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

10 ANTELOPE VALLEY	)	Judicial Council Coordination Proceeding No.
GROUNDWATER CASES	)	4408
11 Included Actions:	)	
12 Los Angeles County Waterworks District No. 40	)	Assigned to The Honorable Jack Komar
v. Diamond Farming Co., Superior Court of	)	
13 California, County of Los Angeles, Case No. BC	)	<b>ISSUES BRIEF OF TEJON RANCHCORP</b>
325 201; Los Angeles County Waterworks	)	<b>AND PALMDALE HILLS PROPERTY, LLC</b>
14 District No. 40 v. Diamond Farming Co., Superior	)	
Court of California, County of Kern, Case No. S-	)	Issues Conference Date: March 24, 2006
15 1500-CV-254-348; Wm. Bolthouse Farms, Inc.	)	Time: 10:00 a.m.
v. City of Lancaster, Diamond Farming Co. v.	)	Department: 17 – San Jose Superior Court
16 City of Lancaster, Diamond Farming Co. v.	)	
Palmdale Water Dist., Superior Court of	)	
17 California, County of Riverside, Case Nos. RIC	)	
353840, RIC 344436, RIC 344668	)	

19 **I. INTRODUCTION.**

20 This brief will identify key legal and factual issues that need to be settled, or if necessary,  
21 adjudicated, to determine water rights and develop an effective and equitable physical solution for this  
22 groundwater basin. In particular, the Lancaster Subbasin of the Antelope Valley Groundwater Basin  
23 purportedly suffers from problems such as declining water levels, land subsidence, and other issues that  
24 require solutions. The key element of any physical solution will be increased imports of water from the  
25 State Water Project, coordinated with water banking projects to optimize the use of imported water.

26 **II. FOUNDATIONAL ISSUES – BOUNDARIES, SETTLEMENT, IMPORTED WATER.**

27 **A. Basin Boundaries – Outer and Subarea Boundaries.**

28 The first phase of these cases should adjudicate both the outer boundaries of the Antelope

1 Valley Groundwater Basin as well as any subareas that should be separately managed and/or adjudicated  
2 within the larger basin. (For the Court's convenience, attached is a 2003 USGS depiction of the  
3 Antelope Valley Groundwater Basin, its seven subbasins, and its watershed or drainage area.) In the  
4 prior Riverside litigation, there was as a dispute as to whether the outer boundaries should include the  
5 entire watershed of the Antelope Valley or smaller boundaries. There was a trial in August 2002  
6 regarding basin boundaries, but it was aborted after four days without any ruling. These basin and  
7 subarea boundary issues should be decided first and together for several reasons, including:

8 (1) It is necessary to determine who are necessary parties, and which parcels of land  
9 will have their water rights adjudicated; and

10 (2) Until there is agreement or adjudication of the management subareas of the basin,  
11 the parties will not be able to engage in productive settlement discussions. In the Santa Maria  
12 groundwater litigation, postponement of the subarea issues prevented the parties from reaching a  
13 settlement for several years. Only when the parties themselves agreed on the 3 subareas were they able  
14 to reach a broad settlement. Likewise, in this case, there will be no global settlement without definition  
15 of the subareas, either by agreement of the parties or by ruling of the Court.

16 (3) Both issues involve similar hydro-geological questions (e.g., whether pumping in  
17 one subbasin materially impacts water levels in another subbasin), and the same experts will analyze and  
18 answer these questions.

19 (4) The USGS has repeatedly studied and reported on both the outer boundaries and  
20 the 7 subbasins of the Antelope Valley Groundwater Basin. The experts in this case can analyze the  
21 USGS data & reports, and either reach an agreement regarding the outer and subarea boundaries, or  
22 prepare for trial in relatively short order.

23 In this case, the parties are discussing whether the Antelope Valley Groundwater Basin  
24 should be divided into three subareas: (1) the Central subbasins – Lancaster and possibly North Muroc,  
25 (2) the Western subbasins – Neenach, West Antelope, and Finger Buttes, and (3) the Eastern subbasins –  
26 Pearland and Buttes. This division may make sense because practically all of the water shortage  
27 problems appear to be centered in the Lancaster Subbasin; the eastern and western subbasins appear to  
28 have stable or even rising groundwater levels; and pumping in the Lancaster Subbasin does not seem to

1 materially impact water levels in the outlying subbasins and vice versa. If there is such a division, only  
2 the Lancaster Subbasin may now require active management, while the outlying subbasins could be  
3 monitored to assure that they will not reduce water supplies in the Lancaster Subbasin. Also, the water  
4 purveyors, who are all located in the Lancaster Subbasin, would presumably limit their prescription  
5 claims to the Lancaster Subbasin as well, which would substantially narrow the disputed issues in this  
6 case.

7 We request that the trial of these issues be scheduled in the fall of 2006. Meanwhile, the  
8 parties and experts may be able to resolve these issues amicably, as discussed below.

9 **B. Settlement Process With Lawyers & Engineers' Committee.**

10 Practically all complex multi-party groundwater adjudications are resolved by settlement  
11 among all or most of the parties. In light of the lengthy history of this litigation and the prior technical  
12 work done by the USGS and others regarding this Basin, it is not too soon to commence efforts to reach  
13 agreement regarding technical issues and a physical solution. To promote a settlement here, the "active"  
14 parties (particularly those that have retained experts) should commence regularly scheduled discussions  
15 to resolve the Phase 1 boundary issues. Discussions should then extend to physical solutions for water  
16 management in the basin and any subareas thereof.

17 To initiate the settlement process, a conference among the parties' experts is scheduled  
18 for April 10, 2006 at 10:00 a.m. at the Glendale office of Bookman-Edmonston (225 West Broadway,  
19 Suite 400, Glendale, CA 91204). To promote candor and flexibility, these settlement communications  
20 should be ordered to be privileged, non-discoverable, and inadmissible in evidence. Accordingly, we  
21 are circulating among counsel and will submit to the Court a stipulation and proposed protective order  
22 protecting the confidentiality of such settlement discussions.

23 **III. OTHER IMPORTANT ISSUES.**

24 A number of other issues will influence the resolution of the case. These issues may be shaped,  
25 to some degree, by resolution of the foundational issues referenced above.

26 **A. Prescription, Self Help, and Dormant Overlying Rights.**

27 As demonstrated in the prior Riverside litigation, prescription claims asserted by  
28 purveyors will likely be opposed by the landowners. It may be possible to identify legal issues whose

1 resolution could resolve these claims and defenses or lead to settlement of them. Examples include what  
2 constitutes adequate "notice" to landowners, whether the prescription claims must be decided on a  
3 parcel-by-parcel basis, and the scope and nature of "self help" remedies asserted by landowners.  
4 Moreover, with so much undeveloped land in this large basin (approximately 1,000 square miles), as  
5 well as the scope of proposed development of such lands currently pending, it would be helpful to  
6 clarify the "unexercised or dormant" overlying rights of landowners.

7 **B. Quantifying Sources Of Supply – Native Safe Yield Vs. Imports.**

8 Subject to the purveyors' prescription claims, the overlying landowners have the  
9 paramount right to pump the native groundwater for reasonable and beneficial use on their lands. (*City*  
10 *of Barstow v. Mojave Water Agency* (2000) 23 Cal.4<sup>th</sup> 1224.) On the other hand, as discussed above,  
11 parties that import water to the Basin are entitled to their return flows to the extent they augment the  
12 Basin supply. We are informed that there is already a substantial dispute regarding the size of the native  
13 safe yield of this Basin. If such issues cannot be resolved by agreement of the parties' experts, they will  
14 need to be adjudicated.

15 **C. Creation of Water Banks and Storage Programs.**

16 The Antelope Valley-East Kern Water Agency ("AVEK") imports water from the State  
17 Water Project ("SWP") into the Antelope Valley. AVEK is one of the largest contractors with the  
18 Department of Water Resources, which operates the SWP. AVEK currently supplies SWP water to  
19 numerous purveyors and landowners in the Antelope Valley, including Tejon Ranchcorp, LA County  
20 Waterworks, and others. AVEK has recently initiated discussions regarding the establishment of a  
21 regional water banking program, which could form an important component of a physical solution.

22 **D. Physical Solution – Allocation Of Costs.**

23 Subject to the determination of competing water rights, safe yield, and other issues, the  
24 parties or the Court will need to allocate the costs of the physical solution on an equitable basis.

25 Dated: March 17, 2006

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP  
FREDRIC A. FUDACZ  
HENRY S. WEINSTOCK

27  
28 By: \_\_\_\_\_

  
HENRY S. WEINSTOCK

Attorneys for Tejon Ranchcorp

1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and  
4 am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott,  
5 LLP, 445 S. Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

6 On **March 17, 2006**, I served the foregoing **ISSUES BRIEF OF TEJON RANCHCORP,**  
**AND PALMDALE HILLS PROPERTY LLC** on all interested parties:

7 (X) (By U.S. Mail) On the same date, at my said place of business, said correspondence was sealed  
8 and placed for collection and mailing following the usual business practice of my said employer.  
9 I am readily familiar with my said employer's business practice for collection and processing of  
10 correspondence for mailing with the United States Postal Service, and, pursuant to that practice,  
11 the correspondence would be deposited with the United States Postal Service, with postage  
12 thereon fully prepaid, on the same date at Los Angeles, California, addressed to:

13 Honorable Jack Komar  
14 Judge of the Superior Court of California  
15 County of Santa Clara  
16 191 North First Street, Department 17C  
17 San Jose, CA 95113

18 (X) (By E-Filing) I posted the document(s) listed above to the Santa Clara County Superior Court  
19 website in regard to the Antelope Valley Groundwater matter in compliance with the Court's  
20 electronic posting instructions and the Court's Clarification Order dated October 27, 2005.

21 ( ) (By Federal Express) I served a true and correct copy by Federal Express or other overnight  
22 delivery service, for delivery on the next business day. Each copy was enclosed in an envelope  
23 or package designated by the express service carrier; deposited in a facility regularly maintained  
24 by the express service carrier or delivered to a courier or driver authorized to receive documents  
25 on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying  
26 service list.

27 Executed on **March 17, 2006** at Los Angeles, California.

28 (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Victoria Dimond