

DAVID R. LAMPE
BERNARD G. LE BEAU, JR.
DENNIS R. THELEN
THOMAS S. MCINTOSH
THOMAS A. CREAR
J. NILE KINNEY
BOB H. JOYCE
THOMAS P. FEHER
W. STEVEN SHAYER
ALAN J. MISH
PATRICK C. CARRICK
LORNA H. BRUMFIELD
J. SUZANNE HILL
FRANKLIN D. GORDON
MARK R. BATEMAN
ANDREW K. SHEFFIELD

LAW OFFICES OF
LEBEAU ■ THELEN, LLP
THE ATRIUM
5001 E. COMMERCENTER DRIVE, SUITE 300
BAKERSFIELD, CALIFORNIA 93309

MAILING ADDRESS:
P.O. BOX 12092
BAKERSFIELD, CA 93389-2092
www.lebeauthelen.com

TELEPHONE
(661) 325-8962

FACSIMILE
(661) 325-1127

March 20, 2006

Via E-Filing, Facsimile & U.S. Mail

Hon. Jack Komar
Superior Court of the State of California
Santa Clara County
191 No. First Street
San Jose, CA 95113

Re: *Antelope Valley Groundwater Adjudication*
Judicial Council Coordination No. 4408

Dear Judge Komar:

Please accept this correspondence as the "**Issues Statement**" on behalf of Diamond Farming Company. I will attempt herein to identify procedural issues which remain unresolved, a resolution of which is necessary if we are to proceed in an orderly fashion. I will then identify substantive issues which I do not believe are in concept open to serious legal debate but which will need factual resolution. Third, I will address the more significant issue in controversy, that is the purveyors' claims of prescription, and will identify core legal issues raised by those claims, which are in need of an early resolution, if we are going to avoid letting that issue become the tail that wags the dog. Last, I will proffer a proposed order of trial, assuming that this Court concludes that a consolidation of all actions for trial is appropriate. I believe that proposal will take this Court and the parties more quickly and efficiently to the core issue and inevitable outcome, that is the need for the intervention of this Court to formulate and impose a court supervised solution to that or those geographic areas determined to be in need of management.

A. Procedural Issues.

1. Is the newly pleading proffered on behalf of the purveyors and stylized as a Cross-Complaint, as directed by this Court, to be treated as a Cross-Complaint to the original Complaint filed by Diamond Farming Company, or is it a new action as to Diamond Farming Company?
2. Is Diamond Farming's action filed in October 1999 to be consolidated for trial with these new actions and with all other newly named and served parties?

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3. Will this Court recognize that most separate parcels of real property do not by value economically justify the litigation expense associated with this kind of an action, and thus, formulate and/or shape an appropriate order so as to ensure that defaulting landowners do not lose valuable property rights simply because of economic considerations alone?
4. Will this Court be tempted to and, in fact, order a seriatim series of bifurcated mini trials such that the necessity for an order alluded to in the immediately preceding subparagraph is virtually guaranteed?

B. Legal Issues Which are in Concept Not in Serious Dispute.

1. It is in concept conceded that absent contractual reservations by AVEK, that the user of State Water Project water should be entitled to recapture return flows.
2. Given that agricultural interest have likewise utilized State Water Project water for irrigation, the same rationale should apply.
3. The importation, banking and later extraction of State Water Project water should in concept be permitted and encouraged, subject only to the assured preservation of priority rights.

C. Prescription.

This issue is clearly the most controversial and the one which virtually guarantees protracted litigation. Specific legal issues are in need of a timely and early resolution so as to facilitate both discovery and ultimate resolution, if need be, through trial. Many of the questions posed hereafter, have been raised by Diamond Farming Company in earlier Case Management Conference Statements and some have been thoroughly briefed in those statements and in the previously filed Demurrer.

1. Without statutory authorization, and given the express limiting terms of Article I, Section 19 of the California Constitution, can a public entity take private property and commit it for a public use under a theory of prescription without compensation?
2. If the answer to the preceding question is "yes," can the prescriptive period commence before the public entity has provided to an affected landowner Constitutionally sufficient due process notice of its adverse claim?

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3. Assuming knowledge of the entity's adverse claim, does the landowner preserve the overlying priority by continuing to pump under the doctrine of self-help?
4. Must each purveyor asserting a prescriptive claim demonstrate that sufficient notice was imparted to each separate landowner on a landowner-by-landowner basis?
5. Can the prescriptive period commence before an affected landowner first has an accrued cause of action in inverse condemnation?
6. When does a landowner's taking claim under the 5th and 14th Amendments to the Federal Constitution accrue; on the first day following notice of the public entity's adverse claim, or the first day following the last day of the five year prescriptive period?

I firmly believe that if this Court were to order briefing of the foregoing issues, and were to consider and decide those issues, thus providing the answers for the questions posed, that this Court will have significantly moved this case towards resolution and will have focused all parties' attention upon the merits and/or demerits of expending inordinate sums to litigate that most contentious of all issues before the Court, prescription.

D. Future Proceedings and Resolution.

First, the geographic area in controversy has in various studies, been divided into a number of areas denoted "subbasins." The problem at hand appears to be localized to the central "subbasin," the Lancaster "subbasin." That problem has manifested itself and has become increasingly apparent due to significant urbanization and demonstrably increased and locally concentrated groundwater pumping by various municipal purveyors within that area. It is believed that recently projected population growth in excess of 300% over the next 15 years and increasing pressure by the real estate development community to secure "will serve" certification has spawned this current adjudication. Available studies suggest that over the last few decades, water levels in the area to the west and the east of the Lancaster "subbasin" have been rising, with a concentrated pumping depression having developed within the Lancaster "subbasin." This litigation is most significantly about the projected significant increase in demand for water by the municipal purveyors to meet the projected population growth and urban demands which accompany that growth.

As this Court is aware, Diamond Farming has been involved in this litigation for almost seven (7) years. No apparent end is in sight. Diamond Farming has already spent more than the land it owns justifies. However, it would be simply wrong to permit the purveyor parties to take without constitutionally sufficient due process notice, and without just compensation as required by the Constitution, valuable property rights. If there is no place for agriculture in this area, then let the legislature make that declaration.

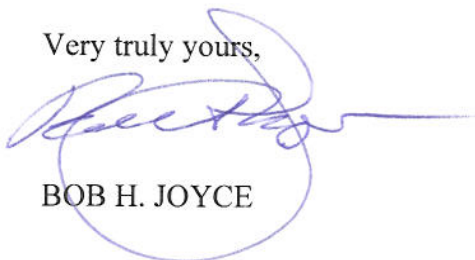
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For the purposes of future proceedings, we believe that a litigation boundary can be established through negotiation. We cannot commit that we would be willing to stipulate that it is in fact a scientific "Basin Boundary." If we learned anything in our efforts before the Riverside County Superior Court, it was that there is no consensus on what exactly a "Basin Boundary" is, in a scientific sense. However, it is believed that a sufficient outer boundary can be established so as to ensure that all necessary and indispensable parties are before the Court. Thus, absent an agreed litigation boundary, the first procedural issue should be the fixing of a boundary for the purposes of this litigation.

Thereafter, this Court should avoid the temptation to breakup the rest of the litigation into discrete subparts. To do so will only play into the strategy of the municipal purveyors, that is to wear down and economically outlast the landowners through attrition and prolonged litigation with no ultimate resolution or end in sight. Given that ultimately this Court must address the problems primarily evident in the Lancaster "subbasin," we would urge this Court to proceed after the litigation boundary has been set and all parties brought before the Court, to then immediately initiate a trial, the end object of which would be to formulate a management plan for those subareas with manifested problems in need of management and resolution. In that one trial, the Court, hopefully after having passed upon the legal issues outlined above, address and concurrently take up the purveyor claims of prescription. It is the purveyors intent to argue that "overdraft" is the singular and only issue necessary to establish prescriptive claims, and thus seek a bifurcation of the issue of "overdraft." However, the proffering of and this Court's consideration of the issue of "overdraft" would be better served in the context of a trial whose objective was to identify the problem but most importantly formulate solutions. All ancillary issues involving and concerning the impacts of self-help, inverse condemnation, takings statute of limitations, and the like, can be adjudicated as part and parcel of that single trial, focused towards solutions and not litigation for the sake of litigation itself.

In conclusion, we request this Court to not permit this case to follow the path and thus the expense and time consumption as has occurred in the ongoing *Santa Mara Valley Conservation District vs. City of Santa Maria* case. This Court must observe that all purveyors claiming rights acquired by prescription are governmental entities, and as such, cannot be permitted to acquire through protracted and expensive litigation private property rights for which the Constitution requires that the affected landowner be first afforded both procedural and more importantly, substantive due process.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bob H. Joyce", is written over a circular blue ink stamp.

BOB H. JOYCE

BHJ:dml

cc: Jeffrey A. Green, Esq.

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PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNSEL 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 March 20, 2006, I served the within

ISSUES STATEMENT

☒ **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefilings.org ; All papers filed in Los Angeles County Superior Court.

☐ **(OVERNIGHT/EXPRESS MAIL)** By enclosing a true copy thereof in a sealed envelopedesignated 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].

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee(s). Executed on _____, 2006, at Bakersfield, California.

☒ **(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 March 20, 2006, in Bakersfield, California.



DONNA M. LUIS