

1 Bob H. Joyce, (SBN 84607)
2 Andrew Sheffield, (SBN 220735)
3 Kevin E. Thelen, (SBN 252665)

4 LAW OFFICES OF
5 **LEBEAU • THELEN, LLP**
6 5001 East Commercenter Drive, Suite 300
7 Post Office Box 12092
8 Bakersfield, California 93389-2092
9 (661) 325-8962; Fax (661) 325-1127

10 Attorneys for CRYSTAL ORGANIC
11 FARMS, a limited liability company

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 Coordination Proceeding Special Title
15 (Rule 1550 (b))

Judicial Council Coordination No. 4408

16 ANTELOPE VALLEY GROUNDWATER
17 CASES

Case No.: 1-05-CV-049053

18 Included actions:

**TRIAL BRIEF OF
CRYSTAL ORGANIC'S LLC;
WITNESS LIST**

19 Los Angeles County Waterworks District No.
20 40 vs. Diamond Farming Company
21 Los Angeles Superior Court
22 Case No. BC 325201

23 Los Angeles County Waterworks District No.
24 40 vs. Diamond Farming Company
25 Kern County Superior Court
26 Case No. S-1500-CV 254348 NFT

27 Diamond Farming Company vs. City of
28 Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

AND RELATED CROSS-ACTIONS.

DATE: October 6, 2008
TIME: 9:00 a.m.
DEPT: 1

///

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

That trial was bifurcated with the First Phase intended to establish the outer boundary within which competing groundwater rights were to be litigated. Pursuant to Stipulation, it was agreed that the First Phase of the Trial in the Riverside County Superior Court would establish a boundary line such that groundwater pumping on one side of the line would have no adverse effect upon groundwater pumping on the other and vice versa. At the Trial in August of 2002, the Purveyors, through their collectively retained expert, Joseph Scalmanini, advanced the claim that the Antelope Valley Ground-Water Basin was part of the Antelope Valley Drainage Basin. Evidence was presented that the drainage basin had been by earlier investigators divided into twelve (12) ground-water subbasins on the basis of fault, consolidated rock, ground-water divides, and in some cases arbitrary boundaries. Mr. Scalmanini at that time in 2002, mapped the area which the Purveyors claimed constituted the Antelope Valley Ground-Water Basin. The Antelope Valley Ground-Water Basin as mapped by Mr. Scalmanini embraced approximately 920 square miles and consisted of seven (7) of the twelve (12) subbasins which had been identified as lying within a larger drainage basin. The seven (7) subbasins identified and mapped by Mr. Scalmanini were: the Buttes, Finger Buttes, Lancaster, Neenach, North Muroc, Pearland, and West Antelope.

After five (5) days of trial and further proceedings, the Trial Court set aside its earlier Bifurcation Order expressing the Trial Court's desire to proceed in a single trial with all expert evidence being presented in conjunction with the adverse water rights claims in issue. After further proceedings in the Trial Court, and after an unsuccessful attempt to file a belated Cross-Complaint to expand that litigation into a basin-wide adjudication, Los Angeles County Waterworks District No. 40 filed new actions in

1 both Kern County and Los Angeles County. Thereafter through coordination proceedings, all actions
2 were coordinated and are now before this Court.

3 Additionally, in 2003 the United States Department of the Interior, the United States Geological
4 Survey, published the "Water-Resources Investigations Report 03-4016." Therein, the U.S. Geological
5 Survey described and mapped essentially the same ground-water basin as that described and mapped by
6 the Purveyor's expert, Joseph Scalmanini, during trial in 2002. After these proceedings were
7 coordinated, Crystal Organic LLC, a related entity to Diamond Farming Company, purchased in January
8 of 2006 approximately 624 acres of developed agricultural property north of the Willow Springs-
9 Cottonwood Fault boundary line, which was the northern boundary in the western portion of what was
10 described and mapped by both Joseph Scalmanini during the August 2002 trial in Riverside, as well as
11 the U.S. Geological Survey in its Report of 2003. Crystal Organic's LLC purchased that developed real
12 property based upon the belief that it was situated north of and outside the area within which adverse
13 water rights claims were being asserted by the Purveyors.

14 In October of 2006, this Court conducted a Phase 1 Trial to establish the Antelope Valley area
15 of adjudication boundary. As a consequence of those proceedings, the area on the western side of the
16 Antelope Valley upon the Willow Springs-Cottonwood Fault were included within the adjudication
17 boundaries. Crystal Organic LLC was served with the Cross-Complaint of the Purveyors and answered
18 that Cross-Complaint.

19 PHASE 2 TRIAL CONTENTIONS

20 Crystal Organic LLC contends that Joseph Scalmanini and the U.S. Geological Survey were
21 and are correct. Groundwater pumping by the Municipal Purveyors, primarily located in the central
22 Lancaster Subbasin, has no measurable adverse effect upon groundwater pumping by Crystal
23 Organic's LLC on the recently acquired agricultural property north of the Willow Springs Fault and
24 the same is true vice versa. Crystal Organic's LLC has designated Joseph Scalmanini as a non-
25 retained expert, and anticipates that Mr. Scalmanini will reaffirm his opinion as expressed in his
26 Technical Memorandum issued in January of 2002, and as reasserted by him repetitively thereafter.
27 It is also anticipated that there will be concurrence in that opinion by Kenneth Utley, Richard Rhone,
28 and John List, specifically, and other party designated experts.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

It is respectfully submitted that the evidence adduced at the imminent Phase 2 Trial will compel the conclusion that if the area north of the Willow Springs/Cottonwood Fault boundary line is not excluded from this litigation, that that area should be treated as Mr. Scalmanini has described it as "a separate area."

Dated: September 29, 2008

LeBEAU • THELEN, LLP

By:  for:
BOB H. JOYCE
Attorneys for CRYSTAL ORGANIC
FARMS, a limited liability company

PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On September 29, 2008, I served the within **TRIAL BRIEF OF CRYSTAL ORGANIC'S LLC; WITNESS LIST**

■ **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ **(BY MAIL)** 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 at Bakersfield, California, in the ordinary course of business.

☐ **(OVERNIGHT/EXPRESS MAIL)** By enclosing a true copy thereof in a sealed envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary business practices from Kern County. I am readily familiar with this business' practice of collecting and processing correspondence for overnight/express/UPS mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with delivery fees paid/provided for at the facility regularly maintained by United States Postal Service (Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal Express/United Postal Service to receive documents].

■ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on September 29, 2008, in Bakersfield, California.


DONNA M. LUIS