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10

11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF LOS ANGELES  
13

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

Judicial Council Coordination Proceeding No.  
4408

15 **ANTELOPE VALLEY GROUNDWATER**  
16 **CASES**

ASSIGNED FOR ALL PURPOSES TO:  
Judge: Honorable Jack Komar

17 Included Actions:

**ISSUES CONFERENCE STATEMENT**

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

General Civil Case  
Date: March 24, 2005  
Time: 10:00 a.m.  
Dept.: 17, Santa Clara County Superior Court

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

23 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster  
24 Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water  
25 Dist.  
Superior Court of California, County of  
26 Riverside, consolidated actions, Case Nos.  
RIC 353 840, RIC 344 436,  
27 RIC 344 668.

1 Pursuant to Court Order issued at the February 17, 2006 Case Management Conference,  
2 County Sanitation Districts Nos. 14 and 20 of Los Angeles County (“LACSD” or “Districts”),  
3 respectfully provide this document for the March 24, 2006 “Informed Issues Conference” that  
4 outlines those issues needing to be addressed and providing a methodology to address those  
5 issues in order to adjudicate all rights to groundwater within the Antelope Valley Groundwater  
6 Basin (“Basin”).

7 The Antelope Valley Groundwater Adjudication includes a number of issues which have  
8 not previously been addressed by California courts. The Districts operate wastewater treatment  
9 facilities in the Antelope Valley and own considerable acreage of accompanying land, and on  
10 behalf of their rate paying customers seek to protect the Districts’ rights to retain control over the  
11 disposition of their reclaimed water and to ensure protection of their rights to pump groundwater  
12 for use on their overlying property. Unlike most of the other public entities in this case, the  
13 Districts are an overlying property owner and not an appropriator, and therefore have certain  
14 interests with the other overlying property owners. But like the other public agencies, the  
15 Districts are concerned not only about the ultimate costs to its ratepayers, but also about ensuring  
16 an efficient and sustainable resolution to the problems of the Basin. To reach that efficient and  
17 sustainable resolution, the Districts have initiated discussions with several parties, both public  
18 and private, both overlier and appropriator.

19 The Districts currently contribute approximately 21 million gallons per day (“mgd”)  
20 (23,000 acre-feet per year) to the water supply of the Basin, primarily through sale of reclaimed  
21 water for direct reuse for irrigation purposes and for habitat maintenance. The Districts have  
22 funded initial groundwater extraction and treatment efforts, under orders from the Regional  
23 Water Quality Control Board – Lahontan Region (“RWQCB”), to remediate problems from past  
24 reclaimed water management activities. The Districts currently intend to pump a portion of the  
25 reclaimed water that has reached the Basin as part of a water quality remediation program  
26 pursuant to orders from the RWQCB, and may pump groundwater as an overlying groundwater  
27 user in conjunction with their management activities in the future. The Districts have also funded  
28 and continue to fund costly capital improvements and treatment processes beyond those required

1 by the State regulations in order to increase capacity and make higher quality recycled water  
2 available to users in the arid Antelope Valley. The Districts expect to charge reasonable rates for  
3 the sale of this reclaimed water, and have initiated discussions with some of the municipal  
4 purveyors in this Adjudication for sale of this reclaimed water for municipal uses and  
5 groundwater recharge.

6  
7 **I. Issues**

8 A. Factual Issues

9 1. Description of the Groundwater Basin

10 Identification and delineation of the groundwater Basin should be the first step the court  
11 takes in this adjudication process in order to identify and properly serve all necessary parties. It  
12 is the Districts' understanding that most, if not all, of the work to determine the definition of the  
13 Basin may have been completed in the preceding Riverside action. The Districts have begun  
14 reviewing the transcripts very recently posted on the Adjudication E-Filing website. The parties  
15 to this coordination proceeding should review the existing material to determine whether  
16 additional information is required.

17 2. Water Usage Records

18 The court should then order all parties to provide pumping, importation, water  
19 reclamation and other water usage records. This should help accelerate the determination of safe  
20 yield and meaningful settlement discussions.

21 3. Safe Yield of the Basin

22 After the Basin's boundaries are determined and all parties are joined, the court should  
23 address the issues of overdraft, safe yield and operating safe yield of the Basin, taking into  
24 account all sources of water, and taking into account historical uses of water in the Basin, how  
25 uses have changed over time and present uses.

26 B. Legal Issues

27 1. Imported and Developed Water Doctrines

28 The Districts generally agree that the party responsible for importing water from another

1 watershed or for developing new water supplies not otherwise available under natural conditions  
2 is entitled to that water until that water is transferred or abandoned. Rights to this water are  
3 predicated on the principal that importers and developers are entitled to reap the rewards from  
4 their efforts. The imported water and developed water doctrines are not absolute; they are  
5 modified, for example, by the specific statutory provision contained in Water Code section 1210,  
6 which grants the exclusive right to reclaimed water to the treatment plant operator, regardless of  
7 the source of the water.

8           2.       California Water Code Section 1210 Gives the Districts Exclusive Rights  
9                   to Control its Reclaimed Water

10           California Water Code section 1210 makes clear on its face that exclusive rights to the  
11 reclaimed water belong to the treatment plant operator, regardless of the source of the water,  
12 including water delivered to water users in the Basin from imported water. Dispensing with any  
13 dispute as to the meaning and application of section 1210 at an early stage would significantly  
14 help pave the way for settlement discussions.

15           Contrary to the arguments of several water purveyors, the Districts acknowledge the  
16 imported water doctrine, to the extent it does not conflict with Water Code section 1210. The  
17 Districts' position is that an importer should have the right to control all water imported into the  
18 Basin until such time that that water has been used and it reaches Districts' water reclamation  
19 system. The Districts also believe that once the Districts sell their rights or abandon their  
20 reclaimed water, the importer may reassert its rights to the portion of imported water that  
21 recharges the Basin. In many ways, Water Code section 1210 is a recognition of the principle  
22 that the entities that expend effort to develop, salvage, import, treat or recycle water are entitled  
23 to the benefits therefrom; however, the Legislature found it necessary to vest ownership of  
24 recycled water in a single entity to avoid conflicting claims of ownership of this water.

25           3.       Self Help

26           The doctrine of self help has been developed by the courts in groundwater adjudications.  
27 The doctrine recognizes that an overlying owner protects its water rights and priority by  
28 continuing to pump during overdraft and that this pumping prevents the acquisition of

1 prescriptive rights by the appropriators. It is the understanding of the Districts that evidence  
2 presented in the preceding Riverside action shows that the entire safe yield of the basin has been  
3 protected through self help pumping by the overlying entities, making the issue of prescription  
4 moot because there are no unprotected rights against which to prescribe. The Districts request  
5 that the court recognize the doctrine of self help as a sufficient defense to the claim of  
6 prescription, and to issue a ruling that self help has in fact protected the rights of overlying users  
7 to the entire safe yield of the Basin.

8 4. Prescription

9 Should the court decide that prescription may have occurred, the court must address the  
10 legal standards necessary for prescription.

11 5. California Civil Code section 1007 Precludes Prescription Against a  
12 Public Entity such as the Districts

13 Should the court determine that prescription may have occurred, the Districts wish to  
14 ensure no claims for prescription exist against properties of the Districts.

15 6. Reasonable and Beneficial Use

16 While the issue of what constitutes reasonable and beneficial use is typically considered a  
17 factual issue, there have been claims that any water use for irrigation purposes in an arid  
18 environment like the Antelope Valley should be considered *per se* unreasonable. This is not a  
19 correct interpretation of the law and this issue should be addressed.

20 7. Municipal Preference

21 There have been claims that Water Code section 106, which recognizes that the use of  
22 water for domestic purposes as the highest use of water in the state, subordinates all other rights  
23 to those rights used for domestic purposes. This is not a correct interpretation of the law and this  
24 issue should be addressed.

25  
26 **II. Methodology and Process**

27 The Districts believe that the Adjudication should begin with the factual issues of Basin  
28 boundaries, sources of water used in the Basin, and a determination of water usage. The factual

1 inquiry would then be followed by legal determinations recognizing the treatment plant  
2 operator's exclusive claim to reclaimed water under Water Code section 1210, rights to imported  
3 water and developed water, and application of the self help doctrine. The ultimate court  
4 determination would be to define the safe yield and operating safe yield of the Basin and to  
5 adjudicate rights to the Basin's yield.

6  
7 **III. Common Interest Groups**

8 The Districts agree with the Court's decision to develop "Common Interest Groups" in an  
9 effort to effectively utilize resources and efficiently proceed with the litigation while not  
10 eliminating any party's ability to participate. As noted above, the Districts are in the unique  
11 position of producing reclaimed water, owning overlying groundwater rights and being a public  
12 entity with issues similar to other public entities. This unique combination has convinced the  
13 Districts to represent themselves within the "Common Interest Groups." The Districts, however,  
14 have met with numerous parties to discuss areas of common interest and ways in which  
15 resolution may be achieved, and the Districts endeavor to continue their efforts to seek common  
16 ground with other parties to efficiently proceed with this litigation.

17  
18 Dated: March 17, 2006

ELLISON, SCHNEIDER & HARRIS L.L.P.

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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 am not a party to the within action. My business address is ELLISON,  
5 SCHNEIDER & HARRIS, L.L.P.; 2015 H Street; Sacramento, California 95814-3109;  
6 telephone (916) 447-2166.

7 On March 17, 2006, I served the County Sanitation Districts' *Issues Conference*  
8 *Statement* by electronic posting to the Santa Clara Superior Court E-Filing website,  
9 <http://www.scefiling.org/cases/casehome.jsp?caseId=19>, to the parties on the attached service  
10 list.  
11

12 I declare under penalty of perjury that the foregoing is true and correct and that this  
13 declaration was executed on March 17, 2006, at Sacramento, California.

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