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

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

Judicial Council Coordination
Proceeding No. 4408

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

ISSUES CONFERENCE
STATEMENT OF U.S. BORAX
INC.

14 Included Actions:

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

Date: March 24, 2005
Time: 10:00 a.m.
Dept: 17, Santa Clara County
Superior Court, Honorable Jack Komar

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

20 Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
21 Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
22 Riverside, consolidated actions, Case
Nos. RIC 353 840, RIC 344 436, RIC 344 668
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1 U.S. Borax, Inc. ("Borax") submits the following issues conference statement in accordance
2 with the Court's order from the February 17, 2006 hearing and case management conference.

3 As one of the largest private landowners in the Antelope Valley, Borax has a substantial and
4 definite interest in these proceedings. Fortunately or unfortunately, six years of litigation have
5 already taken place on issues and involving evidence that may or may not be relevant to Borax's
6 interest.

7 At the February case management conference, the Court ordered that the materials from the
8 prior litigation be made available through the e-filing website. So far, deposition transcripts of three
9 experts and two persons most knowledgeable have been posted. Three trial transcripts have been
10 posted as well. Finally, one expert report has been posted. However, no exhibits or exhibit lists, and
11 no other reports or declarations have been posted. Borax has contacted the prior litigants to obtain
12 exhibits and, so far, has received one map. All counsel have been polite and cooperative.
13 Nevertheless, it would appear that a significant amount of material is still lacking.¹

14 At the same time, counsel for Borax has been contacted by parties regarding various courses
15 of action and strategies on how to proceed with the litigation including, perhaps, early settlement
16 conferences. In principle, Borax is interested in such a cooperative approach, but Borax believes it
17 will be far more productive to have meetings after all parties have an opportunity to review the
18 available information—information that some parties have presumably been living with for several
19 years.

20 Borax has also observed that suggestions are already being made about what the evidence
21 does or does not show, and what presumptions may be made. The Court has also been asked to make
22 declaratory conclusions on issues not yet properly presented. In an adjudication of this magnitude,
23 where a number of substantially interested parties have only recently been named, Borax submits that
24 any such presumptions or conclusions right now are premature.

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27 ¹ Independent docket research suggests that there are still two other expert reports and that the
28 prior trial proceedings may have involved between 30 and 120 exhibits.

1 On the phasing and order of issues in this litigation, Borax proposes only two steps at this
2 early stage:

3 (1) The first step should be to establish the basin boundary. Without the benefit of more
4 information, Borax cannot say whether the parties will reach an agreement on this issue.² Borax also
5 cannot take any position yet on the appropriateness of separate subbasin management or adjudication.

6 (2) The second step should be to determine safe yield and resolve questions of overdraft.
7 Even the process for this second step is uncertain depending in part on whether any subbasins should
8 be managed independently.

9 With respect to the host of other issues being raised, including prescriptive/appropriative
10 rights, storage/banking rights, priorities and allocation, it is simply too premature to set those in some
11 particular order for resolution now. Moreover, some of the issues being identified by other parties
12 may not need to be resolved at all—it is too early to tell.

13 The primary task at hand is to assure that the exchange of available information is completed,
14 as this Court has ordered, so that all parties are on the same playing field. Borax is ready and willing
15 to cooperate in achieving an efficient resolution.

16 Dated: March 17, 2006

MORRISON & FOERSTER LLP

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18 By: William M. Sloan
19 William M. Sloan
20 Attorneys for U.S. Borax Inc.
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26 _____
27 ² That six years of litigation appears to have focused primarily on this one unresolved
28 question suggests that it could still be a significant point of contention.