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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

11 Coordination Proceeding
Special Title (Rule 3.550)

13 **ANTELOPE VALLEY
GROUNDWATER CASES**

15 Included Actions:

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

17 Los Angeles County Superior Court
Case No. BC 325 201

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

19 Kern County Superior Court
Case No. S-1500-CV-254-348

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

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Santa Clara County Superior Court
Case No. 1-05-CV-049053

**U.S. BORAX PRE-TRIAL BRIEF RE
PHASE III TRIAL**

Dept: 17C (Santa Clara County)
Judge: Hon. Jack Komar

Trial Date: January 4, 2011

1 The parties to this groundwater adjudication are about to embark on the third phase of trial.
2 In the prior two phases, the Court established the adjudication boundaries and determined that there
3 are no hydrologically disconnected sub-basins. Now, the Court has set this phase to determine the
4 condition of the basin, including specifically addressing the issues of safe yield and overdraft. The
5 stated purpose for trying these issues is to establish whether the elements are met for the Court to
6 invoke its equitable jurisdiction to impose a physical solution on the Antelope Valley. As the Court
7 has already observed, the Public Water Supplier cross-complainants, who are the parties seeking
8 relief from the Court in the form of a physical solution, bear the burden of proof on these issues.

9 As has been and will be briefed by other parties, there is virtually no disagreement that the
10 Antelope Valley will benefit from some form of coordinated management. Nonetheless, there is a
11 substantial amount of disagreement over what is the present safe yield and what is current pumping in
12 the basin. Based on the expert discovery to date, U.S. Borax anticipates that the Court will hear
13 rather divergent opinions regarding safe yield, pumping and overdraft that are, to be sure, the product
14 of a substantial commitment of resources and time by many parties to this adjudication. Many
15 professionals have focused on these complex and technical issues and their effort to come up with
16 answers is to be commended.

17 The issue of safe yield has, to put it bluntly, become a lightning rod in this case. This number
18 will, in effect, be the “pie” that the parties will be left to divide up—the smaller the pie, the less water
19 available for the respective parties. Unsurprisingly, the setting of this number brings with it a
20 tremendous amount of anxiety for the varying water users in the valley—from generations of farmers,
21 to small and large water providers, to property owners and developers, to a significant military base,
22 to businesses such as U.S. Borax, among others.

23 Since its involvement in this lawsuit, U.S. Borax has engaged its expert, Bruce Nelson, to
24 interact with other parties’ experts and examine all of the available data and work produced. Having
25 considered the opinions and information available, U.S. Borax holds a strong concern that the Court
26 will be asked to pick a “single” number for safe yield that will straightjacket the parties in developing
27 the best management approach for the Antelope Valley. A single number will be requested despite
28 the fact that, among other things:

- Natural recharge is opined to vary as much as 200,000 acre feet in individual years.
- Groundwater pumping for agriculture, rural residential, and many smaller community uses are not metered, as well as municipal indoor/outdoor uses respectively.
- Precipitation records are incomplete.
- Stream flow records are limited.
- Published data on individual crop water requirements are limited or unavailable.
- Deep percolation cannot be practically measured.
- Only sporadic data is available on well yields and the related characteristics of the aquifer materials.

U.S. Borax believes that these shortcomings in the available information will be *uncontested*. And these are just some of the frankly insurmountable challenges confronting any professional who is tasked with estimating (1) what is the present safe yield; (2) what is current pumping; and (3) whether the basin is in overdraft, for a valley that encompasses approximately 1,390 square miles.

As the Court evaluates the testimony, U.S. Borax would simply ask that an additional question the Court should have in its mind is:


Is a *range* the appropriate determination to be made, *as opposed to a single number*, for safe yield?

Science is designed to acknowledge uncertainty—whether conveyed through a “margin of error” or “confidence intervals” or otherwise, scientists have established ways of acknowledging uncertainty and communicating the range of values that any particular estimate could encompass. In this phase of trial, where the data is limited and the size of the basin is immense, and the trepidation over a single number is high, U.S. Borax has consistently submitted that both the science and the circumstances in the valley commend only establishing a range for the safe yield of this basin. A range will have sufficient utility to guide all valley water users in determining how much water should be pumped going forward, and what data and information gaps should be filled to more precisely determine what can safely be extracted. A range will also allow sufficient flexibility in avoiding unnecessary cutbacks—cutbacks where jobs could be lost and livelihoods extinguished by a “single number” that might later be proven wrong by tens of thousands of acre feet.

1 Plenty of management approaches exist to monitor and collect data that would enable a
2 refinement of any range to either narrow its scope or perhaps even some day settle on a single value,
3 but with all the shortcomings in the current information, that day is not now. At the end of this phase
4 of trial, U.S. Borax believes that the Court will certainly have enough evidence and expert testimony
5 to determine a range within which the safe yield likely fits within. The Court may even be satisfied
6 that it has enough evidence and expert testimony to estimate a range for current pumping and,
7 perhaps, even feel equipped to answer the question whether the basin is in overdraft. However, U.S.
8 Borax also expects that some parties will pursue a “single number”—even after their own experts
9 acknowledge all of the shortcomings in the data and related information. That request should be
10 measured against the burden of proof; and U.S. Borax submits that the data and information needed
11 to satisfy the burden of proving a “single number” for the Antelope Valley simply does not presently
12 exist.

13 Dated: December 20, 2010

EDGAR B. WASHBURN
WILLIAM M. SLOAN
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16 By: 
17 William M. Sloan
18 Attorneys for U.S. BORAX INC.
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PROOF OF SERVICE

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

I further declare that on December 20, 2010, I served a copy of:

U.S. BORAX PRE-TRIAL BRIEF RE PHASE III TRIAL

- ☒ **BY ELECTRONIC SERVICE** by electronically posting a true copy thereof to Santa Clara County Superior Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C - <http://www.scefilng.org>) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope Valley Groundwater matter).
- ☐ **BY U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, December 20, 2010.

Catherine L. Berté
(typed)


(signature)