater Basin. Your property rights may be affected by the proposed settlement of this lawsuit. Your right to object to or comment on that settlement is described below. In addition, this notice contains important information about your disclosure obligations in the event you sell your property. ***PLEASE TAKE THE TIME TO READ THIS IMPORTANT LEGAL NOTICE, WHICH IS DIFFERENT FROM THE PRIOR NOTICE SENT TO YOU ABOUT THIS CASE.***

2. WHAT IS THIS LAWSUIT ABOUT?

Under California law, property owners have a right to pump groundwater (water underneath the surface) and use it for reasonable purposes on their overlying land. In this case, however, the naturally available supply of water in the Basin may not be adequate to satisfy the needs of everyone who wants to use that water. Plaintiff Willis brought this action to protect her right and that of other "dormant" Antelope Valley landowners (i.e., persons who do not now and have not previously pumped groundwater on their properties) to pump groundwater and use the water on their properties in the future. She claims that she and other such landowners have water rights which are superior to the rights of certain public water suppliers and entities (listed as defendants on page 1) to use that water. The public water suppliers claim that their historical pumping has given them superior water rights.

This lawsuit has been consolidated with other pending cases relating to groundwater rights in the Antelope Valley, but the proposed settlement only concerns this case.

3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?

You have been designated as a possible class member because records indicate that you own property in the Antelope Valley. **The Willis class includes all private (i.e., non-governmental) landowners within the Antelope Valley Groundwater Basin who do not pump and have not pumped water on their properties**, with certain exceptions set out below. A map of the Basin is attached to this notice.

You are not in the Class if you do not own real property within the Basin. In addition, you are **NOT** in the Class if any of the following are true as to you:

1. You pump groundwater on your property or have ever pumped water on your property; *or*
2. Your property is connected to *and* receives water from a public water system, public utility or mutual water company; *or*
3. You are already a party to this litigation.

4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The following is a summary of the basic terms and conditions of the proposed settlement. You may view the complete settlement agreement at www.avgroundwater.com. If you do not have Internet access, you may request a copy of the settlement agreement by

writing to the following: Antelope Valley Groundwater Litigation, P.O. Box 12013, Riverside, CA 92502-9839.

In summary, the proposed settlement provides as follows: (capitalized terms are defined in the Agreement).

- a. The Class agrees not to contest the Settling Defendants' estimates of the Basin's Native Safe Yield. The Court will determine the Basin's Native Safe Yield based on evidence to be presented in open court.
- b. The Class agrees not to contest the Settling Defendants' estimates of the Basin's Total Safe Yield. The Court will determine the Basin's Total Safe Yield based on evidence to be presented in open court.
- c. The parties agree that the United States has a Federal Reserved Right to some portion of the Basin's Native Safe Yield, the amount of which will be determined by the Court.
- d. The Settling Parties agree that the Settling Parties each have rights to produce groundwater from the Basin's Native Safe Yield, as follows: (i) Settling Defendants collectively have the right to produce up to 15% of the Basin's Federally Adjusted Native Safe Yield; and (ii) the Willis Class has a correlative right (along with other overlying landowners) to produce up to 85% of the Federally Adjusted Native Safe Yield.
- e. All parties have the right to recapture return flows from water that they had imported. The Class agrees not to contest the Settling Defendants' estimates that such return flows total 28,200 acre-feet per year, of which 25,100 acre-feet is from municipal and industrial use.
- f. The Settling Parties agree that the Basin has limited water resources and that there is a need for a groundwater management plan for the Basin. The Parties have agreed to be bound by such a plan, as may later be ordered by the Court.
- g. The Settlement contains mutual releases of the claims the Settling Parties have asserted against each other in the litigation. The Settlement specifically provides that it will not prejudice the rights of non-settling parties.

5. WHAT DO I NEED TO DO?

You are not required to do anything. However, if you wish to object to the settlement or to Plaintiffs' Counsel's Application for Fees and Expenses, you should mail a Notice of Intent to Appear and Be Heard to the Clerk, Los Angeles County Superior Court, 111 N. Hill Street, Los Angeles, CA 90012. **That Notice should be sent by February 10, 2011** for it to be considered and must briefly state the position(s) you wish to take with respect to the Settlement and/or any related matters, such as counsel's fee application. In addition, you should send a copy of that Notice to the following attorneys by that date:

Ralph B. Kalfayan, Esquire
rkalfayan@kkbs-law.com
Krause Kalfayan Benink & Slavens LLP
625 Broadway, Suite 635
San Diego, CA 92101
Willis Class Counsel

Stefanie D. Hedlund, Esquire
avgroundwater@bbklaw.com
Best Best & Krieger LLP
400 Capitol Mall, Suite 1650
Sacramento, CA 95814
Liaison Counsel for Defendants

6. CAN I EXCLUDE MYSELF FROM THE CLASS?

No. Class members were previously given the opportunity to exclude themselves from the Class, but you may not do so at this time. If you previously excluded yourself from the Class and wish to rejoin the Class, you may request the Court's approval to do so by contacting Ms. Rowena Walker, Clerk, at (408) 882-2286.

7. WHY, WHEN, AND WHERE WILL THE SETTLEMENT HEARING TAKE PLACE?

The Court must approve the proposed settlement after a fairness hearing in order for the settlement to become effective. That fairness hearing will take place on February 24, 2011 at 10:00 a.m. in Courtroom 1 on the fifth floor of the Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, CA 90012. ***You are welcome to attend that hearing but you are not required to attend.***

Any class member may appear in person or through counsel and state his or her comments on or objections to the proposed settlement and/or on counsel's fee application, but should mail a Notice of Intent to Appear pursuant to the procedures set forth in paragraph 5, above. ***You are not required to submit any papers to attend the fairness hearing, but if you wish to be heard at that hearing you should mail a Notice pursuant to the procedures set forth above.***

8. WHO REPRESENTS PLAINTIFF AND THE CLASS?

Plaintiff and the Class are represented by the following attorneys in this matter:

Ralph B. Kalfayan, Esquire ralph@kkbs-law.com
David B. Zlotnick, Esquire david@kkbs-law.com
Krause Kalfayan Benink & Slavens LLP
625 Broadway, Suite 635
San Diego, CA 92101
(619) 232-0331
(619) 232-4019 (fax)

9. WHY DOES CLASS COUNSEL SUPPORT THE SETTLEMENT?

Class Counsel believe that the settlement reflects a reasonable and fair resolution of the claims asserted in this matter. The Settling Defendants assert that they have prescriptive rights to substantially more than 15% of the Basin's Native Safe Yield; the Class asserts that the Settling Defendants have no such prescriptive rights. Counsel believe that the Settlement fairly compromises the parties' positions.

Under the Settlement, the Class has agreed not to contest the Settling Defendants estimates of the Basin's yield because we are confident that the Court will have adequate information to make an informed and fair determination of the Basin's yield. Other parties to the litigation have retained numerous experts who will provide evidence that will aid the Court in that determination.

The Court is required to independently determine the Basin's safe yield and other pertinent aspects of the Basin after hearing the relevant evidence, and the Settling Parties will be bound by the Court's findings in that regard. In addition, the Parties will be required to comply with the terms of any Physical Solution that may be imposed by the Court to protect the Basin, and the Court will not be bound by the Settling Parties' agreements in that regard. Willis

and Class Counsel believe that the Court will have the benefit of adequate relevant information to make fully informed decisions and that further participation by the Class may not be necessary. To the extent issues arise that affect the Class' rights, Class counsel will act to protect the Class' interests.

10. HOW WILL PLAINTIFF'S COUNSEL'S FEES BE PAID?

Plaintiffs' counsel will petition for an award of fees and expenses to be paid by the Settling Defendants. *You will not be responsible to pay any portion of their fees.*

Plaintiffs' counsel have worked on this matter for over 4 years without being paid and they have advanced considerable amounts to pay for out-of-pocket expenses, including travel, hearing transcripts, consultants, etc. Plaintiffs' Counsel reserve the right to seek a fee award of up to \$4.5 million to compensate them for their time and expenses in representing the Class in this matter. The Court will ultimately determine whether counsel are entitled to a fee award and the appropriate amount of any such award.

11. WILL I HAVE TO PAY ANYTHING?

No. You will not be required to pay anything in connection with the proposed settlement.

12. WILL I RECEIVE ANY MONETARY COMPENSATION FROM THE SETTLEMENT?

No. The settlement does not provide you with any monetary benefits. It simply preserves your correlative rights to use the groundwater under your property for reasonable and beneficial purposes.

13. WHAT HAPPENS IF THE SETTLEMENT IS APPROVED BY THE COURT?

If the Settlement is approved, the above litigation will be over. But the consolidated cases will continue until all claims to groundwater rights in the Basin have been settled or decided and a management plan (Physical Solution) has been adopted to protect the Basin, if necessary. The extent to which the Class will need to participate in those matters or other aspects of the consolidated cases is unclear at this time. The Class members will be bound by the terms of any later findings made by the Court and any Physical Solution imposed by the Court.

14. WHAT HAPPENS IF THE SETTLEMENT IS NOT APPROVED BY THE COURT?

If the settlement is not approved, the settlement agreement will be null and void and the parties will be returned to their prior positions in the litigation.

15. WHERE CAN I GET ADDITIONAL INFORMATION?

The amended complaint, the settlement agreement, and certain other documents from the litigation are available at www.avgoundwater.com. In addition, that website has a list of answers to certain other questions you may have and it has an e-mail address for you to obtain information if you have further questions. That website will be updated from time to time to advise you of the status of this litigation. Or you may call the following number for information: (619) 232-0331. Also, all of the documents filed in the case are available on the court's website at <http://www.sceffiling.org/cases/casehome.jsp?caseId=19>.

16. WHAT ARE THE RELEVANT DATES?

The Settlement Hearing is scheduled for February 24, 2011. If you wish to be heard at the Hearing, you should mail a Notice of Intent to Appear and Be Heard with the Clerk, Los Angeles County Superior Court. **That Notice should be mailed by February 10, 2011** for it to be fully considered. In addition, by that date, you should send a copy of that Notice to the attorneys identified in paragraph 5, above.

17. MAY I PUMP WATER ON MY PROPERTY?

Yes. There are presently no restrictions on your ability to pump water on your property or the amount that you can pump for reasonable and beneficial uses on your property. However, it is likely that there will be limits imposed on the amount of pumping in the near future and that pumpers will be required to install meters on their pumps. *Hence, we strongly urge anyone who installs a pump on their property to make sure that it has a meter that will accurately record the amount of water pumped.* That will be less costly for you than being required to later install a meter on an existing pump.

18. WHAT HAPPENS IF I SELL MY ANTELOPE VALLEY PROPERTY?

If the Settlement is approved by the Court, anyone who acquires your property will be bound by the terms of the Settlement. Hence, you should disclose the terms of the Settlement to anyone who may acquire your Antelope Valley property.

PLEASE DO NOT CALL OR WRITE THE COURT OR CLERK'S OFFICE. IF YOU HAVE ANY QUESTIONS, PLEASE CONSULT YOUR OWN COUNSEL, VISIT THE WEB SITES LISTED ABOVE, OR WRITE TO CLASS COUNSEL AT THE ADDRESS ABOVE.

Dated: December, 2010

BY ORDER OF THE SUPERIOR COURT OF CALIFORNIA FOR
THE COUNTY OF LOS ANGELES

EXHIBIT C

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**CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

JUL 18 2011

John A. Clarke, Executive Officer/Clerk

By Raul Sanchez Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**STATEMENT OF DECISION
PHASE THREE TRIAL**

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

Judge: Honorable Jack Komar

Wm. 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 Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

2
3 The standard for a statement of decision as set forth in Code of Civil Procedure section
4 632 requires a court to explain "... the legal and factual basis for its decision as to each of the
5 principal controverted issues at trial...." Case law is clear that a court must provide the factual
6 and legal basis for the decision on those issues only closely related to the ultimate issues on the
7 case. (See *People v. Casa Blanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.)
8 It is also clear that a court need not respond to requests that are in the nature of "interrogatories."
9 (See *id.* at pp. 525-526.)

10 The only issues at this phase of the trial were simply to determine whether the
11 adjudication area aquifer is in a current state of overdraft and as part of that adjudication to
12 determine the safe yield. This Statement of Decision focuses solely on those issues.

13 Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale,
14 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
15 Quartz Hill Water District, California Water Service Company, Rosamond Community Service
16 District, Phelan Piñon Hills Community Services District, Desert Lake Community Services
17 District, North Edwards Water District (collectively, the "Public Water Producers")¹ brought an
18 action for, *inter alia*, declaratory relief, alleging that the Antelope Valley adjudication area
19 groundwater aquifer was in a state of overdraft and required judicial intervention to provide for
20 management of the water resources within the aquifer to prevent depletion of the aquifer and
21 damage to the Antelope Valley basin.

22 Several of the cross-defendant parties (collectively, the "Land Owner Group") also
23 sought declaratory relief in their various independent (now coordinated and consolidated)
24 actions.

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27 ¹ The United States and the City of Los Angeles, though not water suppliers in the Antelope Valley adjudication
28 area, joined with the Public Water Producers. Rosamond Community Services District joined with the Land Owner
Group.

1 The first issues to be decided in the declaratory relief cause of action are the issues of
2 overdraft and safe yield. The remaining causes of action and issues are to be tried in a
3 subsequent phase or phases.

4 This Phase Three trial commenced on January 4, 2011 and continued thereafter on
5 various days based upon the needs of the various parties and the Court's availability.
6 Appearances of counsel are noted in the minutes of the Court.

7 At the conclusion of the evidence, the Court offered counsel the opportunity to provide
8 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the
9 Court heard oral argument and the matter was ordered submitted.

10 The Public Water Producers (and others) have alleged that the basin is in a condition of
11 overdraft and have requested that the Court determine a safe yield and consider imposition of a
12 physical solution or other remedy to prevent further depletion of the water resource and
13 degradation of the condition of the aquifer.

14 Several parties in opposition to the request of the Public Water Producers have
15 contended that while there may have been overdraft in the past, currently the aquifer has
16 recovered and is not in overdraft. These same parties contend that it is not possible to establish
17 a single value for safe yield; instead they have requested that the Court determine a range of
18 values for safe yield.

19 The Court concludes that the Public Water Producers have the burden of proof and that
20 the burden must be satisfied for this phase and purpose by a preponderance of the evidence.
21 This burden of proof may or may not be appropriate to other phases of this trial. And since the
22 findings here have no application to other phases, such as prescription or rights of appropriators,
23 and the parties have not briefed those or other issues, the Court makes no conclusions as to what
24 standard of proof might be applicable to such other issues or phases of trial.

25 The law defines overdraft as extractions in excess of the "safe yield" of water from an
26 aquifer, which over time will lead to a depletion of the water supply within a groundwater basin
27 as well as other detrimental effects, if the imbalance between pumping and extraction
28 continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199; *City of*

1 *Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District v.*
2 *City of Riverside* (1959) 173 Cal. App. 2d 137.) “Safe yield” is the amount of annual
3 extractions of water from the aquifer over time equal to the amount of water needed to recharge
4 the groundwater aquifer and maintain it in equilibrium, plus any temporary surplus. Temporary
5 surplus is defined as that amount of water that may be pumped from an aquifer to make room to
6 store future water that would otherwise be wasted and unavailable for use.

7 Determination of safe yield and overdraft requires the expert opinions of hydrologists and
8 geologists.² Experts in the field of hydrogeology routinely base their opinions and conclusions
9 concerning groundwater basin overdraft on evidence of long-term lowering of groundwater
10 levels, loss of groundwater storage, declining water quality, seawater intrusion (not an issue in
11 this case), land subsidence, and the like. Experts also conduct a sophisticated analysis of
12 precipitation and its runoff, stream flow, and infiltration into the aquifer, including such things as
13 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge), as
14 well as the nature and quantity of extractions from the aquifer and return flows therefrom.

15 Generally, neither overdraft nor safe yield can be determined by looking at a
16 groundwater basin in a single year but must be determined by evaluating the basin conditions
17 over a sufficient period of time to determine whether pumping rates have or will lead to
18 eventual permanent lowering of the water level in the aquifer and ultimately depletion of the
19 water supply or other harm. Recharge must equal discharge over the long term. (*City of Los*
20 *Angeles v. City of San Fernando, supra*, 14 Cal. 3rd at pp. 278-279.) But having heard
21 evidence about the aquifer as a whole, the Court is not making historical findings that would be
22 applicable to specific areas of the aquifer or that could be used in a specific way to determine
23 water rights in particular areas of the aquifer.
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27
28 ² All the experts offer estimates. The American Heritage College Dictionary, Third Edition, defines an “estimate”
as, *inter alia*, “[a] rough calculation, as of size” or “[a] judgment based on one’s impressions; an opinion.”

1 The location of the Antelope Valley adjudication area boundaries was the subject of the
2 Phase One and Two trials in this matter. The Court defined the boundaries of the valley aquifer
3 based upon evidence of hydro-connection within the aquifer. If there was no hydro-connectivity
4 with the aquifer, an area was excluded from the adjudication. The degree of hydro-connectivity
5 within the Antelope Valley adjudication area varies from area to area. Some areas seemingly
6 have fairly small or nominal hydro-connectivity but must be included in this phase of the
7 adjudication unless the connection is *de minimis*.³ Pumping in those parts of the aquifer may be
8 shown to have *de minimis* effect on other parts of the aquifer while pumping in other areas
9 within the basin appear to have material impacts on adjacent parts of the basin. All areas were
10 included within the adjudication area because they all have some level of hydro-connection,
11 some more and some less. How to deal with those differences is ultimately a basin management
12 decision that is well beyond the scope of this phase of trial.
13

14 Overdraft

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16
17 The preponderance of the evidence presented establishes that the adjudication area
18 aquifer is in a state of overdraft. Reliable estimates of the long-term extractions from the basin
19 have exceeded reliable estimates of the basin's recharge by significant margins, and empirical
20 evidence of overdraft in the basin corroborates that conclusion. Portions of the aquifer have
21 sustained a significant loss of groundwater storage since 1951. While pumping in recent years
22 has reduced and moderated, the margin between pumping and recharge as cultural conditions
23 have changed and precipitation has increased (with the appearance of wetter parts of the
24 historical cycle), pumping in some areas of the aquifer is continuing to cause harm to the basin.
25 The evidence is persuasive that current extractions exceed recharge and therefore that the basin is
26

27 ³ The court may exclude truly *de minimis* connectivity areas based upon evidence in later phases of the trial if
28 shown to have virtually no impact on the aquifer.

1 in a state of overdraft. Since 1951⁴ there is evidence of periods of substantial pumping
2 (principally agricultural in the early years of the period) coinciding with periods of drought, with
3 almost continuous lowering of water levels and severe subsidence in some areas extending to the
4 present time, with intervals of slight rises in water levels in some areas.

5 Areas of increased pumping, with concomitant lowering of water levels, can have a
6 serious effect on water rights in other areas, caused by cones of depression, which alter natural
7 water flow gradients, causing the lowering of water levels in adjacent areas, with resulting
8 subsidence and loss of aquifer storage capacity. Given population growth, and agricultural and
9 industrial changes, the valley is at risk of being in an even more serious continuing overdraft in
10 the future unless pumping is controlled.

11 While the lowering of current water levels has slowed, and some levels in wells in some
12 areas have risen in recent years, significant areas within the aquifer continue to show declining
13 levels, some slightly so, but many with material lowering of water levels.

14 Thus, the Antelope Valley adjudication area is in a state of overdraft based on estimates
15 of extraction and recharge, corroborated by physical evidence of conditions in the basin, and
16 while the annual amount of overdraft has lessened in recent years with increased precipitation
17 and recharge, the effects of overdraft remain and are in danger of being exacerbated with
18 increased pumping and the prospective cyclical precipitation fluctuations shown by the historical
19 record. The physical evidence establishes that there was significant subsidence occurring in
20 parts of the adjudication area ranging from two to six feet or more in certain areas of the valley
21 caused by such pumping and that measurable water levels fell in a substantial part of the valley.
22 While some of the ongoing subsidence may be attributable to residual subsidence (from earlier
23 periods of shortfall) that would not seem to be an explanation for the extent of continued
24 subsidence. The evidence establishes that ground water extractions in excess of recharge are a
25 cause as well.
26
27

28 ⁴ Precipitation and well records prior to that year are too sketchy to be relied upon.

1 **Safe Yield**

2
3 A calculation of safe yield is necessary to manage the basin or create a physical solution
4 to a potential or actual continuing overdraft. A determination of safe yield requires an initial
5 determination of average annual natural or native recharge to the aquifer from all sources. The
6 only source of natural or native recharge for the Antelope Valley is precipitation that recharges
7 the aquifer and it is therefore necessary to ascertain average annual precipitation. The
8 calculation of annual average precipitation can only be determined by using a baseline study
9 period that covers precipitation in periods of drought and periods of abundant precipitation over
10 a sufficient period of time that a reliable estimate of average future recharge based on
11 precipitation can be made.

12 It has been suggested that safe yield could be based on using shorter base periods or more
13 than one base period, (the total time span of which was considerably less than the 50 year period
14 the Court believes is more credible). If the purpose of selecting a base period is to determine
15 average recharge over time based on precipitation, choosing two consecutive periods of time
16 with two different average numbers would not serve that purpose and would preclude estimating
17 a single safe yield. Likewise, selecting a base period that does not have completely representative
18 precipitation cycles over time would not provide an accurate evaluation of conditions in the
19 valley. A base period that calculates average precipitation over a representative period of time
20 permits reliable predictions about future natural recharge based on regular recurring precipitation
21 cycles. A period of precipitation fluctuations from 1951 to 2005 satisfies that standard. Shorter
22 periods do not.

23
24 The Court finds that current extraction of water from the aquifer by all pumping ranges
25 from 130,000 to 150,000 acre feet a year, but in any event, is in excess of average annual
26 recharge. The major area of dispute between the parties is the average amount of natural
27 recharge, which also involves disputes concerning return flows, the amount of native vegetation
28 water needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag

1 time, bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the
2 basin, including artificial recharge-water pumped into the aquifer from external sources are not
3 in dispute.

4 Evidence established that during the entire historical period presented, populations
5 increased within the valley and water use changed in a variety of ways. There has been a shift in
6 some areas to urban uses and away from agriculture although in recent years agricultural
7 pumping has also increased. The nature of agricultural duties has changed as well. The type of
8 irrigation used by farmers has become more efficient and less water is needed per acre
9 (depending on the crops grown) with more efficient uses of water. But there has also been an
10 increase as well as a change in the nature of the type of agriculture in the valley in material
11 quantities in recent years. More of such changes may occur and it is important to both current
12 and future generations to ensure that the water resources within the basin are managed prudently.

13
14 The Court heard from a very large number of experts, some of whom have provided
15 opinion testimony of what constitutes safe yield. All the experts testifying acknowledged that
16 changes in the selection of a base study period, lag time, agricultural water duties,
17 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration,
18 return flows, playa evaporation relating to run off and bedrock infiltration, chloride
19 measurements, satellite imaging, and agricultural and municipal pumping estimates, among
20 others, would affect the ultimate opinion of natural recharge and return flows.

21 The opinions of all the experts are estimates, based upon their professional opinion. All
22 of the opinions were critiqued by other experts who often had different opinions. The Court
23 recognizes the imprecision of the various estimates and the fact that an estimate by definition is
24 imprecise. But the fact that estimates lack precision does not mean that the Court cannot rely
25 upon such estimates. The scientific community relies upon such estimates in the field of
26 hydrogeology and the Court must do the same.

27 Reasonable experts can differ as to reasonable estimates of natural recharge and
28 virtually all other components of water budgets, computations of change of storage, and the

1 like, all the while using the same formulae and scientific principles to reach their conclusion.
2 For example, all the experts could agree on the definition of "Darcy's Law" and the physics
3 principle of "conservation of mass" but still reach different conclusions.

4 Some of the experts opined that the basin was not in overdraft and that recharge was in
5 excess of or in balance with extractions so that there was a surplus in the aquifer. One expert
6 opined that loss of storage was merely space for temporary storage. Observable conditions in the
7 valley are inconsistent with those conclusions. If there were a surplus, even in the shortened
8 base periods used by the some experts, there should not be subsidence of land, nor the need to
9 drill for water at deeper and deeper levels in those parts of the aquifer most affected by the
10 overdraft. The physical condition of the valley is inconsistent with those estimates that there is
11 and has been a surplus of water in the aquifer.

12 The selection of a safe yield number for an aquifer the size of the Antelope Valley is
13 made difficult because of not only its size but because of the complexity of its geology. As
14 reflected above, hydro-connectivity and conductivity varies considerably between various parts
15 of the aquifer. The hydro-connectivity between some portions of the adjudication area aquifer
16 and others is so slight as to be almost (apparently) nonexistent. Pumping in those areas may
17 have little or no effect on other areas of the aquifer. The Antelope Valley basin is not like a
18 bathtub where lowering and raising of water levels is equal in all parts of the "tub."
19


20 Therefore, assigning a safe yield number (what quantity of pumping from the basin will
21 maintain equilibrium in the aquifer) may require different numbers for different parts of the
22 aquifer (and clearly may also provide for some level of separate management). No attempt has
23 been made in this phase of trial to define geological differences in the valley that would justify
24 different safe yield numbers for different parts of the valley in light of the decision in Phase Two
25 regarding connectivity (the Phase Two trial focused on hydro-connectivity for purposes of
26 determining necessary parties to the action).

27 Weighing the various opinions of the experts, however, the Court finds by a
28 preponderance of the evidence that conservatively setting a safe yield at 110,000 acre feet a

1 year will permit management of the valley in such a way as to preserve the rights of all parties
2 in accordance with the Constitution and laws of the State of California. Some portions of the
3 aquifer receive more recharge than others and pumping requirements vary. These differences
4 require management decisions that respect the differences in both the geology and the cultural
5 needs of the diverse parts of the valley.

6 It should not be assumed that the safe yield management number may not change as
7 climate circumstances and pumping may change, or as the empirical evidence based on
8 experience in managing the basin suggests it is either too high or too low.
9

10
11 Dated: JUL 13 2011

12 
13 Hon. Jack Komar
14 Judge of the Superior Court
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PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

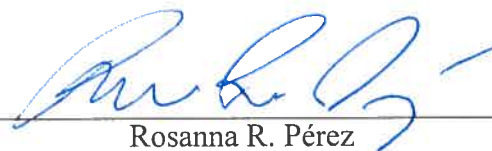
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On July 24, 2015, I served the within document(s):

DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF PUBLIC WATER SUPPLIERS' OPPOSITION TO WILLIS CLASS' SECOND MOTION TO ENFORCE SETTLEMENT



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 24, 2015, at Los Angeles, California.


Rosanna R. Pérez

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