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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 Coordination Proceeding
Special Title (Rule 1550(b))

12 ANTELOPE VALLEY GROUNDWATER CASES

13 Included Actions:

14 Los Angeles County Waterworks District No. 40 v.
15 Diamond Farming Co.
Superior Court of California, County of Los Angeles,
16 Case No. BC 325 201

17 Los Angeles County Waterworks District No. 40 v.
18 Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

19 Wm. Bolthouse Farms, Inc. v. City of Lancaster
20 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
21 Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668
22 (Consolidated Actions)

Judicial Council Coordination
Proceeding No. 4408

Assigned to The Honorable
Jack Komar

U.S. BORAX'S CASE
MANAGEMENT
CONFERENCE STATEMENT
FOR JANUARY 9, 2009
HEARING

Date: January 9, 2009
Time: 1:30 p.m.
Dept: 1 (L.A. County Superior)

23
24 The Court has requested further briefing regarding the next phase of trial. Given the
25 importance of the next phase, U.S. Borax reiterates its position that the trial should, at the very least,
26 address the entire claim of prescription asserted by the public water suppliers.

27 A limited trial only on safe yield and overdraft will be expensive, may increase the level of
28 contention in this action, and will still leave all parties with the prospect of another expensive trial

1 before resolving any of their respective rights. The law governing the adjudication of causes of
2 action, as briefed already by Borax, does not favor splitting the public water suppliers' single claim
3 of prescription into multiple trials. Indeed, such bifurcation will almost certainly prejudice many of
4 the smaller parties in this adjudication by attempting to craft this next phase into another limited but
5 expensive "battle of experts." The cost will be prohibitive for many landowners, notwithstanding
6 that safe yield and overdraft are relevant to every landowners' defense against prescription. Taking
7 into account all of these reasons, Borax sees no merit in limiting this next phase of trial only to safe
8 yield and overdraft.

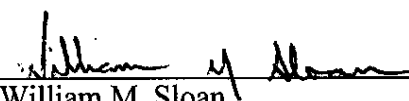
9 Borax also wishes to state its position now that there should be no dispute the burden of proof
10 going forward lies with the public water suppliers. Unlike the earlier phases, prescription does not
11 constitute a jurisdictional question. Safe yield and overdraft, as elements of the cause of action for
12 prescription, should not be treated "in the abstract" for expert analysis.

13 In the interest of efficiency, Borax also requests that the Court set for trial in the next phase
14 the federal reserved right claimed by the United States. Whether or not the United States has such a
15 right, and if so, in what amount, are critical questions to the resolution of this adjudication. Borax
16 sees no utility in postponing this significant claim to later stages of the proceedings.

17 Regarding discovery, Borax is willing to cooperate in any sensible proposal (and has
18 cooperated throughout this adjudication), but Borax is unable to allow its unique interests to be
19 represented by a liaison.

20 Dated: December 31, 2008

EDGAR B. WASHBURN
WILLIAM M. SLOAN
MORRISON & FOERSTER LLP

21 By: 
22 William M. Sloan
23 Attorneys for U.S. BORAX INC.
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1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is
3 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I
4 am over the age of eighteen years.

5 I further declare that on December 31, 2008, I served a copy of:

6 **U.S. BORAX'S CASE MANAGEMENT CONFERENCE**
7 **STATEMENT FOR JANUARY 9, 2009 HEARING**

8 ☒ **BY ELECTRONIC SERVICE** by electronically posting a true copy thereof to Santa Clara County Superior
9 Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C -
10 <http://www.scefilng.org>) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope
11 Valley Groundwater matter).

12 ☐ **BY U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully
13 prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San
14 Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices.
15 I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence
16 for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster
17 LLP's business practice the document(s) described above will be deposited with the United States Postal
18 Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully
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20 ☐ **BY FACSIMILE** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone
21 number 415.268.7522 to the fax number(s) set forth below, or as stated on the attached service list. The
22 transmission was reported as complete and without error. The transmission report was properly issued by the
23 transmitting facsimile machine. I am readily familiar with Morrison & Foerster LLP's practice for sending
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26 at Morrison & Foerster LLP for transmission.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing
28 is true and correct.

Executed at San Francisco, California, December 31, 2008.

Catherine L. Berté
(typed)

Catherine L. Berté
(signature)