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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

Coordination Proceeding

**ANTELOPE VALLEY  
GROUNDWATER CASES**

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

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

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

Diamond Farming Co. v. City of  
Lancaster

Diamond Farming Co. v. Palmdale Water  
District

Case No. 105 CV 049053

Judicial Council Coordination Proceeding  
No. 4408

The Honorable Jack Komar  
Santa Clara Case No. Case No. 105 CV 049053

**PRE-TRIAL BRIEF OF CITY OF LOS  
ANGELES AND LOS ANGELES WORLD  
AIRPORTS FOR PHASE FOUR TRIAL**

Riverside County Superior Court  
Lead Case No. RIC 344436

Case No. RIC 344668

Case No. RIC 353840

Los Angeles Superior Court

Case No. BC 325201

Kern County Superior Court

Case No. S-1500-CV-254348

The City of Los Angeles by and through its Department of Airports, Los Angeles World  
Airports ("LAWA") submits this pre-trial brief to provide a legal context for the evidence it will  
offer at the Phase 4 Trial scheduled to commence May 28, 2013. At the Case Management  
Conference, the Court significantly narrowed the scope of the Phase 4 trial, limiting it to a

1 determination of current groundwater production of all parties for the calendar year 2011 and  
2 January 1 through November 30, 2012 and federal reserved rights.<sup>1</sup> The Court made clear that  
3 only evidence of actual groundwater pumping was relevant, and that determination of groundwater  
4 rights would be reserved for a future phase of trial. Accordingly, the City of Los Angeles will  
5 offer evidence of its ownership of land overlying the Antelope Valley Groundwater Basin and the  
6 production of groundwater for use on that land in 2011 and 2012.

### 7 **LAWA's Lands Overlie the Antelope Valley Groundwater Basin**

8 The Court has previously identified the geographical boundaries of the Antelope Valley  
9 Groundwater Basin ("Basin") in Phase I of this matter. (Revised Order After Hearing on  
10 Jurisdictional Boundaries, signed March 12, 2007 (Doc. No. 505<sup>2</sup>)). Thus, evidence that land  
11 owned by LAWA is located within the boundaries established by the Court, and that water has  
12 been pumped from its land, is sufficient evidence that LAWA's land overlies the Basin.

13 LAWA owns approximately 17,500 acres of land abutting USAF's Plant 42, north of  
14 Palmdale and south of Edwards Air Force Base. Although the land was acquired to support the  
15 development of a regional airport, it is currently used primarily for agricultural purposes. The  
16 testimony of Vivian Howell, LAWA's Director of Commercial Development, will establish the  
17 location of the LAWA land and the Los Angeles County Assessor Identification Numbers ("AIN")  
18 assigned to the LAWA land by the Los Angeles County Assessor. In assigning the AIN's, the  
19 Assessor specifically identified the City of Los Angeles as the owner of the identified parcels. Ms.

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21 <sup>1</sup> Prior to the Case Management Conference on May 17, 2013, although the Court had requested evidence of  
22 groundwater production in 2011 and 2012, the Court noted that evidence of current groundwater use might require  
23 evidence of pumping in the prior years 2000 – 2004 as necessary to explain annual variations in groundwater pumping.  
24 (See Case Management Order signed December 12, 2011.) Under California Water Code section 1010, reduction in  
25 groundwater pumping due to use of recycled wastewater is treated as the equivalent of pumping. To understand the  
26 amount of LAWA's recycled wastewater use that may be treated as groundwater production, it is necessary to look to  
27 its groundwater pumping in 2000. Accordingly, LAWA filed Responses to the Court's Discovery Order No. 1 on  
28 December 12, 2012 and incorporates that response herein by this reference. (See Document No. 5493 filed herein.)  
Additionally, LAWA also filed declarations of expert witnesses setting forth the information contained in the  
discovery responses filed on December 12, 2012. The declarations were filed on January 31, 2013 and are  
incorporated herein by this reference. (See Document Nos. 5960 and 5961 filed herein.)

2 <sup>2</sup> Documents are numbered as identified on the Case website  
<http://www.sceffiling.org/cases/casehome.jsp?caseld=19>

1 Howell's testimony will be submitted through her declaration under penalty of perjury posted on  
2 the Court's website for this case on January 31, 2013 (Doc. No. 5960). Ms. Howell's declaration  
3 included as an exhibit a surveyor's map that LAWA commissioned in connection with its pending  
4 application to Los Angeles County for consolidation of LAWA's land into fewer than the current  
5 1200+ parcels identified on the County tax rolls. (Exhibit 4-LosAngeles-4.)

6 LAWA's expert witness, Robert Wagner, using the Assessor's Identification Numbers  
7 calculated the acreage for each individual parcel identified by the Assessor as being owned by  
8 LAWA. (Exhibit 4-LosAngeles-18.) The testimony of Robert Wagner will be offered through his  
9 declaration, under penalty of perjury, posted on the Court's website for this case on January 31,  
10 2013 (Court No. 5961).

11 **Water May Be Pumped From One Overlying Parcel And Used On Another As A**  
12 **Valid Exercise Of An Overlying Groundwater Right**

13 While Assessor's Parcel Numbers or, in Los Angeles County, Assessor's Identification  
14 Numbers ("AINs"), are a convenient way to identify land owned by a specific party, they are  
15 irrelevant to the determination of whether water being applied to the land is a valid exercise of  
16 overlying groundwater rights. So long as the parcel overlies the groundwater basin, it is irrelevant  
17 whether the groundwater being applied to it is pumped from the same "parcel" as identified by the  
18 County Assessor. California's courts have long recognized the close analogy between riparian and  
19 overlying groundwater rights. (*See Peabody v. Vallejo* (1935) 2 Cal.2d 351, 372, 383 ["the  
20 California Supreme Court 'accorded to the underlying and percolating water right a status  
21 analogous to the riparian right.'"]; *Hudson v. Dailey* (1909) 156 Cal. 617, 628; W. A. Hutchins,  
22 The California Law of Water Rights (Calif. 1956) at 452-53). Just as a water diverted from a  
23 surface stream pursuant to a riparian right need not be diverted on the riparian parcel on which it is  
24 used (*see Pabst v. Finmand* (1922) 190 Cal. 124, 137-38; Hutchins, *supra*, at 248 – 49), similarly,  
25 water pumped from one parcel overlying a groundwater basin for use on a different overlying  
26 parcel is still water pumped pursuant to overlying right.

1 Robert Wagner's testimony will identify the wells that are located on the LAWA land and  
2 the portions of the LAWA land on which groundwater has been used in 2011 and 2012.

3 **Groundwater Use By LAWA's Lessees Is A Valid Exercise Of LAWA's Overlying Right**

4 The overlying water rights for LAWA land have been exercised by LAWA's lessees for  
5 irrigation, domestic and industrial uses of the LAWA property. None of the lessees has claimed  
6 any rights of their own as a consequence of the use of water on the leasehold, and, pursuant to  
7 California Water Code sections 4999 et seq., LAWA has filed the Notices of Extraction and  
8 Diversion in its own name for the wells used to irrigate its land. LAWA's claim to the water is  
9 consistent with the Los Angeles City Charter, which prohibits the City of Los Angeles from  
10 selling, leasing, or disposing of water rights held by the City. (See Los Angeles City Charter, Sec.  
11 673 (b), attached hereto as Appendix A for the Court's convenience.)

12 **LAWA's 2011 And 2012 Groundwater Pumping Was 5,156 Acre-Feet And 4,531 Acre-Feet**  
13 **Respectively.**

14 To establish groundwater pumping for 2011 and 2012, LAWA relies on the opinion of its  
15 expert witness Robert C. Wagner. Mr. Wagner is a well qualified expert who is intimately familiar  
16 with the farming practices, irrigation methods, and crop duties in the area. He is a registered civil  
17 engineer in California and Nevada with over 23 years of experience in water resources  
18 management, including groundwater hydrology and land use evaluations for municipal and  
19 agricultural projects. He has provided expert witness testimony in the Mojave Basin adjudication  
20 and has served as the court-appointed Watermaster under the decree in the Mojave Adjudication  
21 for over 17 years. (Exhibit 4-LosAngeles-17.) It is common knowledge the Mojave Groundwater  
22 Basin is immediately adjacent to the Antelope Valley Groundwater Basin and has similar climatic  
23 characteristics. LAWA requests this information be judicially noticed by this court.

1 Mr. Wagner estimates conservatively that 5,156 acre-feet of groundwater was pumped from the  
2 Basin in 2011<sup>3</sup> and that at least 4,531 acre-feet of groundwater was pumped from the Basin in  
3 2012 and beneficially used on LAWA's land.(Exhibit 4-LosAngeles-26, pp 6 and 7.)<sup>4</sup>

4 In arriving at his opinion Mr. Wagner, reviewed all of the water use and water source  
5 records for 2011 and 2012. These included the Notices of Extraction and Diversion of Water (4-  
6 LosAngeles-17), lessees' irrigation maps, records and pump tests (Exhibits 4-LosAngeles-19 and -  
7 20), electric meters and pump tests (Exhibit 4-LosAngeles-21 and -22), diesel pump records and  
8 pump tests (Exhibit 4-LosAngeles-23 and -24), water meter records of lessee County of Los  
9 Angeles Sanitation District No. 20 (Exhibit 4-LosAngeles-26) and aerial photographs and satellite  
10 imagery (Exhibit 4-LosAngeles-27.) Where measurement of groundwater pumping was not  
11 available, Mr. Wagner relied on the irrigated acreage and water duties provided in Table D.3-2  
12 (pdf page 53) of Appendix D of the Public Water Suppliers' Expert Report (Doc. No. 3745),  
13 submitted into evidence by the Public Water Suppliers in the Phase III trial. (Exhibit 4-LosAngeles-  
14 25.)

15 Mr. Wagner's testimony includes exhibits showing the array of sources of information for  
16 identifying well locations, irrigated fields and irrigated crops on which he relied and quantifying  
17 his conservative estimate of the amount of groundwater pumped. (Exhibits 4-Los Angeles-26, -33,  
18 -34and -35). Importantly, Mr. Wagner's conclusion concerning water use on the irrigated fields of  
19 the LAWA land, is based on the data and method that result in the lowest estimate of water use.

20  
21 <sup>3</sup> Mr. Wagner's testimony and trial exhibits conclude groundwater pumping amounts slightly different than  
22 those contained in Mr. Wagner's Declaration filed January 31, 2013 due to further refinement in determination of the  
23 acreage irrigated since the declaration was filed.

24 <sup>4</sup> The amount of groundwater pumpage for 2011 and 2012 is not, however, the amount of groundwater  
25 pumping that should be used to establish LAWA's groundwater rights under California law. To conserve groundwater  
26 resources and maximize the available supply as required by California Constitution Article X, Section 2, the  
27 Legislature has enacted statutes to encourage use of alternative sources of water. For example, Water Code section  
28 1010(a)(1) provides that the reduction in groundwater use as a result of the use of recycled or polluted water instead of  
pumped groundwater "is deemed equivalent to, and for the purposes of maintaining any right shall be construed to  
constitute, a reasonable beneficial use of water to the extent and in the amount of [use], not exceeding the amount of  
reduction." Thus, for determination of LAWA's groundwater right, it will be necessary to look backwards to  
determine the amount of reduction – for the period from 2000 to 2012, the year that should be used is the year of  
greatest groundwater pumping, 2000. LAWA has used treated effluent in lieu of groundwater pumping in all years  
since before 2000.


1           **Conclusion**

2           Based on the multiple and corroborating sources of information concerning water use on  
3 the LAWA land, and on the expertise and experience of Mr. Wagner, the Court can be confident  
4 that the groundwater pumping for 2011 was at least 5,156 acre-feet and for 2012 was at least 4,531  
5 acre-feet.

6           DATED: May 27, 2013

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World Airports; Attorneys for Defendant CITY OF LOS  
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12           Attorneys for Cross-Defendant CITY OF LOS  
13           ANGELES and LOS ANGELES WORLD  
14           AIRPORTS  
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## EXHIBIT A



**CITY OF LOS ANGELES  
CALIFORNIA**

**JUNE LAGMAY**  
City Clerk



Office of the  
CITY CLERK

**Council and Public Services**  
Room 395, City Hall  
Los Angeles, CA 90012  
General Information - (213) 978-1133  
Fax: (213) 978-1040

**HOLLY L. WOLCOTT**  
Executive Officer

[www.cityclerk.lacity.org](http://www.cityclerk.lacity.org)

**ANTONIO R. VILLARAIGOSA**  
MAYOR

When making inquiries relative to  
this matter, please refer to the  
Council File No.

**PUBLIC RECORD CERTIFICATION**

STATE OF CALIFORNIA

} ss.

COUNTY OF LOS ANGELES,

I, Maria Vizcarra, am employed as a Deputy City Clerk with the City of Los Angeles Office of the City Clerk. I am authorized to certify that materials provided by this office are true and correct copies of our records.

I hereby certify that the attached documents, listed below, are true and correct copies of public records on file in this office:

1. Section 673 of the City of Los Angeles City Charter;
2. Section 677 of the City of Los Angeles City Charter

Executed on May 10th, 2013 at Los Angeles, California

In Witness Whereof, I have hereunto  
set my hand and affixed the Seal of  
City of Los Angeles, this 10th day of  
May, 2013.

City Clerk of the City of Los Angeles

By Maria Vizcarra  
Maria Vizcarra, Deputy



OFFICIAL  
**CITY OF LOS ANGELES**  
**CHARTER** <sup>TM</sup>

**June 8, 1999**



**Official Revision Number 6**

**(December 31, 2011)**

Please insert these pages into your loose-leaf copy of the Charter in accordance with the included instructions. If you require any additional information regarding the revision procedure, please contact American Legal Publishing at 1-800-445-5588.

**Sec. 671. The Los Angeles River.**

The City of Los Angeles shall continue in the ownership and enjoyment of all the rights to the water of the Los Angeles River, vested in it and its predecessors, including the Pueblo of Los Angeles, and is hereby declared to have the full, free and exclusive right to all the water flowing in the river and also the exclusive ownership of, and the exclusive right to develop, economize, control, use and utilize all the water flowing beneath the surface in the bed of the river at any point from its sources to the intersection of the river with the southern boundary of the City.

**Sec. 672. Possession, Management and Control of Water and Power Assets.**

The Board of Water and Power Commissioners shall have the possession, management and control of:

(a) **Water and Water Rights, Lands, and Facilities.** Whether situated inside or outside of the City or the State of California, all the water and water rights of the Los Angeles River, all other water or water rights of every nature and kind owned or controlled by the City, and all the lands, rights-of-way, sites, facilities and property used for the capture, transportation, distribution and delivery of water for the benefit of the City, its inhabitants and its customers. The water and water rights, lands, rights-of-way, sites, facilities and other interests of the City related to its water business under the possession, management and control of the board shall be known as the Water Assets.

(b) **Electric Energy Rights, Lands and Facilities.** All the electric energy rights, lands, rights-of-way, sites, facilities and property used for the generation, transportation, distribution and delivery of power for the benefit of the City, its inhabitants and its customers. The electric energy rights, lands, facilities and all other interests of the City related to its energy business under the possession, management and control of the board shall be known as the Power Assets.

**Sec. 673. Water and Water Rights.**

(a) **Los Angeles River.** The City shall not sell, lease or otherwise dispose of the City's rights in the waters of the Los Angeles River, in whole or in part.

(b) **Other Water and Water Rights.** Except as provided in this Article, no other water or water rights owned or controlled by the City shall ever be sold, leased or disposed of, in whole or in part, without the assent of two-thirds of the registered voters of the City voting on the proposition, and no water shall ever be sold, supplied or distributed to any person or corporation other than to municipalities for resale, rental or disposal to consumers for their own use.

(c) **Exceptions.** To the extent authorized in Section 677, the prohibitions in subsection (b) shall not apply to the ordinary sale and distribution of water or reclaimed water to City inhabitants for their own use, the supply or distribution by the City of surplus water or reclaimed water outside the City, or the exchange of water with any public agency.

**Sec. 674. Power Contracts.**

(a) Subject to approval by ordinance, the board shall have the power to contract with the United States or any of its agencies, any state or state agency, and any corporation, public or private, located inside or outside of the City or State of California:

(1) For the construction, ownership, operation, and maintenance of facilities for the generation, transformation, and transmission of electric energy, subject to the following:

(A) Any contract entered into under this subsection may provide for a sharing of the use and benefits and of the capital charges and other obligations associated with the facilities.

(B) The term of any contract entered into under this subsection is not subject to the term limitations specified in Section 607(a) and may extend over the useful life of the facilities constructed, purchased or developed.

(2) For the sale, purchase, exchange or pooling of electric energy or electric generating capacity.

(b) The board may renew, without Council approval, any contract with the United States existing as of December 12, 1940 concerning the delivery of electric energy to the City and the customers of the department from the Hoover Dam electric generating facility.

provided that these rates are established by binding contract, contribute to the financial stability of the electric works and are consistent with procedures established by ordinance.

#### **Sec. 677. Sale or Exchange of Water and Power.**

The board shall have the power:

(a) **Surplus Water.** To supply and distribute any surplus water owned or controlled by the City and not required for the use of consumers served by the City within its limits:

(1) to consumers outside the City for their own use; and

(2) to municipalities outside the City for municipal uses, or for resale, disposal or distribution to consumers within those municipalities, subject to the following:

(A) Any contract for the supply or distribution of surplus water shall be subject to the paramount right of the City, at any time, to discontinue the contract, in whole or in part, and to take, hold and distribute, the surplus water for the use of the City and its inhabitants.

(B) Contracts for supplying surplus water by the City to other municipalities outside the City may be made by the board for periods not exceeding 15 years, and upon terms and conditions set by the board and approved by ordinance. Any contract shall include the right to terminate the contract upon three years written notice to the municipality that the water supplied under the contract is required for the City and its inhabitants.

(C) Prior to execution, the contract must be assented to by a majority of the registered voters of the City voting on the question at a regular or special election.

(b) **Exchange of Water.** To enter into contracts with any public agency for the exchange of water as long as the water exchanged is replaced in full to the City within a reasonable period set by the board.

(c) **Reclaimed Water.** To supply and distribute reclaimed water to consumers served by the City within its limits, to consumers outside the City for their use, and to public agencies outside of the City for public uses and for resale, disposal or distribution to consumers within the public agency's jurisdiction.

(d) **Surplus Energy.** To supply and distribute or exchange any surplus electric energy, owned or controlled by the City and not required for the use of consumers served by the City within its limits, to any person or entity whether located inside or outside of the City.

#### **Sec. 678. Powers and Duties of the General Manager.**

In addition to the powers described in Section 604, the general manager of the department shall have the power and duty to:

(a) enforce all orders, rules and regulations adopted by the board;

(b) supervise and manage the design, construction, maintenance and operation of all work or improvements authorized or ordered by the board; and

(c) carry out all powers and duties of the department delegated by the board.

#### **Sec. 679. Water and Power Revenue Funds.**

(a) **Water Revenue Fund.** All revenue from every source collected by the department in connection with its possession, management and control of the Water Assets of the City shall be deposited in the City Treasury to the credit of the Water Revenue Fund.

(b) **Power Revenue Fund.** All revenue from every source collected by the department in connection with its possession, management and control of the Power Assets of the City shall be deposited in the City Treasury to the credit of the Power Revenue Fund.

(c) **Use of Funds.** The money in the Water Revenue Fund and Power Revenue Fund may not be appropriated, transferred or expended for any purposes except the following:

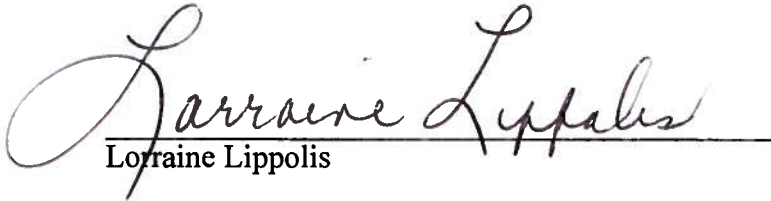
1 PROOF OF SERVICE

2 I DECLARE THAT:

3 I am employed in the County of Sacramento, State of California. I am over the age of  
4 eighteen years and not a party to the within action. My business address is 400 Capitol Mall, 27<sup>th</sup>  
5 Floor, Sacramento, California 95814.

6 On May 28, 2013, I served the attached **CITY OF LOS ANGELES'S PRE-TRIAL**  
7 **BRIEF FOR PHASE FOUR TRIAL** by posting the document to the Santa Clara Superior Court  
8 website [www.scefiling.org](http://www.scefiling.org). in regard to the Antelope Valley Groundwater matter.

9 I declare under penalty of perjury under the laws of the State of California that the above  
10 is true and correct and that this document was executed on May 28, 2013.

11  
12   
13 Lorraine Lippolis

14 1025268.1 1351.7