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

ANTELOPE VALLEY
GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co. Superior Court of
California County of Los Angeles, Case No. BC
325 201 Los Angeles County Waterworks
District No. 40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348Wm. Bolthouse
Farms, Inc. v. City of Lancaster Diamond
Farming Co. v. City of Lancaster Diamond
Farming Co. v. Palmdale Water Dist. Superior
Court of California, County of Riverside,
consolidated actions, Case No. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination Proceeding
No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

ANTELOPE VALLEY GROUNDWATER
AGREEMENT ASSOCIATION'S CASE
MANAGEMENT CONFERENCE
STATEMENT RE PROPOSED PHASE III
TRIAL

The Antelope Valley Groundwater Agreement Association ("AGWA") hereby submits this Case Management Conference statement with reference to the proposed Phase III trial.

I. THE CASE IS NOT AT ISSUE

Major landowners and water users in the Antelope Valley exist and are known to the purveyors, but have not been served or even named in the adjudication. For example, over the past couple years renewable energy development projects have been very active in the Antelope Valley due to stimulus programs by the Federal Government. The companies that own these projects have acquired thousands of acres. Attached to this pleading as Exhibit "A" are various recent newspaper articles that clearly demonstrate the existence of such projects, and a recent comment letter by AGWA to one such project that demonstrates the interest and desire of the purveyors to avoid involving these projects in their adjudication.

At the March 8, 2010 hearing, the purveyors were unable to assure the Court that the case is at issue. Despite this, the Court proceeded to schedule the Phase III Trial – the first substantive trial phase in the case and arguably the most important phase. This action was improper. No civil case should be set for a pretrial conference or for trial until it is at issue and unless a party thereto has served and filed therein a memorandum, stating that the case is at issue as to all parties served with process or appearing therein. (*Contract Engineers v. Welborn* (1968) 258 Cal.App.2d 553, 557-558; *Loney v. Superior Court* (1984) 160 Cal.App.3d 719, 723; Weil and Brown, Civil Procedure Before Trial, §12:116, p. 12-25.3.) The common understanding for the term "at issue" is when the pleading stage is complete: i.e., that all defendants as to whom judgment is sought have been served, that their answers are on file, and that no further pleadings are required or expected from any party. (Weil and Brown, Civil Procedure Before Trial, §12:116, p. 12-25.3.)

From the very beginning the purveyors, have attempted to limit landowner participation in and awareness of the adjudication. Whether it has taken the form of attempting to have the case heard in a geographically distant jurisdiction, or publishing notices in every paper except the Antelope Valley Press, or putting as many landowners as possible into classes who have no intention of hiring experts who will aid in the technical defense of the case, the purveyors have done

1 everything in their power to minimize the ability of landowners to defend their water rights. The
2 reluctance of the purveyors to name and serve large landowners, particularly large power companies
3 who have the financial resources to meaningfully participate in the Phase III defense, is just another
4 instance of this strategy.

5 **II. PHASE III TRIAL**

6 Without waiving the above objections, AGWA submits the following proposal regarding
7 issues to be tried at the Phase III Trial.

8 **A. Current Basin Conditions**

9 Many parties have demanded a jury trial on any issue that will be used to satisfy an element
10 of the claim of prescription. The *current* condition of the Basin, including the current Safe Yield
11 and whether the Basin is currently in an overdraft condition ,does not appear to be relevant to the
12 claim of prescription, and thus it appears that the Court will not grant the jury trial demand as to
13 Phase III. However, because of this the Court must exercise caution in Phase III to make no findings
14 that would be relevant to the claim of prescription as alleged by the purveyors. The Court should
15 definitively state in its pre-trial Order that any Order that results from Phase III will make no
16 findings concerning Basin conditions prior to the filing of the Los Angeles County Waterworks
17 District No. 40's Cross Complaint on January 18, 2006.

18 **B. Discovery Schedule**

19 At the March 8, 2010 Case Management Conference, the Court set a timetable for discovery
20 associated with Phase 3 expert witnesses. The Court should set similar deadlines for percipient
21 witnesses that may testify at Phase III trial, as those witnesses may have testimony of similar or
22 greater importance during Phase III.

23 **C. If Phase III is to Determine Present Safe Yield and Overdraft of the Basin, the**
24 **Court Must Define These Terms**

25 The Court has indicated that the purpose of the Phase III Trial is to determine the present
26 "safe yield" of the Basin and whether there is "overdraft." Before moving forward into Phase III,
27 however, the Court should define these terms so that the parties may fully understand exactly what
28

1 they are litigating. Definitions of both safe yield and overdraft have been the subject of debate for
2 many years, and in light of this fact AGWA believes the court should adopt clear definitions of both
3 terms for the purposes of Phase III and future phases of trial.

4 Safe yield is defined as “the amount of groundwater that can be continuously withdrawn
5 from a basin without adverse impact.” (California Department of Water Resources, Bulletin 118
6 (2003), p. 99.) The California Supreme Court defined safe yield as “the maximum quantity of water
7 which can be withdrawn annually from a ground water supply under a given set of conditions
8 without causing an undesirable result.” (*City of Los Angeles v. City of San Fernando* (1975) 14
9 Cal.3d 199, 278.) The phrase “undesirable result” most often refers to a gradual lowering of the
10 ground water levels resulting eventually in depletion of the supply. (*City of San Fernando*, 14 Cal.3d
11 at 278.) This depletion of the supply is manifested by permanent lowering of the water table.
12 (*Orange County Water District v. City of Riverside* (1959) 173 Cal.App.2d 137.) Undesirable results
13 are generally understood to refer to perverse basin events, such as water quality degradation,
14 seawater intrusion, land subsidence, or uneconomic use of groundwater, caused by a gradual
15 lowering of the water table. (See Bulletin 118, *supra*, p. 99; *City of San Fernando*, 14 Cal.3d at 278-
16 80.)

17 The safe yield of a basin changes over time. The Department of Water Resources (DWR)
18 states that proper application of the safe yield concept requires that the value be modified through
19 time to reflect changing practices within the basin. “One of the common misconceptions is that safe
20 yield is a static number. That is, once it has been calculated, the amount of water can be extracted
21 annually from the basin without any adverse impacts.” (Bulletin 118, *supra*, p. 99.)

22 Overdraft is tied to the definition of safe yield. Authorities define overdraft to mean
23 pumping over the safe yield of the basin. For example, the California Supreme Court stated that
24 “...overdraft exists when such draft exceeds the safe yield.” (*City of Los Angeles v. City of San*
25 *Fernando* (1975) 14 Cal.3d 199, 278.) The Court also used a similar definition in *City of Pasadena*
26 *v. City of Alhambra* (1949) 33 Cal.2d 908, 929, where the Court stated that “Each taking of water in
27 excess of the safe yield...was wrongful and was in injury to the then existing owners of water rights,
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1 because the overdraft, from its very beginning, operated progressively to reduce the total available
2 supply.” (*City of Pasadena*, 33 Cal.2d at 929.) The Court’s definition is also supported by other
3 leading authority. Beck’s Water and Water Rights states that “[a]n overdraft occurs when pumping
4 exceeds the safe yield for the groundwater source from which the draft is taking place.” (3 Beck,
5 Water and Water Rights, 1991 ed., §22.02(b)(4), p. 210.)

6 Thus, mere pumping over the natural supply to the groundwater basin in a given year is not
7 sufficient to establish that there is “overdraft.” Groundwater basins are natural reservoirs that allow
8 for stability in water supplies because they can tolerate depletion in dry years and be refilled in wet
9 years. So long as the dry-year pumping does not cause adverse impacts to the groundwater basin,
10 then the pumping pattern is sustainable and is not considered “overdraft.”

11 It is important for the Court to clarify in this case what the agreed definitions of overdraft and
12 safe yield are before moving further into Phase III.

13
14 Dated: March 15, 2010

BROWNSTEIN HYATT FARBER
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17 By: 
18 MICHAEL T. FIFE
19 BRADLEY J. HERREMA
20 ATTORNEYS FOR AGWA
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PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On March 15, 2010, I served the foregoing document described as:

**ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION'S CASE
MANAGEMENT CONFERENCE STATEMENT RE PROPOSED PHASE III TRIAL**

on the interested parties in this action.

By posting it on the website at 4:00 p.m. on March 15, 2010.
This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on March 15, 2010.

APRIL ROBITAILLE
TYPE OR PRINT NAME



SIGNATURE