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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding

Case No. 105 CV 049053

**ANTELOPE VALLEY
GROUNDWATER CASES**

Judicial Council Coordination Proceeding
No. 4408

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Hon. Jack Komar

STATEMENT OF ISSUES

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Riverside County Superior Court

Lead Case No. RIC 344436

Case No. RIC 344668

Case No. RIC 353840

Wm. Bolthouse Farms, Inc. v. City of
Lancaster

Diamond Farming Co. v. City of
Lancaster

Los Angeles Superior Court
Case No. BC 325201

Diamond Farming Co. v. Palmdale Water
District

Kern County Superior Court
Case No. S-1500-CV-254348

These coordinated proceedings require an adjudication of conflicting claims of right to
groundwater in the approximately 900 square-mile Antelope Valley groundwater basin.

1 Generally, under California law, overlying landowners, including mutual water
2 companies, share a correlative right to the safe-yield of the basin's water. Like riparian rights,
3 overlying groundwater rights are not lost by non-use.

4 Public water purveyors can assert appropriative rights to any surplus after overlying
5 landowners' rights have been satisfied. Appropriative groundwater rights, like appropriative
6 surface water rights, have a time-based priority among themselves. To the extent a public
7 purveyor can demonstrate that it has been openly extracting non-surplus water for five
8 consecutive years, adverse to overlying rights and with notice to the overlying landowner, it may
9 have perfected prescriptive rights to the non-surplus water.

10 The United States can assert overlying rights, and can also assert federal reserved rights to
11 groundwater to the extent the water is used for the purpose of a federal reservation, with a priority
12 based on the date of the reservation.

13 All water rights are subject to the requirement that the water use be reasonable and for a
14 beneficial purpose.

15 The City proposes that the Court conduct this Adjudication in phases, similar to the
16 manner in which the Santa Maria Groundwater Adjudication was conducted.

17 **I. Basin Boundaries**

18 The Court will need to determine the geographic boundaries of the Antelope Valley
19 groundwater basin at the outset of the case. This is necessary to ensure that all parties who may
20 be affected by the proceedings are before the court. Additionally, the federal government's
21 waiver of sovereign immunity under the McCarran Act, 43 U.S.C. § 666, depends on the
22 comprehensive nature of the adjudication. The federal government is the owner of the Edwards
23 Air Force Base, and thus is probably the largest landowner in the basin. Because of extensive
24 previous investigation by the United States Geological Service ("USGS") there may be fairly
25 universal consensus on this issue. The City joins with Tejon Ranchcorp in requesting a Phase 1
26 determination in 2006.

27 It is not necessary in Phase 1 to determine whether the seven "subunits" identified by the
28 USGS in its publications constitute independently manageable "sub-basins." Moreover, the

1 hydrogeologic data and expert consideration of the extent of interaction among these subunits
2 may not be sufficiently developed to make a final determination at this early stage of the
3 proceedings. Nor, until the basin boundaries are established that enable service of all necessary
4 parties, would there be assurance that all parties affected by the sub-basin determination could be
5 before the Court to be heard. Settlement among the parties will require more hydrologic
6 investigation than is required for determination of basin boundaries. Accurate information
7 concerning the amount of "leakage" between basins, and the degree to which, for example, the
8 Lancaster subunit is dependent on maintenance of inflow from other subunits will be critical to
9 settlement, but not to determination of basin boundaries and necessary parties.

10 **II. Overdraft/Safe Yield and Sub-areas**

11 The Court will need to hear evidence on the status of the groundwater basin to determine
12 whether it is in overdraft. Although the complaint alleges that the basin is in overdraft, there is no
13 consensus on the subject. The USGS has described past declines in groundwater levels and
14 subsidence in portions of the basin, but it is not clear whether the decline continues or whether it
15 is a general condition throughout the entire basin. These issues will need to be decided based on
16 evidence and expert testimony that may not be developed in time for a Phase 1 trial in 2006. It is
17 the City's suggestion that these issues be dealt with in a Phase 2 trial. At that time, data and
18 expert consideration should be adequately developed for the court also to consider whether
19 separate subunits can be identified that may serve as a basis for independent management, or
20 whether the basin must be dealt with as an organic whole. Additionally, this phase should
21 determine the date(s) on which overdraft commenced (and/or recommenced), for purposes of
22 asserting prescriptive rights.

23 Identification of the existence, extent and degree of overdraft in various portions of the
24 basin, together with the considered views of experts with an adequate factual foundation, will
25 enable the parties to productively explore physical solutions and settlement mechanisms. It will
26 also provide the parties with an understanding of the strength of their own water right assertions,
27 a predicate for constructive negotiation. Further, it may allow the public purveyors to focus their
28 claims and evidence of notice and adversity on the overlanders actually affected by their pumping,

1 rather than on the basin as a whole.

2 **III. Prescription**

3 If the Court determines that the basin, or a portion of the basin, is in overdraft, it will need
4 to determine whether the public purveyors have satisfied the prerequisites for claiming
5 prescriptive rights. The City suggests that this determination be made in a Phase 3 trial. The
6 principle elements of a prescriptive claim are (1) adversity, (2) notice, (3) claim of right, and (4)
7 amount of the right. Each of these elements comprises multiple legal issues, many of which will
8 be matters of first impression.

9 (1) Adversity: What does “adversity” mean in a huge groundwater basin in which
10 active overlying landowners have continued to pump and dormant landowners
11 have not needed the water?

12 (2) Notice: What notice (individual or general) is required in a huge groundwater
13 basin in which a landowner may not be aware of the reason for, or identity of
14 pumpers responsible for, declines in groundwater? What constitutes effective
15 “constructive notice” sufficient to divest landowners of property rights to
16 groundwater?

17 (3) Claim of right: Is the mere act of pumping by a purveyor during periods of
18 groundwater level decline an adequate claim right sufficient to establish
19 prescriptive rights?

20 (4) Amount of prescriptive right: What is the basis for measuring the amount of water
21 to which a prescriptor is entitled?

22 (5) Defenses: Is self-help a defense to a claim of prescription?

23 It may be helpful to the court to have the parties brief these essentially legal issues prior to
24 the commencement of this phase of trial.

25 **IV. Allocation and Quantification**

26 A Phase 4 trial is suggested to determine
27 overlying rights of landowners and reserved rights of the federal government. Prior to embarking
28 on the trial of this phase, it would be helpful to the parties if the court were to rule on the issues
relating to burden of proof. It is undisputed that overlying landowners would have the burden of

1 proof of their title to overlying land as the basis of an overlying right. However, it is not as clear
2 that there is agreement on who has the burden of showing that the right has (or has not) been lost
3 due to prior landowners' actions. This is an issue that could have huge implications on the
4 burden of case preparation for landowners, and, in fairness, should be understood before trial
5 commences.

6 **V. Storage Issues:**

7 In order to determine the rights of the parties, the Court will need to decide specific issues
8 related to the importation of water from outside the basin or watershed.

9 One question of first impression is whether the use by public purveyors of imported water
10 constitutes "in-lieu storage" and creates a paramount right to a like amount of native groundwater
11 that would otherwise have been pumped. Can "in-lieu storage" be claimed in a declining
12 groundwater basin, if the appropriators would have no right to the non-surplus groundwater
13 supply? If so, is the claim of right to return flow of such water valid? Furthermore, to what
14 extent is water "stored" in a declining basin from which the "storing parties" continue to pump?

15 Another issue that the court will likely have to grapple with is whether the percolation of
16 treated wastewater that pollutes the basin supply creates paramount "storage" rights that can be
17 claimed by the percolating wastewater district.

18 Importation of supplemental water is likely to be a key component of any settlement of the
19 Adjudication, and therefore these issues need to be determined at an early stage of the
20 proceedings. It may be that an early hearing (before a Phase 3 trial) may assist the parties in
21 reaching settlement.

22 **VI. Other Issues**

23 The City believes that many of the issues related to physical solution and management of
24 the basin may ultimately require the Court to rule developed water rights and cost allocation.
25 However, it is too early in the process to identify such issues.

26 **VII. Settlement**

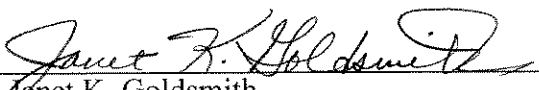
27 The City agrees with and joins in Tejon Ranchcorp's suggestion that the court promote the
28 candid exchange of information among parties and their respective experts with the goal of

1 agreement on technical issues concerning basin characteristics, water supply, related water quality
2 issues and potential basin management. A court order protecting the confidentiality and non-
3 admissibility of such exchanges would be helpful, and the City supports Tejon Ranchcorp's
4 proposed stipulation and requests that the Court enter a protective order on that basis.

5 Dated: March 17, 2006

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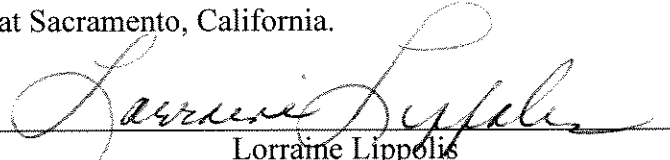
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PROOF OF SERVICE

I, Lorraine Lippolis, 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 400 Capitol Mall, 27th Floor, Sacramento, CA 95814-4416. On March 17, 2006, I served the City of Los Angeles' Statement of Issues by electronic posting to the Santa Clara Superior Court E-Filing website, <http://www.scefiling.org/cases> to the parties on the attached service list.

Executed on March 17, 2006, at Sacramento, California.


Lorraine Lippolis

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