Bob H. Joyce (SBN 84607)
Andrew K. Sheffield (SBN220735)
LAW OFFICES OF
LEBEAU • THELEN, LLP
5001 East Commercenter Drive, Suite 300
Post Office Box 12092
Bakersfield, California 93389-2092
(661) 325-8962; Fax (661) 325-1127

Attorneys for DIAMOND FARMING COMPANY, a California corporation, CRYSTAL ORGANIC FARMS, a limited liability company, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550 (b))

ANTELOPE VALLEY GROUNDWATER CASES

Included actions:

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

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

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

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

CASE MANAGEMENT STATEMENT OF THE LANDOWNERS REGARDING ISSUES FOR PHASE 5 TRIAL

Date: July 29, 2013
Time: 10:30 a.m.
Dept: 48

TABLE OF CONTENTS

I.

INTRODUCTION.

A number of threshold procedural, factual and legal issues are in need of determination to permit the parties to focus, refine the issues, facilitate efficient pretrial discovery, and appropriately assign the burden of proof and factual predicates for the claim of prescription. There exists a number of purely legal issues which are in need of resolution which we will identify, and briefly provide an overview, but not a complete briefing of the law and argument applicable to each issue. We invite this Court to establish a comprehensive briefing schedule and hearing date for argument in order to vet and resolve the following, as yet, unresolved legal issues. Some of the issues set forth hereinafter are issues of first impression.

II.

NECESSITY OF COMPELLING IDENTIFICATION OF FIVE YEAR PRESCRIPTIVE PERIOD.

"A prescriptive right to groundwater requires proof of the same elements required to prove a prescriptive right in any other type of property: a continuous five years of use that is actual, open and notorious, hostile and adverse to the original owner, and under claim of right. (*California Water Service, supra*, 224 Cal.App.2d at p. 726.)" (*City of Santa Maria, et. al. v. Adam* (2012) 211 Cal.App. 4th 266, 291.) (Underlining added.)

In this case, the First Amended Cross-Complaint filed March 13, 2007 by the municipal purveyors contains only the most general of allegations regarding the five year period stating in part, as follows:

> "The Public Water Providers are informed and believe, and upon that basis allege, that the Basin is and has been in an overdraft condition for more than five (5) consecutive years before the filing of the complaint. During these time periods, the total annual demand on the Basin exceeded the supply of water from natural sources." (First Amended Cross-Complaint, Paragraph 31, Lines 15-18.) (Underlining added.)

No allegation in the First Amended Cross-Complaint discloses or identifies any specific continuous five year period(s). None of the nine (9) cross-complainants either jointly or individually make any allegation sufficient to define the five year period as support for the their distinct and respective claims of prescriptive water rights. (First Amended Cross-Complaint, generally.)

The disclosure and identification -- by each of the purveyors -- of the precise five year period(s) is **the threshold issue** which will dictate the nature, scope, scheduling and duration of a Phase V Trial intended to resolve the First Cause of Action – Declaratory Relief – Prescriptive Rights. Without **an immediate disclosure and identification** by each of the purveyors of their alleged continuous five year period the court is unable to proceed with a timely and efficient determination of whether the allegations of prescription can be sustained because the Cross-Complaint lacks the specificity necessary for the Phase V Trial to go forward.

A court order directing that each of the purveyors disclose and identify the alleged five year prescriptive period(s) is essential as such information will also direct and determine several interdependent issues relating to the Phase V Trial such as:

1. Determination of a discovery plan providing for the preparation of written discovery, document productions, and percipient depositions in accordance with the Code of Civil Procedure;

2. Parties' evaluation of the necessity for technical experts, the retention of experts, definition of assignments, reports, expert designations and expert discovery in accordance with the Code of Civil Procedure;

3. Completion of all written discovery, document production and percipient depositions in accordance with the Code of Civil Procedure;

4. With regard to each five year prescriptive period, the determination of the Basin safe yield, total groundwater pumping, and whether the Basin was in a state of surplus at any time during the period(s);

5. Determination of the nature, scope and extent of any right by the purveyors to pump and use return flow from imported water during the five year prescriptive period(s);

6. Determination of legal issues and preparation of legal defenses such as self-help, statute of limitations, and other dispositive legal issues;

7. Timing of the preparation, filing and determination of dispositive motions by the court in accordance with the Code of Civil Procedure;

8. Parties ability to provide the court with a reasonable estimate of trial duration and scheduling; and

9. Timing for the selection, duration and impanelment of a jury.

The disclosure and identification of the five year prescription period(s) is the threshold issue with regard to each of these listed items. The parties would be unable to try this case without disclosure by the municipal purveyors of this threshold allegation.

Defendants raised this issue with the municipal purveyors back in 2009 by requesting in discovery that the municipal purveyors identify when their alleged prescriptive right was acquired, and that they state all facts in support of their prescriptive right claim. The municipal purveyors responded that "the precise prescriptive period has not yet been determined" and that they would "further supplement" their response "at a reasonable time. . . ." The reasonable time for a response passed long ago and now the parties are on the eve of the Phase V Trial regarding prescriptive rights.

Neither the parties nor the court would be served by proceeding with further discovery on this issue. We propose that the court order as the first step in preparation for a Phase V Trial **that each purveyors disclose and identify precisely all five year prescriptive period(s) which they contend support their allegations to a prescriptive water right being asserted against each defendant subject to the Cross-Complaint**. Such an order would be similar to the court's direction prior to the Phase IV Trial ordering the parties to disclose their land ownership and historical groundwater pumping information. Such a procedure will best ensure that the Phase V Trial proceedings are conducted in the most timely, efficient and expedient manner for both the court and the parties.

III.

RIGHT TO JURY TRIAL.

The right to trial by jury is guaranteed by the state constitution in actions triable by jury at common law. (Cal. Const. art I, § 16.; Code Civ. Proc., § 592; 3 Witkin California Proc. (4th ed. 1997) § 94, p. 113.) The right is coextensive with the right as it existed in 1850 under English common law. (*C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 8.) As a general proposition, a jury trial is a matter of right in a civil action at law, but not in equity; the inquiry is purely historical. (*C & K Engineering Contractors, supra*, 23 Cal.3d. at p. 8.) If the action deals with ordinary common law rights cognizable in courts of law, it is an action at law. (23 Cal.3d

at p. 9.) If, on the other hand, the action is essentially one in equity and the relief sought depends upon the application of equitable doctrines, the parties are not entitled to a jury trial. (*Ibid.*)

The purveyors claim in their First Amended Cross-Complaint that they have acquired groundwater rights from the cross-defendants, including these Landowners, by prescription. California courts have uniformly held that a claim for prescription, whether by quiet title or declaratory relief, is an action at law, not equity. (*Connolly v. Traube* (2012) 204 Cal.App.4th 1154, 1164; *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 125-126.) The Landowners are therefore entitled to, and hereby request, a right to trial by jury on the prescriptive claims.

IV.

LEGAL ISSUES IN NEED OF PRETRIAL RESOLUTION.

A. Can the Purveyors Constitutionally Acquire and Commit to Public Use the Water Rights in Issue Under a Theory of Prescription Without Payment to the Affected Landowners of Just Compensation?

The purveyors ignore and refuse to acknowledge that as political subdivisions of the State, they are themselves the sovereign. Their powers are limited to those expressly conferred by statute and their conduct is constrained by both the Federal and State Constitutions. The purveyors assert that their actions need not be, and in fact cannot be, scrutinized any differently than if they were themselves a private citizen. That is not the law and should not be the law as to the prescriptive claims.

Private rights and private responsibilities devolve from the common law. However, those who exercise the powers of the sovereign do so with the consent of the governed. Under our system and as between our three branches of government, the independent judiciary is the guardian of that compact. When the government acts against the property rights of a private citizen, there is not a congruence between public and private rights and responsibilities. The purveyors' acts and claims of title acquired by prescription must be scrutinized through the prism of the Constitution.[1]

///

---

[1] "In such cases the purposes of the constitutional clause, rather than the limits established by a rule of statutory or common law allocating rights and responsibilities between private parties, must fix the extent of a public entity's responsibility." *Holtz v. Superior Court* (1970) 3 Cal.3d 296; at p. 302.

Under the Federal and the California State Constitution public entities are invested with the power of Eminent Domain: the power to take private property and commit it to a public use. Unlike the Federal Takings Clause, the California State Constitution is both temporally specific and procedurally limited.

> **"While the federal Constitution does not expressly state when compensation is to be paid with respect to a taking, California's constitution does: 'Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has *first* been paid to, or into court for, the owner.' (Cal. Const., art. I, § 19, italics added.) To this general rule requiring payment in advance, the Constitution permits one exception: 'The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.' The Legislature has enacted such provisions. (Code Civ. Proc., §1255.010-1255.480.)" *City of Needles, supra*, p. 1892. *City of Needles vs. Griswold* (1992) 6 Cal.App.4th 1881.**

The California State Constitutional Takings Clause was last amended in 1974 and by amendment, then added the limiting term "only." As amended in 1974, it now reads:

> "Section 19. Eminent Domain.
>
> 'Private property may be taken or damaged for public use only when just compensation ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The legislature may provide for possession by the condemner following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be amount of just compensation.'" [Emphasis added.] Cal. Constitution, Article I, § 19. (As Amended in 1974.)

We are not aware of any Appellate Court case which addressed the inclusion of the term "only" in 1974.

Code of Civil Procedure § 1858.

> "In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

The same rules of construction apply whether the court is construing a Statutory or Constitutional provision.

///

> "Under California law, the rules of statutory construction are the same whether applied to the California Constitution or a statutory provision, *Winchester v. Mabury*, 122 Cal. 522, 527, 55 P. 393 (1898), and interpretation of these provisions is a question of law for the courts. *Culligan Water Conditioning v. State Bd. of Equalization*, 17 Cal. 3d 86, 93, 130 Cal. Rptr. 321, 550 P.2d 593 (1976). If the clear and unambiguous language can resolve a question of statutory interpretation, California law requires the court look no further to search for legislative intent. See *Delaney v. Superior Court*, 50 Cal. 3d 785, 798, 268 Cal. Rptr. 753, 789 P.2d 934 (1990); see also *Brown v. Kelly Broadcasting Co.*, 48 Cal. 3d 711, 724, 257 Cal. Rptr. 708, 771 P.2d 406 (1989). The words of the statute are given 'their usual and ordinary meaning,' *Lennane v. Franchise Tax Bd.*, 9 Cal. 4th 263, 268, 885 P.2d 976 (1994). Additionally, 'words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible.' *Woods v. Young*, 53 Cal. 3d 315, 323, 279 Cal.Rptr. 613, 807 P.2d 455 (1991). 'Interpretations that lead to absurd results or render words surplusage are to be avoided.' Id." *In re County of Orange v. Fuji Securities, Inc.* (1998) 31 F. Supp. 2d 768, 774.

. . . . .

> "The Petaluma Municipal Water District is a public corporation organized solely to serve a public use. The only purpose for which it can acquire, hold, and use property is for such public use. The only means by which it can acquire such property without the owner's consent is through the exercise of the right of eminent domain. The only legal procedure provided by the constitution and statutes of this state for the taking of private property for a public use is that of a condemnation suit which the constitution expressly provides must *first* be brought before private property can be taken or damaged for a public use. (Const., art. I, sec. 14.) [Emphasis Added.] *Jacobsen v. Superior Court* (1923) 192 Cal. 319, 331.

A governmental entity is constrained by its enabling legislation and limited to those powers expressly granted or necessarily implied from those granted. No purveyor has by legislation been expressly authorized to acquire title to private property for public benefit through a claim of prescription.[2] That power cannot arise from a necessary implication which violates an express constitutional limitation. *John R. Byers v. Board of Supervisors of San Bernardino County* (1968) 262 Cal.App.2d 148.

In *City of Barstow v. Mojave Water Agency* (1998) 64 Cal.App.4th 737, the Fourth District held that overlying rights were not subject to a "physical solution" adjudicated over objection,

---

[2] Both the mode and the measure of the power of many of the purveyors to acquire title to real property is expressly provided for and limited in California Water Code § 55370 which states:

> "Section 55370 title to property
>
> A district may acquire property by purchase, gift, devise, exchange, descent, and eminent domain. The title to all property which may have been acquired for a district shall be vested in the district."

affirming that acquisition by the government cannot happen without due process and just compensation:

> "In other words, we agree with the Cardozo Appellants that, if the public agencies desire to acquire the vested property rights of the Cardozo Appellants, they should use their eminent domain powers: '". . .If the higher interests of the public should be thought to require that the water usually flowing in streams of this state should be subject to appropriation in ways that will deprive the riparian proprietor of its benefit, the change sought must be accomplished by the use of the power of eminent domain.'" (*Irrigation Dist. v. Mt. Shasta P. Corp.* (1927) 202 Cal. 56 66, 259, P. 444. n14.)"[3] *City of Barstow, supra*, at p. 773.

B. If the Purveyors Can Constitutionally Assert a Prescriptive Right, What Evidence is Necessary to Prove "NOTICE" to Support that Claim of Prescription?

This basinwide adjudication was initiated by the purveyors to establish a right superior and adverse to the title of all overlying property owners. The purveyors seek to establish a prescriptive right in groundwater.

> "Courts typically classify water rights in an underground basin as overlying, appropriative, and prescriptive. (*California Water Service Co., supra*, 224 Cal. App.2d at p. 725.) [Footnote omitted.] An overlying right, "analogous to that of the riparian owner in a surface stream, is the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on the ownership of the land and is appurtenant thereto." (*California Water Service Co., supra,* 224 Cal. App.2d at p.725.) One with overlying rights has rights superior to that of other persons who lack legal priority, but is nonetheless restricted to a reasonable beneficial use."[4]
>
> . . . . .
>
> "In contrast to owners' legal priorities, we observe that "[t]he right of an appropriator . . . depends upon the actual taking of water. Where the taking is wrongful, it may ripen into a prescriptive right. Any person having a legal right to surface or groundwater may take only such amount as he reasonably needs for beneficial purposes . . . . Any water not needed for the reasonable beneficial use of those having prior rights is excess or surplus water and may rightly be appropriated on privately owned land for non-overlying use, such as devotion to public use or exportation beyond the basin or watershed [citation]. When there is a surplus, the holder of prior rights may not enjoin its appropriation [citation]. Proper overlying use, however, is

---

[3] (Affirmed in all material respects in City of Barstow v. Mojave Water Agency (2000) 23 Cal.4th 1224; See also, United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 100-101 ["It is a fundamental principle of water law that one may not withdraw water from its source without first acquiring 'water rights.' . . . It is equally axiomatic that once rights to use water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation."].)

[4] (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240.)

> paramount and the rights of an appropriator, being limited to the amount of the surplus [citation], must yield to that of the overlying owner in the event of a shortage, unless the appropriator has gained prescriptive rights through the [adverse, open and hostile] taking of non-surplus waters. As between overlying owners, the rights, like those of riparians, are correlative; [i.e.,] each may use only his reasonable share when water is insufficient to meet the needs of all [citation]. As between appropriators, however, the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any [citation]."[5]

The purveyors inferentially assert that the ordinary priorities between them and all overlying landowners have been reversed due to their superior right acquired by prescription.

> "The facts or elements which are necessary to the existence of a prescriptive water right have been set forth in a veritable forest of cases. To perfect such right, the use of the water must be: (1) actual, (2) open and notorious, (3) hostile and adverse to the original owner's title, (4) continuous and uninterrupted for the statutory period, and (5) under a claim of title in the claimant, and not by virtue of another right. [Citation.] The burden is upon the party who claims title by prescription to clearly prove by competent evidence all the elements essential to such title." (*Peck v. Howard* (1946) 73 Cal.App.2d 308, 325-326 [167 P.2d 753].) A use is not adverse unless it deprives the owner of water to which he or she is entitled. (*City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 927 [207 P.2d 17]; *Pabst v. Finmand*, *supra*, 190 Cal. at p. 128.)"[Emphasis Added.][6]

No purveyor has physically invaded or trespassed upon the property of any overlying landowner. The purveyors have not interfered with any landowner's use and enjoyment of its property. No purveyor has by its pumping or by any other conduct interfered with or limited in any way the exercise of the overlying right nor prevented groundwater pumping of any overlying landowner. (See *Pleasant Valley Canal Co., supra*, p. 784.)

If the Court should conclude that the acquisition of private property and its commitment to a public use under a theory of prescription is Constitutional, then a secondary Constitutional issue is framed. What quantum and what quality of evidence of notice to the landowner is required to commence the prescriptive period and thereafter divest the landowner of his property without compensation?

The *sine qua non* of any prescription claim is "NOTICE." Well over a hundred years ago, the California Supreme Court in *Sullivan v. Zeiner* (1893) 98 Cal.346; pp. 351-352, concluded:

---

[5] (*City of Barstow* at 1241.)

[6] (*Pleasant Valley Canal Co. v. Borrow* (1998) 61 Cal.App.4th 742, 784.)

> "This right [notice] of the injured party is a cardinal fact that must exist, else all statutes of limitation and all rules of prescription or of presumption, of license or grant, would be but rules of spoliation or robbery." [Bracket insert added] (*Sullivan, supra*, p. 352.)

The *sine qua non* of a taking by the government through a claim of prescription should be "CONSTITUTIONALLY SUFFICIENT NOTICE," i.e., notice "reasonably intended to and calculated to inform."

Given that all purveyors are governmental entities, it is here asserted that under the Federal and California State Constitutions, and specifically the Takings and Due Process clauses, that any governmental entity asserting a right acquired by prescription must as a threshold element of proof, demonstrate that it attempted to provide to each landowner Constitutionally sufficient due process notice of the adverse claim as required under the Federal and State Constitutions and as articulated by the United States Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306.

For well over a century, the California Supreme Court has held that as between private citizens, prescription follows upon a presumption that the adversely affected landowner, with knowledge of the adverse claim, by acquiescence, impliedly granted an easement or license to the prescripting party.

> "Title by prescription is created in such cases only where the conduct of the party who submits to the use by another cannot be accounted for on any other hypotheses than that which raises the presumption of the grant of an easement. The conduct of the party claiming the benefit of the presumption must in all cases have been such in itself as to give the other party the right to complain." (*Lakeside Ditch Company* v. *Henry A. Crane, et al.* (1889) 80 Cal. 181; pp. 183-184.)

In *Peck* v. *Howard* (1946) 73 Cal.App.2d 308, at pages 325-326, the Second District Court of Appeals observed:

> "The law will not allow the property of one person to be taken by another, without any conveyance or consideration, upon slight presumptions or probabilities." (*Niles* v. *Los Angeles*, 125 Cal. 572, 576.) (*Peck, supra.*)

That court further held:

> "That owners are not affected by acts which do not bring to them knowledge of the assertion of an adverse right, and that the use by the adverse claimant was not hostile unless there was an actual clash with the rights of the actual owners, and that before a right by prescription is established the acts by which such establishment is sought must operate as an invasion of the rights of the parties against whom it is set up, was

> the holding in *Anaheim Water Co.* v. *Semi-Tropic Water Co.*, 64 Cal. 185, 192 [30 P. 623]; *City of San Diego* v. *Cuyamaca Water Co.*, 209 Cal. 105, 133 [287 P. 475]; *Churchill* v. *Louie*, 135 Cal. 608, 611 [67 P. 1052]; *Skelly* v. *Cowell*, 37 Cal.App. 215, 218 [173 P. 609]; *Faulkner* v. *Rondoni*, 104 Cal. 140, 147 [37 P. 883]; *Pabst* v. *Finmand*, 190 Cal. 124, 128, 129 [211 P. 11.]. To the same effect, was the holding in the well considered case of *Jobling* v. *Tuttle*, 75 Kan. 351 [89 P. 699, 9 L.R.A.N.S. 960, 965, 966], and *Dondero* v. *O'Hara* [***39] , 3 Cal.App. 633 [86 P. 985]. [Emphasis Added.]"

Historically and currently, groundwater pumping for irrigation has co-existed with and occurred concurrently with pumping for municipal and industrial use. In *Unger v. Mooney, et al.* (1883) 63 Cal. 586, the analogous situation of co-tenants was considered where one, through a claim of adverse possession, sought to oust the title held by the other co-tenant. The Supreme Court held that the co-tenant's possession alone could not support the claim.

> "Hence there must be some conduct of the occupying tenant evidenced by acts or declarations, or both, in its nature and essence hostile to the title of the tenant out of possession, and imparting knowledge of such hostility to the latter, to affect his right." [Emphasis added.] (*Unger*, *supra*, at p. 592.)

Knowledge of the adverse and hostile claim must be first imparted by the public entity purveyor to an affected landowner before the prescriptive period can commence. It is only upon notice, and after notice and inaction and thus acquiescence for the statutory period that the prescriptive claim can be perfected.

> "This right [notice] of the injured party is a cardinal fact that must exist, else all statutes of limitation and all rules of prescription or of presumption, of license or grant, would be but rules of spoilation or robbery." [Bracket insert added.] See *Sullivan* v. *Zeiner* (1893) 98 Cal. 346; pp. 351-352.

"Pumping" alone, conjoined with notice of "pumping" is not a sufficient substitute for the required proof by each public entity that it imparted knowledge of its claim of right, adversity and hostility to each affected landowner. Use alone is not sufficient to establish a prescriptive title. More than continued use for the statutory period is required; i.e., notice to the legal owner that the use is hostile and under a claim of right. See *Case v. Uridge* (1960) 180 Cal.App.2d 1, 7-8.

> "The law will presume that the land belongs to the owner of the paper title, and that the use was by permission or silent acquiescence. If this presumption is overcome by evidence showing the use to have been hostile, and that the owner knew of such hostile claim, and took no steps to protect his property, for a period of five years, then the presumption changes. No injustice is done to the owner, if he knows the claim to

> be hostile, and that title is being asserted against him, but neglects for five years to avail himself of the right which the law gives him." [Emphasis added.] *Clark v. Clark* (1901) 133 Cal. 667, 670-671.

> "It is not sufficient that the claim of right exist only in the mind of the person claiming it. It must in some way be asserted in such manner that the owner may know of the claim." [Emphasis added.] *Rochex & Rochex, Inc. v. Southern Pacific Company* (1932) 128 Cal.App. 474, 479-480.

In *Wright v. Goleta* (1985) 174 Cal.App.3d 74, at page 90, the court held that cooperation in or knowledge of a public entities taking of water for a public purpose did not equate with knowledge that individual overlying rights were in jeopardy.

The California Supreme Court in *City of Los Angeles* v. *City of San Fernando* (1975) 14 Cal.3d 199, at page 1311 makes clear " . . . if the other party is not on notice that the overdraft exists, such adverse taking does not cause the commencement of the prescriptive period." That court continued:

> "The findings that the takings from the basin were open and notorious and were continuously asserted to be adverse does not establish that the owners were on notice of adversity in fact caused by the actual commencement of overdraft." [Emphasis added.] (*City of Los Angeles*, *supra*, at p. 1311.)

We assert that a public entity claiming a title acquired by prescription must prove the fact of its acts and/or declarations which by their quality satisfy the Constitutional due process standard of notice. Under the 5th and 14th Amendment to the Federal Constitution, the government is prohibited from depriving any person of property without due process of law, fundamentally Constitutionally sufficient due process notice.

Query: What quantum and what quality of notice to the affected landowner is required to commence the prescriptive period in favor of the government in order to permit it to divest the private landowner of his property without compensation? It is anticipated that the purveyors will claim that "overdraft" is the *sine qua non* of a prescriptive claim. The commencement of the prescriptive period coincides with the commencement of "overdraft." That assertion is simply wrong. The *sine qua non* of any prescriptive claim, even those as between private citizens, is "NOTICE."

///

When the actions and/or omissions of the government which affect the property rights of a private citizen are in issue, the governments actions or failure to act must be scrutinized and filtered through the prism of the Federal and California State Constitutions. (See *Holtz, supra.*) The *sine qua non* of a taking by the government of private property must be "CONSTITUTIONALLY SUFFICIENT NOTICE." Each purveyor must prove that it made a good faith effort to provide to each separate landowner constitutionally sufficient due process notice of its adverse claim consistent with the standard established in *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306. The means employed must be such as one desirous of actually informing might have reasonably adopted to give notice. Unless it is proven that an affected landowner " . . . is not reasonably identifiable, constructive notice alone does not satisfy the mandate of *Mullane*." *Mennonite Board of Missions vs. Adams* (1983) 462 U.S. 791 at p. 798.

In *Walker v. City of Hutchison* (1956) 352 U.S. 112, the Supreme Court held that state statutory constructive notice by publication failed to meet the requirements of Constitutional due process. There a city exercised its power of eminent domain over a landowner's property and the Supreme Court held that such notice failed to meet the *Mullane* standard, and ordered that notice "reasonably intended to and calculated to inform" must be given to any landowner whose address is readily known from the public record. All landowners in the Antelope Valley can be easily identified and located by reference to the APN numbers available in each county Tax Assessor's office.

In *Schroeder v. City of New York* (1962) 371 U.S. 208, the U.S. Supreme Court applied the *Mullane* rule, holding that the statute of limitations did not bar a claim for compensation because the riparian property owner was not given adequate due process notice of the City's eminent domain proceedings to divert upstream waters, when notice was attempted only by postings and publication. The court further held that a mere change in the appearance of downstream flows [here the alleged gradually lowering of water well levels] was not sufficient to put the landowner on notice, and that

///

///

///

some good faith effort to give actual notice to property owners was required, if their names were reasonably ascertainable from public records.[7]

In *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, the court rejected the notion that an adjudication of underground basin rights could affect the interests of absent landowners with overlying rights, holding that those landowners were necessarily entitled to "notice and an opportunity to resist any interference" with those rights in accord with standards of due process.[8]

In *United States vs. James Daniel Good Real Property, et al.,* (1993) 510 U.S. 43, the Supreme Court held that even a convicted felon was entitled to due process notice when the government sought to seize without notice that felon's real property. The Supreme Court there concluded: "Fair procedures are not confined to the innocent. The question before us is the legality of the seizure not the strength of the government's case." (P. 62.) It would be an irony in the law to suggest that a convicted felon is entitled to more constitutional due process notice from the government than an innocent landowner.

Evidence that a landowner had notice of a purveyor's "pumping" is not equivalent to proof that it gave notice of its "claim of right," "claim of hostility, and adversity," and certainly is not evidence of "acts or declarations or both" which by their nature and essence constitutes constitutionally sufficient due process notice of the adverse claim. The prescriptive period as against any landowner could only commence after constitutionally sufficient notice of the adverse claim had been imparted to each landowner by the government. Notice of "adversity in fact" is required. (*City of Los Angeles vs. City of San Fernando* (1975) 14 Cal.3d 199, p. 283.

///

---

[7] "The majority opinion in the New York Court of Appeals seems additionally to have drawn support from an assumption that the effect of the city's diversion of the river must have been apparent to the appellant before the expiration of the three-year period within which the statute required that her claim be filed. 10 N.Y. 2d, at 526-527, 180 N. E. 2d, at 569-570. There was no such allegation in the pleadings, upon which the case was decided by the Trial Court. But even putting this consideration aside, knowledge of a change in the appearance of the river [here, the gradual lowering of well water levels] is far short of notice that the city had diverted it and that the appellant had a right to be heard on a claim for compensation for damages resulting from the diversion. That was the information which the city was constitutionally obliged to make at least a good faith effort to give personally to the appellant – an obligation which the mailing of a single letter would have discharged. (*Schroeder, supra*, pp. 213-214. [Bracket inserted.])

[8] (*Wright* at 88-89.)

C. Can the Prescriptive Period Commence Before the Affected Landowner First has an Accrued Cause of Action for Inverse Condemnation?

Since prescription is premised upon conduct sufficiently hostile and adverse, such that it must give to the injured party notice and a right of action, and given that the purveyors are governmental entities, invested with the power of eminent domain, the claimed taking constituted inverse condemnation.[9] The prescriptive period on a claim asserted by a governmental subdivision of the state can never commence before and must in fact coincide with the accrual of a cause of action for damages.

The purveyors desire to acquire private property for public use, not as Constitutionally permitted upon the payment of just compensation, but instead without payment of any compensation whatsoever. The purveyors wish to steal from all overlying landowners under the plead theory of prescription that the California State Constitution mandates that it first pay for. "The law, however, is dedicated to the proposition that for every wrong there is a remedy." (*Desny* v. *Wilder* (1956) 46 Cal.2d 715, 734.) Given that the purveyors have committed the water they pump to public use, an injunction will not lie.

Therefore, the legal analysis used to fix the date of accrual of a cause of action in inverse condemnation must be, at the very least, applied to fixing the date upon which any prescriptive period asserted by the government as against each parcel of private property can commence.

Thus:

> "In determining the related question as to when a cause of action for inverse condemnation accrues, a 'taking' occurs 'when the damaging activity has reached a level which substantially interferes with the owner's use and enjoyment of his property." (*Smith* v. *County of Los Angeles* (1989) 214 Cal.App.3d 266, 291; *Smart* v. *City of Los Angeles* (1980) 112 Cal.App.3d 232, 235.)
>
> "It is by focusing on the impact of the governmental activity upon the property owners actual use that the courts have determined a date of 'taking' in inverse condemnation actions." (*Smart*, *supra*, at p. 238.)

Farming interests pump groundwater for irrigation in the Antelope Valley. The Woods Class, as defined, pump groundwater. Additionally, there are virtually hundreds of landowners who do not

---

[9] This presupposes of course that the purveyors can by Statute or Constitutionally acquire title by prescription.

have wells nor pump groundwater at all but who nonetheless have dormant unexercised overlying rights. The purveyors likewise pump groundwater for municipal and industrial use. It is claimed that all pumping is from a common supply, however, there is not and never has been an actual trespass nor physical invasion by any purveyor onto any overlying landowner's property.

> "Where there is no direct physical invasion of the landowner's property and the fact of taking is not immediately apparent, the limitations period is tolled until 'the damage is sufficiently appreciable to a reasonable [person] . . .'" (*Mehl* v. *People Exrel. Dept. Pub. Wks.* (1975) 13 Cal.3d 710, 717.)

Thus, it is evident that if constitutionally sufficient notice of the adverse and hostile claim is not required, then appreciable damage and the identity and conduct of the governmental entity asserting that prescriptive right is a fundamental prerequisite to the commencement of the running of the statute of limitations for an inverse condemnation claim and thus the concurrent commencement of the prescriptive period. The purveyors must prove the facts by which each inverse condemnation claim accrued as to each affected landowner.

There must exist congruence between the date upon which the prescriptive period commences and the date upon which a cause of action for inverse condemnation accrues. It is not coincidental that the prescriptive period is five years and the statute of limitations for inverse condemnation is that same five years. Thus, there must exist a congruence in time for the commencement of the prescriptive period and the simultaneous accrual of a cause of action for damages in inverse condemnation.[10]

///

---

[10] "To perfect a claim based upon prescription there must, of course, be conduct which constitutes an actual invasion of the former owner's rights *so as to entitle him to bring an action.*" (Emphasis added.) *City of Pasadena*, supra, p. 927.

"Generally, the limitations period on such inverse condemnation claims begins to run when the governmental entity takes possession of the property. (See *Ocean Shore R.R. Co. v. City of Santa Cruz, supra,* 198 198 Cal.App.3d at p. 272; see also *Williams v. Southern Pacific R.R. Co.* (1907) 150 Cal. 624, 627 [89 P. 599]; *Mosesian v. County of Fresno* (1972) 28 Cal.App.3d 493, 500-502 [104 Cal.Rptr. 655].) *Where, however, there is no direct physical invasion of the landowner's property and the fact of taking is not immediately apparent, the limitations period is tolled until 'the damage is sufficiently appreciable to a reasonable [person] ....'* (*Mehl v. People* ex rel. *Dept. Pub. Wks.* (1975) 13 Cal.3d 710, 717 [119 Cal.Rptr. 625, 532 P.2d 489].) *Otay Water District v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048-1049 (Emphasis added.)

The case of *Smart v. City of Los Angeles* (1980) 112 Cal.App.3d 232, is more closely analogous to the issues at bench. In *Smart*, plaintiff, the owner of a vacant parcel of land located near Los Angeles International Airport, brought an action for inverse condemnation based on a reduction in value of the property from jet overflights. In 1972, Mr. Smart discovered his damages when a prospective buyer was refused financing because of the land's exposure to high levels of noise. *Ibid.* at 234-235.

The Trial Court held that the "date of stabilization" [here overdraft] of the aircraft noise occurred in 1966, and that the lawsuit, filed in July of 1973, was time-barred. The Court of Appeal reversed and rejected the argument that an actionable invasion of property rights necessarily occurred when the aircraft noise had stabilized. *Ibid.*

The City argued that the airport noise would have been "sufficiently appreciable to a reasonable person" by the year 1966. *Ibid.* at p. 238. The Court made clear that it is not a hypothetical interference that determines taking, but rather a substantial interference in fact with the property owner's actual use and enjoyment of the land. Accordingly:

> "In our opinion the aircraft overflight noise did not cause a substantial interference with plaintiff's *actual* use and enjoyment of the land until he attempted to sell it, thus his cause of action did not accrue until his discovery of the "red-lining" in 1972.
>
> * * *
>
> It is by focusing on the impact of the governmental activity upon the property owner's *actual* use that the courts have determined a date of "taking" in inverse condemnation actions." (*Ibid.* at 238.) (Original emphasis.)

The Court of Appeal then concluded on the subject:

> "In our rejection of the 'date of stabilization' approach to the fixing of a date of taking in this particular case, we merely recognize that property owners may be damaged by a given governmental activity in different ways and at different times."

The foregoing compels a rejection of a hypothetical or "rote" concept of invasion of property rights, and accrual of claims. An asserted basin wide simultaneous accrual of all inverse condemnation claims is not consistent with law. An asserted basin wide simultaneous commencement of the prescriptive period is inconsistent with the law.

///

///

D. When Does a Compensable Taking Occur Under the Federal Constitution, Amendments 5th and 14th, by the Government, the First Day of the Commencement of the Prescriptive Period or the First Day After the Last Day of the Five Year Prescriptive Period?

The answer to the immediately preceding question was answered by the United States District Court for the District of Rhode Island in *Pascoag Reservoir & Dam, LLC*, plaintiff v. *The State of Rhode Island, et al.*, (217 F.Supp.2d 206). Therein, that court in a well-reasoned decision concluded that under the 5th and 14th Amendments to the Federal Constitution, a private landowner's Federal Constitutional takings claim as against a state or political subdivision of the state is not ripe (does not accrue) in adverse possession or prescription cases until the property interest has been acquired by the government and that that acquisition does not occur until the prescriptive period has run its course.

The court reasoned as follows:

> "A plaintiff could not bring a takings claim until the possession or prescription period had been completed because, until that time, the government had not taken a property interest. In the case of adverse possession, prior to the end of the statutory period, the adverse possessor has no rights to the property. See, e.g., *R.I. Gen. Laws § 34-7-1.* A record owner could bring an action of trespass and ejectment. Under the trespass claim, the record owner could seek damages for the trespass. Under the ejectment claim, the record owner could stop the adverse possession clock from running and enjoin the putative adverse possessor from continued possession of the property. As the putative adverse possessor had no property rights, however, the record owner could not make out a takings claim."
>
> "Similarly in the case of a prescriptive easement, the record owner could bring an action for trespass and ejection. There is no property interest, yet, that has been no taking prior to the completion of the statutory period. In this case, because the public was using the Reservoir, and not the State, plaintiff had no claim against the State of any kind prior to the end of the prescriptive period. Plaintiff could only sue private individuals for trespass. As there was no state law that mandated that plaintiff allow access to these individuals, prior to the end of the prescriptive period, there was no state action and no takings claim could have been alleged."
>
> "If the takings clock were to stop at the moment the adverse possession clock has run, then the record owner as against the government is in a curious Catch-22 situation. He or she had no takings claim prior to the completion of the adverse possession prescription period, but would be similarly barred from having a takings claim after the period was completed. This Court does not sanction this bonanza for the government at the intersection of property law and constitutional law." (*Pascoag, supra, at p. 224.)*

Thus, the purveyors' prescription claims place in issue all landowner rights under the 5th Amendment Takings Clause to the Federal Constitution, as applied to the states by the 14th

Amendment. Given that the statute of limitations on a takings claim is 5 years, it can be argued that each landowner has nine years, three hundred and sixty four days from the date of notice of the adverse claim within which to seek compensation.

E. Does "Self-Help" Preserve Overlying Rights?

The purveyors seek to reverse the common law priority enjoyed by all actively pumping overlying landowners. The Landowners have pumped and are pumping groundwater and have used and are using that groundwater for irrigation. The California Supreme Court in *City of Barstow v. City of Mojave Water Agency* (2000) 23 Cal.4th 1224 at p. 1248, affirmed the doctrine of "self-help," and the Appellate Court's recognition that overlying landowners retain their overlying priority by pumping. The California Supreme Court also relied in part upon the Appellate Court's decision in *Hi-Desert County Water District v. Blue Skies County Club, Inc.* (1994) 23 Cal.App.4th 1723. Therein the court held:

> "Hence, an overlying user may maintain rights to water by continuing to extract it in the face of an adverse appropriative use. Such is the doctrine of 'self-help.'" *Hi-Desert County Water District, supra*, p. 1731.

Many landowners have pumped and continue to pump groundwater and use and continue to use that groundwater for irrigation. The purveyors cannot, as a matter of law, claim a priority by prescription, given that evident "self-help."

F. Ownership of Return Flows Must be Determined.

Various parties, including many of the purveyors claiming prescription, have asserted rights to return flows from imported water. It is axiomatic that a party asserting prescription must be deemed to have lawfully pumped its own water first, before unlawfully pumping adverse to the landowners within the basin. For this reason, it is critically important that the court first decide the ownership and quantity of return flows for each year during the prescriptive period, before proceeding to a jury trial on prescription. The total quantity of water imported into the AVAA was the subject of limited testimony in the Phase 3 trial solely for the purpose of estimating total safe yield. The court will recall that the Summary Expert Report (SEP) submitted by the purveyors estimated return flows on a block [multi-year] basis, not an annual basis. Further, the SEP estimated return flows based on two separate lag time scenarios. Other experts testified to alternate lag times.

The court did not make any findings regarding what quantity of return flows augments the Aquifer for any given year nor for any given party. The court must decide these issues sufficiently in advance of the prescription trial to allow the parties' respective experts to analyze how pumping of return flows reduces a party's claimed adverse pumping during the prescriptive period and thereafter prepare exhibits and jury instructions for trial. By way of example, suppose that a party asserting prescription has been pumping 1,000 acre-feet each year for five years, and that the same party has a right to extract and reuse return flows from imported water totaling 800 acre-feet for each year of the same five year period. Then, that party is presumed to have lawfully pumped the return flows first, reducing the annual adverse pumping to 200 acre-feet per year. Multiply this exercise over a 50 year period and multiple parties and one must conclude that it would be extremely confusing to a jury and consume an undue amount of time, to decide the return flow issues while the jury is seated. For these and other reasons, the court should complete trial of the Phase 4 issue well in advance of the Phase 5 trial.

G. Rights of Public Overliers Including the Federal Government Must Be Determined.

1. Federal Rights

Issues associated with any potential Federal reserved right were thoroughly briefed in Phase IV. Extensive discovery took place and the parties were prepared to proceed to trial on this issue. Before the Court can determine whether, and if so, how much pumping by the purveyors was adverse to the landowners it must first determine whether a federal reserved right exists and, if it does exist, the quantity of such right. If a reserved right exists, the amount of such right will reduce the amount of the safe yield available to the landowners to share correlatively, and will reduce the amount of water that can be subject to prescriptive claims. In any year in which pumping is at or near the safe yield, whether an amount of water is removed from the safe yield pursuant to a reserved right could make the difference as to whether prescription can exist in that year. In addition, the existence of a reserved right will affect the amount of water available to satisfy self-help claims.

2. Other Public Overliers

The public overliers all acquired their property from private landowners. Even the Federal property was to a large extent acquired from private ownership. While public agencies are currently

immune from prescription by statute, the property they now own did not enjoy such immunity when it was in private ownership. One of the critical reasons for identifying the five-year period of a potential prescriptive claim is to determine whether the property that now serves as a basis for the rights of the public overliers was acquired subject to the burden of a prescriptive right.

V.

CASE MANAGEMENT ISSUES.

All of the elements necessary to perfect a claim of prescription must be proved within the same five year time frame by each purveyor party claiming a prescriptive right. Accordingly, each purveyor must identify each five year time frame during which such purveyor claims a prescriptive right. This identification then should be followed by court sanctioned limited discovery relevant to legal challenges to such prescriptive claims which can be discovered in a cost effective manner and which then can be tried to the Court along with appropriate briefing, in advance of the jury trial on claims of prescription.

If prescription is proven in the present case, a variety of legal issues will arise due to the status of landowners named and served, the dormant class, the small pumpers class and parties against which a default has been taken. These issues will affect the scope of any claimed prescriptive right and/or apportionment of any claimed prescriptive right.

Assuming that a prescriptive right can be proved, San Fernando articulates the scope of a prescriptive right as follows:

> "The effect of the prescriptive right would be to give to the party acquiring it and take away from the private defendants against whom it was acquired either (1) enough water to make the ratio of the prescriptive right to the remaining rights of the private defendants as favorable to the former in time of subsequent shortage as it was throughout the prescriptive period. (*San Fernando at 14 Cal.3d 293, citing City of Pasadena vs. City of Alhambra, supra, 33 Cal.2d at page 931-933*) or (2) the amount of the prescriptive taking, whichever is less (Id., at page 937), fn. 10."

In order to apply the San Fernando formula, certain prerequisite findings need to be made to determine the "ratio of the prescriptive right to the remaining rights of the private defendant." As a prerequisite to a jury trial on prescription, the court will need to determine, based upon appropriate proof by the party with the burden of proof, the pumping of the prescripting party during the claimed period of prescription, reduced by pumped return flows as well as prove the nature and scope of all

other remaining rights. These remaining rights may include other pumping including appropriative rights, landowner return flow rights, federal reserved rights and overlying rights. Discovery and legal briefing should be narrowly tailored to address these issues prior to more time consuming and expensive discovery and legal briefing and jury trial regarding the claimed prescriptive rights.

This Court determined in the Santa Maria case that a prescription claim proved against an entire groundwater basin, must be apportioned so as to award only a proper portion of the prescription award against any particular party. This approach was upheld by the Sixth District Court of Appeal. In Santa Maria, this Court set forth an apportionment formula based upon a particular party's proportionate pumping in relationship to overall pumping during the period of overdraft. Similar apportionment will need to be made in the present case.

Apportionment of a potential prescriptive award in the present case is complicated by the number and status of various parties including the non-pumping class, the non-pumping class settlement, the small pumper class, other landowners, parties which have reached settlement agreements, defaulted parties and parties which have been named but not served and landowners in the area of adjudication which have neither been named nor served.

Determining the ratio of prescriptive pumping to "remaining rights" will be difficult and time consuming given all of the parties involved. It may be legally appropriate to determine "remaining rights" on an acreage basis rather than on the basis of actual pumping. Either way, this issue should be legally evaluated based upon limited discovery. This determination should be made in advance of the jury trial on prescription claims.

Additional legal issues may exist regarding the effect on correlative rights where prescription is proved against some but not all landowners, regarding whether purveyors may lawfully agree not to pursue prescriptive claims against some but not all landowners, whether quantification of "remaining rights" is possible if the small pumpers class is included in the case and depending upon the existence of and or quantification of, any federal reserved right.

Once again, determination of legal apportionment issues is necessary and appropriate prior to broader discovery on the prescription claims. Such issues should be decided by the Court in advance of jury trial on the prescription claims.

Dated: July 22, 2013

LeBEAU • THELEN, LLP

By: _____
BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY, a California corporation, CRYSTAL ORGANIC FARMS, a limited liability company, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

Dated: July 22, 2013

CLIFFORD & BROWN

By: _____
RICHARD ZIMMER
Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.

Dated: July 22, 2013

BROWNSTEIN, HYATT, FARBER, SCHRECK, LLP

By: _____
MICHAEL T. FIFE
Attorneys for Antelope Valley Groundwater Agreement Association ("AGWA")

Dated: July 22, 2013

LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: _____
SCOTT K. KUNEY
Attorneys for Gertrude J. Van Dam, Delmar D. Van Dam, Craig Van Dam, Gary Van Dam, And WDS California II, LLC

Dated: July 22, 2013

MORRISON & FOERSTER, LLP

By: _____
WILLIAM M. SLOAN
Attorneys for U.S. Borax Inc.

Dated: July 22, 2013

LeBEAU • THELEN, LLP

By: _____
BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY, a California corporation, CRYSTAL ORGANIC FARMS, a limited liability company, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

Dated: July 22, 2013

CLIFFORD & BROWN

By: _____
RICHARD ZIMMER
Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.

Dated: July 22, 2013

BROWNSTEIN, HYATT, FARBER, SCHRECK, LLP

By: _____ for Michael T. Fife
MICHAEL T. FIFE
Attorneys for Antelope Valley Groundwater Agreement Association ("AGWA")

Dated: July 22, 2013

LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: _____
SCOTT K. KUNEY
Attorneys for Gertrude J. Van Dam, Delmar D. Van Dam, Craig Van Dam, Gary Van Dam, And WDS California II, LLC

Dated: July 22, 2013

MORRISON & FOERSTER, LLP

By: _____
WILLIAM M. SLOAN
Attorneys for U.S. Borax Inc.

Dated: July 22, 2013

LeBEAU • THELEN, LLP

By: _____
BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY, a California corporation, CRYSTAL ORGANIC FARMS, a limited liability company, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

Dated: July 22, 2013

CLIFFORD & BROWN

By: _____
RICHARD ZIMMER
Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.

Dated: July 22, 2013

BROWNSTEIN, HYATT, FARBER, SCHRECK, LLP

By: _____
MICHAEL T. FIFE
Attorneys for Antelope Valley Groundwater Agreement Association ("AGWA")

Dated: July 22, 2013

LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: _____
SCOTT K. KUNEY
Attorneys for Gertrude J. Van Dam, Delmar D. Van Dam, Craig Van Dam, Gary Van Dam, And WDS California II, LLC

Dated: July 22, 2013

MORRISON & FOERSTER, LLP

By: _____
WILLIAM M. SLOAN
Attorneys for U.S. Borax Inc.

Dated: July 22, 2013

LeBEAU • THELEN, LLP

By: _____
BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY, a California corporation, CRYSTAL ORGANIC FARMS, a limited liability company, GRIMMWAY ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

Dated: July 22, 2013

CLIFFORD & BROWN

By: _____
RICHARD ZIMMER
Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.

Dated: July 22, 2013

BROWNSTEIN, HYATT, FARBER, SCHRECK, LLP

By: _____
MICHAEL T. FIFE
Attorneys for Antelope Valley Groundwater Agreement Association ("AGWA")

Dated: July 22, 2013

LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: _____
SCOTT K. KUNEY
Attorneys for Gertrude J. Van Dam, Delmar D. Van Dam, Craig Van Dam, Gary Van Dam, And WDS California II, LLC

Dated: July 22, 2013

MORRISON & FOERSTER, LLP

By: _____
WILLIAM M. SLOAN
Attorneys for U.S. Borax Inc.

Dated: July 22, 2013

KLEIN, DeNATALE, GOLDNER, ET AL.

By: /S/ Joseph D. Hughes
JOSEPH D. HUGHES
Attorneys for H&N Development Co. West, Inc.

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 July 22, 2013, I served the within **CASE MANAGEMENT STATEMENT OF THE LANDOWNERS REGARDING ISSUES FOR PHASE 5 TRIAL**

■ **(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.

■ **(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 July 22, 2013, in Bakersfield, California.

Lequetta Hansen
LEQUETTA HANSEN