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Attorneys for Plaintiff Richard Wood and the Class

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER
CASES

Lead Case No. BC 325201

RICHARD A. WOOD, an individual, on
behalf of himself and all others similarly
situated,

Case No.: BC 391869

Plaintiff,

**NOTICE OF LODGING OF
PROPOSED CASE MANAGEMENT
ORDER FOR PHASE 5 AND 6
TRIALS AND MEMORANDUM
REGARDING SCOPE OF TRIAL**

v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.

Defendants.

1 Plaintiff Richard Wood submits a proposed Case Management Order for Phase 5
2 and 6 Trials, which is attached here to as Exhibit A. The issues have been debated
3 among the liason committee with some consensus on many points, but disagreement on a
4 few others. The primary points of disagreement concern the scope of trial.

5
6 **A. THE PHASE 3 TRIAL DID NOT ADJUDICATE RETURN FLOW RIGHTS**

7 The scope of the Phase 3 trial was argued and determined at the March 23, 2010
8 hearing, during which the Court stated:

9 THE COURT: I don't want to make any finding, Mr. Sloan, that will have any
10 impact at all on any of the claims that the parties have, vis-à-vis, to each other with
11 regard to prescription, ownership, rights to pump, and so on.

12 (March 23, 2010 Hearing, at 23:5-9.)

13 THE COURT: . . . So no findings that I'm going to make could possibly affect the
14 claims or the defenses against prescription because I'm not going to make any
15 findings with regard to particular portions of the aquifer or as to rights or duties of
16 particular parties within the aquifer.

17 (*Id.* at 17:1-6.)

18 This stated position carried over into the Court's Order which was a very clear that
19 the Phase 3 trial would only relate to the question of overdraft. (Order After Case
20 Management Conference (Dkt. 3493).)

21 Consistent with its prior rulings on the scope of the trial, the Court's Statement of
22 Decision for Phase Three Trial did not make a finding on the amount of return flows.
23 (Exhibit B (Statement of Decision of July 13, 2011).) Indeed, in its initial draft of the
24 Statement of Decision, filed on June 6, 2011, Waterworks District 40 included specific
25 findings of fact not only as to total safe yield, but also as to native safe yield and return
26 flows. (Exhibit C, [proposed] Statement of Decision (initial draft, filed June 6, 2011;
27 Dkt. 4471) at 8:6-19.) Upon objection from various parties, the Court removed this
28 language from the final Statement of Decision for Phase Three Trial, and simply made a

1 finding of overdraft and set a safe yield at 110,000 acre feet per year.

2 Notwithstanding these facts, the water suppliers wish to avoid having to meet their
3 burden of proof with regard to establishing total return flow amounts by convincing the
4 Court that it previously tried an issue which it expressly did not. There has been no
5 finding of fact on the amount of return flows. Because one or two of the experts may
6 have done an assessment of the issue prior to Phase Three does not change the history of
7 the litigation, nor does it obviate the concerns of due process inherent in requirement that
8 the parties know what issues they are trying before they commence trial.

9 It is also worth noting that the return flow claim is not a sub-element of some other
10 right the water suppliers seek to establish or a necessary predicate to setting a total safe
11 yield; rather, it is a distinct claim to groundwater. This point the water suppliers should
12 concede given the Sixth Cause of Action in their First Amended Cross-Complaint
13 (“Declaratory Relief – Recapture of Return Flows from Imported Water Stored in the
14 Basin”).

15 **B. The Scope of Phase 6: Prescription**

16 As to the Phase 6 trial, consistent with the Court’s comments at the last hearing on
17 the matter, Plaintiff believes that should focus on prescription and the defenses thereto
18 and has therefore incorporated that language into the attached Proposed Case
19 Management Order.

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21
22 DATED: September 27, 2013

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O’LEARY

23
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25 By: _____
26 Michael D. McLachlan
27 Attorneys for Plaintiff
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Exhibit A

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Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325201

Case No.: BC 391869

**[proposed] CASE MANAGEMENT
ORDER FOR PHASE 5 AND PHASE 6
TRIALS**

IT IS HEREBY ORDERED:

1. The Phase 5 Trial will commence at 9:00 a.m. on February 10, 2014, in Room 222 of the Superior Court of the County of Los Angeles, located at 111 North Hill Street, Los Angeles, California or such other location as ordered by the court. The trial will continue for one week.

2. The Phase 5 Trial the issues of federal reserved water rights and return flows from imported water. As to return flows from imported water, the trial will determine who has the right to recapture and use return flows that result from water imported into the area of adjudication, as well as the amount or percentage of return flows that augment the groundwater basin due to the imported water. The Phase 5 Trial will commence with the issue of the federal reserved water rights.

3. The Phase 6 Trial will commence on August 4, 2014 and will continue for two weeks. The Phase 6 trial will determine claims to a prescriptive rights and defenses thereto.

4. The Court sets the following schedule for the Phases 5 and 6 trials:

PHASE 5 SCHEDULE	
DATE	EVENT
10/15/2013	Deadline to file Notice of Intention to Participate in Phase 5 Trial
10/18/2013	Summary judgment motions filing deadline
12/27/2013	Oppositions to summary judgment deadline
01/03/2014	Replies in support of summary judgment deadline
01/10/2014	Hearing on summary judgment motions
1/10/2014	Discovery cut-off (expert witness depositions excepted)
01/17/2014	Expert witness depositions completion deadline
01/23/2014	Witness and exhibit lists posted

01/24/2014	Motions in limine deadline
01/31/2014	Trial Brief deadline
01/31/2014	Opposition to motions in limine deadline
02/03/2014	Parties exchange trial exhibits
02/10/2014	TRIAL

PHASE 6 SCHEDULE	
DATE	EVENT
02/01/2014 through 03/01/2014	Discovery hiatus for Phase 6 discovery due to Phase 5 trial
04/18/2014	Summary judgment motion deadline
4/30/2013	Deadline to file Notice of Intention to Participate in Phase 5 Trial
06/19/2014	Oppositions to summary judgment motion deadline
06/27/2014	Replies in support of summary judgment motion deadline
07/03/2014	Hearing on summary judgment motions
07/03/2014	Discovery cut-off (expert depositions excepted)
07/21/2014	Expert witness deposition completion deadline
07/17/2014	Witness and exhibit lists deadline
07/18/2014	Motions in filing limine deadline
07/25/2014	Trial brief deadline
07/25/2014	Opposition to motions in limine deadline
07/28/2014	Parties exchange trial exhibits
08/04/2014	TRIAL

5. Expert witness designations shall comply with all Code of Civil Procedure requirements and include a statement as to the expert witness's deposition availability.

1 The expert witness designation shall include a copy of any report prepared concurrently
2 with his or her designation.

3 6. All parties designating expert or non-expert witnesses for the Phase 5 Trial
4 are directed to meet and confer in person and/or by telephone by December 1, 2013, to
5 develop a schedule for the taking of depositions of all designated witnesses. Counsel for
6 the Los Angeles County Waterworks District No. 40 is directed to provide telephone
7 conference information to the parties by posting the same to the Court's website by
8 October 4, 2013.

9 All parties designating expert or non-expert witnesses for the Phase 6 Trial are
10 directed to meet and confer in person and/or by telephone by June 15, 2014, to develop a
11 schedule for the taking of depositions of all designated witnesses for the Phase 6 trial.
12 Counsel for the Los Angeles County Waterworks District No. 40 is directed to provide
13 telephone conference information to the parties by posting the same to the Court's
14 website by June 1, 2014. Similar telephone conference(s) shall take place in the same
15 manner for the supplemental expert witnesses, if necessary. The telephone conferences
16 are to develop schedules to complete depositions before the deposition deadlines.

17 A party failing to participate in the telephone scheduling conferences or who
18 refuses to schedule its witnesses for deposition shall be deemed to have waived the right
19 to coordinate scheduling, and may thereafter have their witness' deposition set at the
20 convenience of participating scheduling parties on 15 days' notice pursuant to the
21 Court's Electronic Filing and Service Order. To the extent that parties are unable to
22 reach agreement as to any deposition, the Court will conduct a telephonic meet and
23 confer to be scheduled at the earliest time convenient to the Court.

24 7. The parties are directed to utilize the assistance of a liaison committee as a
25 means of attempting to resolve issues quickly and informally, and to streamline the
26 presentations at trial. The existence of this committee, however, shall not deprive any
27 other party from raising issues or concerns to the other parties.

28 8. All designated witnesses shall be available and prepared to provide

1 deposition testimony, absent other agreement, as noted in the above schedules. The
2 parties shall make every effort to complete the depositions of the initially designated
3 expert witnesses in time for the depositions of the supplemental experts to take place
4 before the discovery cut-off directed above. More than one deposition may be scheduled
5 to take place on the same day, but only if such depositions will not occur
6 simultaneously.

7 9. All expert witness deponents are directed to produce their file on this
8 matter, and any other requested materials for inspection at least three business days
9 before the date set for the deposition at the expert's place of business or such location as
10 the parties may agree. Such materials may be produced in electronic format.

11 10. Written discovery, including requests for admission, form interrogatories,
12 document production requests, etc., may commence immediately for both Phase 5 and
13 Phase 6. Parties are directed to coordinate these efforts with similarly situated parties.

14 11. The parties are directed to meet and confer concerning any discovery
15 dispute before contacting the Court and before filing any discovery motion. If such
16 attempts prove unsuccessful, the Court will conduct a further meet and confer, either by
17 telephone or in person as the Court may direct. The parties will provide the Court with a
18 letter in advance setting forth the text of any written discovery requests and responses
19 thereto that are in dispute, or other information that will assist the Court in conducting
20 the meet and confer. The parties should contact the Court's clerk to schedule any such
21 meet and confer. The Court expects that all discovery disputes will be resolved through
22 the meet and confer process. Any party may thereafter apply *ex parte* for an order
23 shortening time and specially setting a motion to compel for hearing by providing notice
24 thereof pursuant to the Electronic Filing and Service Order.

25 12. Any party intending to participate in the Phase 5 and/or Phase 6 trials must
26 post a Notice of Intention to Participate by October 15, 2013 and April 30, 2014,
27 respectively. Excuse from this requirement may be given upon a showing of good
28 cause.

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2 13. The parties, when posting witness and exhibit lists, shall provide the name
3 of each witness, a short summary of testimony expected to be elicited, and a testimony
4 time estimate. The exhibit list shall be sufficiently specific as to enable the other parties
5 to identify the exhibit prior to trial. Exhibits shall be sequentially numbered for each
6 party, starting with the Arabic number 1. The parties shall continue with the numbering
7 system utilized in Phase 4.

8 14. The parties shall coordinate with one another to determine the actual date
9 and time of the witnesses' testimony at trial. The parties shall make their best efforts to
10 produce all documents relevant to that witnesses' testimony prior to the witness'
11 deposition. Any other documents not previously produced, but which are intended to be
12 used at trial, shall be made available as soon as practicable.

13 15. Allied parties are strongly encouraged to file joint briefs.

14 16. Any motion to exclude witnesses or exhibits, or other motions *in limine*,
15 will be heard at the commencement of the trial for each respective part of Phases 5 and
16 6. Any such moving papers, opposition papers, including evidentiary objections, or
17 evidentiary objections to evidence submitted in opposition, shall be filed and posted as
18 noted in the timeline, above. No other reply papers are allowed.

19 17. Should any party elect to use a third party provider to assist in the
20 projection or presentation of evidence, that party shall permit said third party provider to
21 contract with any other party for the use the same services provided. Third party
22 providers, in any event, shall work together to coordinate the use of equipment.

23 18. Any party desiring to monitor the Phase 5 or 6 trials by telephone may do
24 so through CourtCall, but will not be allowed to question witnesses or participate in oral
25 argument absent prior arrangement with the Court.

26 19. The Court shall be provided with courtesy copies of all exhibits, except
27 those pertaining to impeachment, preferably in three-ring notebooks with numbered
28 dividers, as noted in the timeline, above. Counsel are directed to coordinate this project

1 with one another.

2 20. Prior to the commencement of each day of trial, counsel shall confer as to
3 the order of the next day's witnesses, and shall advise the Court of the same at the
4 commencement of that day of trial.

5 21. The Court will consider whether to request closing trial briefs as the Phase
6 5 and 6 trials proceed.

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9 Dated: _____

10 Hon. Jack Komar
11 Judge of the Superior Court
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Exhibit B

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 ANTELOPE VALLEY GROUNDWATER
12 CASES

Judicial Council Coordination
Proceeding No. 4408

13 Included Consolidated Actions:

Lead Case No. BC 325 201

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

STATEMENT OF DECISION
PHASE THREE TRIAL

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

Judge: Honorable Jack Komar

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

24 Rebecca Lee Willis v. Los Angeles County
25 Waterworks District No. 40
26 Superior Court of California, County of Los
Angeles, Case No. BC 364 553

27 Richard A. Wood v. Los Angeles County
28 Waterworks District No. 40
Superior Court of California, County of Los

2
3 The standard for a statement of decision as set forth in Code of Civil Procedure section
4 632 requires a court to explain “. . . the legal and factual basis for its decision as to each of the
5 principal controverted issues at trial....” Case law is clear that a court must provide the factual
6 and legal basis for the decision on those issues only closely related to the ultimate issues on the
7 case. (See *People v. Casa Blanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.)
8 It is also clear that a court need not respond to requests that are in the nature of “interrogatories.”
9 (See *id.* at pp. 525-526.)

10 The only issues at this phase of the trial were simply to determine whether the
11 adjudication area aquifer is in a current state of overdraft and as part of that adjudication to
12 determine the safe yield. This Statement of Decision focuses solely on those issues.

13 Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale,
14 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
15 Quartz Hill Water District, California Water Service Company, Rosamond Community Service
16 District, Phelan Piñon Hills Community Services District, Desert Lake Community Services
17 District, North Edwards Water District (collectively, the “Public Water Producers”)¹ brought an
18 action for, *inter alia*, declaratory relief, alleging that the Antelope Valley adjudication area
19 groundwater aquifer was in a state of overdraft and required judicial intervention to provide for
20 management of the water resources within the aquifer to prevent depletion of the aquifer and
21 damage to the Antelope Valley basin.

22 Several of the cross-defendant parties (collectively, the “Land Owner Group”) also
23 sought declaratory relief in their various independent (now coordinated and consolidated)
24 actions.

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27 ¹ The United States and the City of Los Angeles, though not water suppliers in the Antelope Valley adjudication
28 area, joined with the Public Water Producers. Rosamond Community Services District joined with the Land Owner
Group.

1 The first issues to be decided in the declaratory relief cause of action are the issues of
2 overdraft and safe yield. The remaining causes of action and issues are to be tried in a
3 subsequent phase or phases.

4 This Phase Three trial commenced on January 4, 2011 and continued thereafter on
5 various days based upon the needs of the various parties and the Court's availability.
6 Appearances of counsel are noted in the minutes of the Court.

7 At the conclusion of the evidence, the Court offered counsel the opportunity to provide
8 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the
9 Court heard oral argument and the matter was ordered submitted.

10 The Public Water Producers (and others) have alleged that the basin is in a condition of
11 overdraft and have requested that the Court determine a safe yield and consider imposition of a
12 physical solution or other remedy to prevent further depletion of the water resource and
13 degradation of the condition of the aquifer.

14 Several parties in opposition to the request of the Public Water Producers have
15 contended that while there may have been overdraft in the past, currently the aquifer has
16 recovered and is not in overdraft. These same parties contend that it is not possible to establish
17 a single value for safe yield; instead they have requested that the Court determine a range of
18 values for safe yield.

19 The Court concludes that the Public Water Producers have the burden of proof and that
20 the burden must be satisfied for this phase and purpose by a preponderance of the evidence.
21 This burden of proof may or may not be appropriate to other phases of this trial. And since the
22 findings here have no application to other phases, such as prescription or rights of appropriators,
23 and the parties have not briefed those or other issues, the Court makes no conclusions as to what
24 standard of proof might be applicable to such other issues or phases of trial.

25 The law defines overdraft as extractions in excess of the "safe yield" of water from an
26 aquifer, which over time will lead to a depletion of the water supply within a groundwater basin
27 as well as other detrimental effects, if the imbalance between pumping and extraction
28 continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199; *City of*

1 *Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District v.*
2 *City of Riverside* (1959) 173 Cal. App. 2d 137.) “Safe yield” is the amount of annual
3 extractions of water from the aquifer over time equal to the amount of water needed to recharge
4 the groundwater aquifer and maintain it in equilibrium, plus any temporary surplus. Temporary
5 surplus is defined as that amount of water that may be pumped from an aquifer to make room to
6 store future water that would otherwise be wasted and unavailable for use.

7 Determination of safe yield and overdraft requires the expert opinions of hydrologists and
8 geologists.² Experts in the field of hydrogeology routinely base their opinions and conclusions
9 concerning groundwater basin overdraft on evidence of long-term lowering of groundwater
10 levels, loss of groundwater storage, declining water quality, seawater intrusion (not an issue in
11 this case), land subsidence, and the like. Experts also conduct a sophisticated analysis of
12 precipitation and its runoff, stream flow, and infiltration into the aquifer, including such things as
13 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge), as
14 well as the nature and quantity of extractions from the aquifer and return flows therefrom.

15
16 Generally, neither overdraft nor safe yield can be determined by looking at a
17 groundwater basin in a single year but must be determined by evaluating the basin conditions
18 over a sufficient period of time to determine whether pumping rates have or will lead to
19 eventual permanent lowering of the water level in the aquifer and ultimately depletion of the
20 water supply or other harm. Recharge must equal discharge over the long term. (*City of Los*
21 *Angeles v. City of San Fernando, supra*, 14 Cal. 3d at pp. 278-279.) But having heard
22 evidence about the aquifer as a whole, the Court is not making historical findings that would be
23 applicable to specific areas of the aquifer or that could be used in a specific way to determine
24 water rights in particular areas of the aquifer.

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28 ² All the experts offer estimates. The American Heritage College Dictionary, Third Edition, defines an “estimate”
as, *inter alia*, “[a] rough calculation, as of size” or “[a] judgment based on one’s impressions; an opinion.”

1 The location of the Antelope Valley adjudication area boundaries was the subject of the
2 Phase One and Two trials in this matter. The Court defined the boundaries of the valley aquifer
3 based upon evidence of hydro-connection within the aquifer. If there was no hydro-connectivity
4 with the aquifer, an area was excluded from the adjudication. The degree of hydro-connectivity
5 within the Antelope Valley adjudication area varies from area to area. Some areas seemingly
6 have fairly small or nominal hydro-connectivity but must be included in this phase of the
7 adjudication unless the connection is *de minimis*.³ Pumping in those parts of the aquifer may be
8 shown to have *de minimis* effect on other parts of the aquifer while pumping in other areas
9 within the basin appear to have material impacts on adjacent parts of the basin. All areas were
10 included within the adjudication area because they all have some level of hydro-connection,
11 some more and some less. How to deal with those differences is ultimately a basin management
12 decision that is well beyond the scope of this phase of trial.
13

14 **Overdraft**

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17 The preponderance of the evidence presented establishes that the adjudication area
18 aquifer is in a state of overdraft. Reliable estimates of the long-term extractions from the basin
19 have exceeded reliable estimates of the basin's recharge by significant margins, and empirical
20 evidence of overdraft in the basin corroborates that conclusion. Portions of the aquifer have
21 sustained a significant loss of groundwater storage since 1951. While pumping in recent years
22 has reduced and moderated, the margin between pumping and recharge as cultural conditions
23 have changed and precipitation has increased (with the appearance of wetter parts of the
24 historical cycle), pumping in some areas of the aquifer is continuing to cause harm to the basin.
25 The evidence is persuasive that current extractions exceed recharge and therefore that the basin is
26

27 ³ The court may exclude truly *de minimis* connectivity areas based upon evidence in later phases of the trial if
28 shown to have virtually no impact on the aquifer.

1 in a state of overdraft. Since 1951⁴ there is evidence of periods of substantial pumping
2 (principally agricultural in the early years of the period) coinciding with periods of drought, with
3 almost continuous lowering of water levels and severe subsidence in some areas extending to the
4 present time, with intervals of slight rises in water levels in some areas.

5 Areas of increased pumping, with concomitant lowering of water levels, can have a
6 serious effect on water rights in other areas, caused by cones of depression, which alter natural
7 water flow gradients, causing the lowering of water levels in adjacent areas, with resulting
8 subsidence and loss of aquifer storage capacity. Given population growth, and agricultural and
9 industrial changes, the valley is at risk of being in an even more serious continuing overdraft in
10 the future unless pumping is controlled.

11 While the lowering of current water levels has slowed, and some levels in wells in some
12 areas have risen in recent years, significant areas within the aquifer continue to show declining
13 levels, some slightly so, but many with material lowering of water levels.

14 Thus, the Antelope Valley adjudication area is in a state of overdraft based on estimates
15 of extraction and recharge, corroborated by physical evidence of conditions in the basin, and
16 while the annual amount of overdraft has lessened in recent years with increased precipitation
17 and recharge, the effects of overdraft remain and are in danger of being exacerbated with
18 increased pumping and the prospective cyclical precipitation fluctuations shown by the historical
19 record. The physical evidence establishes that there was significant subsidence occurring in
20 parts of the adjudication area ranging from two to six feet or more in certain areas of the valley
21 caused by such pumping and that measurable water levels fell in a substantial part of the valley.
22 While some of the ongoing subsidence may be attributable to residual subsidence (from earlier
23 periods of shortfall) that would not seem to be an explanation for the extent of continued
24 subsidence. The evidence establishes that ground water extractions in excess of recharge are a
25 cause as well.
26

27
28 ⁴ Precipitation and well records prior to that year are too sketchy to be relied upon.

1 **Safe Yield**

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3 A calculation of safe yield is necessary to manage the basin or create a physical solution
4 to a potential or actual continuing overdraft. A determination of safe yield requires an initial
5 determination of average annual natural or native recharge to the aquifer from all sources. The
6 only source of natural or native recharge for the Antelope Valley is precipitation that recharges
7 the aquifer and it is therefore necessary to ascertain average annual precipitation. The
8 calculation of annual average precipitation can only be determined by using a baseline study
9 period that covers precipitation in periods of drought and periods of abundant precipitation over
10 a sufficient period of time that a reliable estimate of average future recharge based on
11 precipitation can be made.

12
13 It has been suggested that safe yield could be based on using shorter base periods or more
14 than one base period, (the total time span of which was considerably less than the 50 year period
15 the Court believes is more credible). If the purpose of selecting a base period is to determine
16 average recharge over time based on precipitation, choosing two consecutive periods of time
17 with two different average numbers would not serve that purpose and would preclude estimating
18 a single safe yield. Likewise, selecting a base period that does not have completely representative
19 precipitation cycles over time would not provide an accurate evaluation of conditions in the
20 valley. A base period that calculates average precipitation over a representative period of time
21 permits reliable predictions about future natural recharge based on regular recurring precipitation
22 cycles. A period of precipitation fluctuations from 1951 to 2005 satisfies that standard. Shorter
23 periods do not.

24 The Court finds that current extraction of water from the aquifer by all pumping ranges
25 from 130,000 to 150,000 acre feet a year, but in any event, is in excess of average annual
26 recharge. The major area of dispute between the parties is the average amount of natural
27 recharge, which also involves disputes concerning return flows, the amount of native vegetation
28 water needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag

1 time, bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the
2 basin, including artificial recharge-water pumped into the aquifer from external sources are not
3 in dispute.

4 Evidence established that during the entire historical period presented, populations
5 increased within the valley and water use changed in a variety of ways. There has been a shift in
6 some areas to urban uses and away from agriculture although in recent years agricultural
7 pumping has also increased. The nature of agricultural duties has changed as well. The type of
8 irrigation used by farmers has become more efficient and less water is needed per acre
9 (depending on the crops grown) with more efficient uses of water. But there has also been an
10 increase as well as a change in the nature of the type of agriculture in the valley in material
11 quantities in recent years. More of such changes may occur and it is important to both current
12 and future generations to ensure that the water resources within the basin are managed prudently.

13
14 The Court heard from a very large number of experts, some of whom have provided
15 opinion testimony of what constitutes safe yield. All the experts testifying acknowledged that
16 changes in the selection of a base study period, lag time, agricultural water duties,
17 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration,
18 return flows, playa evaporation relating to run off and bedrock infiltration, chloride
19 measurements, satellite imaging, and agricultural and municipal pumping estimates, among
20 others, would affect the ultimate opinion of natural recharge and return flows.

21 The opinions of all the experts are estimates, based upon their professional opinion. All
22 of the opinions were critiqued by other experts who often had different opinions. The Court
23 recognizes the imprecision of the various estimates and the fact that an estimate by definition is
24 imprecise. But the fact that estimates lack precision does not mean that the Court cannot rely
25 upon such estimates. The scientific community relies upon such estimates in the field of
26 hydrogeology and the Court must do the same.

27 Reasonable experts can differ as to reasonable estimates of natural recharge and
28 virtually all other components of water budgets, computations of change of storage, and the

1 like, all the while using the same formulae and scientific principles to reach their conclusion.
2 For example, all the experts could agree on the definition of "Darcy's Law" and the physics
3 principle of "conservation of mass" but still reach different conclusions.

4 Some of the experts opined that the basin was not in overdraft and that recharge was in
5 excess of or in balance with extractions so that there was a surplus in the aquifer. One expert
6 opined that loss of storage was merely space for temporary storage. Observable conditions in the
7 valley are inconsistent with those conclusions. If there were a surplus, even in the shortened
8 base periods used by the some experts, there should not be subsidence of land, nor the need to
9 drill for water at deeper and deeper levels in those parts of the aquifer most affected by the
10 overdraft. The physical condition of the valley is inconsistent with those estimates that there is
11 and has been a surplus of water in the aquifer.

12 The selection of a safe yield number for an aquifer the size of the Antelope Valley is
13 made difficult because of not only its size but because of the complexity of its geology. As
14 reflected above, hydro-connectivity and conductivity varies considerably between various parts
15 of the aquifer. The hydro-connectivity between some portions of the adjudication area aquifer
16 and others is so slight as to be almost (apparently) nonexistent. Pumping in those areas may
17 have little or no effect on other areas of the aquifer. The Antelope Valley basin is not like a
18 bathtub where lowering and raising of water levels is equal in all parts of the "tub."

19 Therefore, assigning a safe yield number (what quantity of pumping from the basin will
20 maintain equilibrium in the aquifer) may require different numbers for different parts of the
21 aquifer (and clearly may also provide for some level of separate management). No attempt has
22 been made in this phase of trial to define geological differences in the valley that would justify
23 different safe yield numbers for different parts of the valley in light of the decision in Phase Two
24 regarding connectivity (the Phase Two trial focused on hydro-connectivity for purposes of
25 determining necessary parties to the action).

26 Weighing the various opinions of the experts, however, the Court finds by a
27 preponderance of the evidence that conservatively setting a safe yield at 110,000 acre feet a
28

1 year will permit management of the valley in such a way as to preserve the rights of all parties
2 in accordance with the Constitution and laws of the State of California. Some portions of the
3 aquifer receive more recharge than others and pumping requirements vary. These differences
4 require management decisions that respect the differences in both the geology and the cultural
5 needs of the diverse parts of the valley.

6 It should not be assumed that the safe yield management number may not change as
7 climate circumstances and pumping may change, or as the empirical evidence based on
8 experience in managing the basin suggests it is either too high or too low.
9

10
11
12 Dated: JUL 13 2011

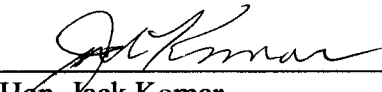

13 Hon. Jack Komar
14 Judge of the Superior Court
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Exhibit C

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated 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-CV0254-348

Wm. 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 Nos.
MC 353 840, MC 344 436, MC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391-869

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325201

**STATEMENT OF DECISION RE
PHASE III TRIAL**

Judge: Honorable Jack Komar

1 Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale,
2 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
3 Quartz Hill Water District, California Water Service Company, Rosamond Community Service
4 District, Phelan Piñon Hills Community Services District, Desert Lake Community Services
5 District, North Edwards Water District (collectively, the “Public Water Suppliers”)¹ brought an
6 action for, *inter alia*, declaratory relief, alleging that the Antelope Valley Adjudication Area
7 groundwater aquifer (“Basin”) was in a state of overdraft and required judicial intervention to
8 provide for water resource management within the Basin to prevent depletion of the aquifer and
9 damage to the Basin (“Basin”).

10 Several of the cross-defendant parties (collectively, the “Landowner Group”) also sought
11 declaratory relief in their various independent (now coordinated and consolidated) actions.

12 The first issues to be decided in the declaratory relief cause of action are overdraft and
13 safe yield. The remaining causes of action and issues are to be tried in a subsequent phase or
14 phases.

15 This Phase Three trial commenced on January 4, 2011 and continued thereafter on various
16 days based upon the needs of the parties and the Court's availability. Appearances of counsel are
17 noted in the Court minutes.

18 Upon conclusion of the evidence, the Court offered counsel the opportunity to provide
19 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the
20 Court heard oral argument and the matter was ordered submitted.

21 The Public Water Suppliers (and others) have alleged that the Basin is in a condition of
22 overdraft and have requested that the Court determine a safe yield and consider imposing a
23 physical solution or other remedy to prevent further Basin depletion and degradation.

24 Several parties, in opposition to the requests of the Public Water Suppliers, have
25 contended that while there may have been overdraft in the past, currently, the Basin has recovered

26 ¹ The United States and City of Los Angeles, though not public water suppliers in the Antelope Valley Adjudication
27 Area, joined with the Public Water Suppliers. Rosamond Community Services District, though a public water
28 supplier, did not join the Public Water Suppliers. Instead, Rosamond Community Services District joined the
Landowner Group parties.

1 and is not in overdraft. These same parties contend that it is not possible to establish a single
2 value for the Basin's safe yield; instead they have requested that the Court determine a range of
3 values for safe yield.

4 The Court concludes that the Public Water Suppliers have the burden of proof and that the
5 burden must be satisfied by a preponderance of the evidence. (Evid. Code section 115.) The
6 Court finds that the Public Water Suppliers have met the burden of proof by a preponderance of
7 the evidence as to the safe yield and overdraft of the Basin.

8 The law defines overdraft as groundwater extractions in excess of the "safe yield" of
9 water from an aquifer, which over time will lead to a depletion of the water supply within a
10 groundwater basin as well as other detrimental effects, if the imbalance between pumping and
11 extraction continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 278;
12 *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District*
13 *v. City of Riverside* (1959) 173 Cal.App.2d 137.) "Safe yield" is the annual water extraction from
14 the aquifer over time equal to the amount of water needed to recharge the aquifer and maintain it
15 in equilibrium, plus any temporary surplus. (*City of Los Angeles v. City of San Fernando* (1975)
16 14 Cal.3d 199, 278.) Temporary surplus is defined as that amount of water that may be pumped
17 from an aquifer to make room to store future water that would otherwise be wasted and
18 unavailable for use. (*Id.*, p. 278.)

19 A determination of safe yield and overdraft requires the expert opinions of engineers,
20 hydrologists and geologists.² Experts in the field of hydrogeology routinely base their opinions
21 and conclusions concerning overdraft on evidence of long-term lowering of groundwater levels,
22 loss of groundwater storage, declining water quality, seawater intrusion (not an issue in this case),
23 land subsidence, and the like. Experts also conduct a sophisticated analysis of precipitation and
24 its runoff, stream flow, and infiltration into the aquifer, including such things as
25 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge
26 including return flows from imported water), as well as the nature and quantity of extractions

27
28 ² All the experts offer estimates. The American Heritage College Dictionary, Third Edition, defines an "estimate" as, *inter alia*, "[a] rough calculation, as of size" or "[a] judgment based on one's impressions; an opinion."

1 from the Basin and return flows therefrom.

2 Generally, neither overdraft nor safe yield can be determined by looking at a groundwater
3 basin in a single year but must be determined by evaluating the basin conditions over a sufficient
4 period of time to determine whether pumping rates have or will lead to eventual permanent
5 lowering of the water level in the aquifer and ultimately depletion of the water supply or other
6 harm. Recharge must equal discharge over the long term. (*City of Los Angeles v. City of San*
7 *Fernando, supra*, 14 Cal.3d at pp. 278-279.)

8 The location of the Antelope Valley Adjudication Area boundaries was decided in the
9 Phase I and II trials. The Court defined the boundaries of the Basin's aquifer based upon
10 evidence of hydraulic connectivity within the aquifer. If there was no hydraulic connectivity with
11 the aquifer, an area was excluded from the adjudication. The degree of hydraulic connectivity
12 varies from area to area within the Antelope Valley Adjudication Area. Some areas seemingly
13 have fairly small or nominal hydro-conductivity but must be included in this phase of the
14 adjudication. Pumping in those parts of the Basin may be shown to have *de minimis* effect on
15 other parts of the Basin while pumping in other areas within the Basin appears to have very large
16 impacts on adjacent parts of the Basin. All areas were included within the Adjudication Area
17 because they all have some level of hydraulic connectivity, some more and some less. How to
18 deal with those differences is ultimately a basin management decision that is well beyond the
19 scope of this phase of trial.

20 21 **Overdraft**

22 The preponderance of the evidence presented establishes that the Basin is in a state of
23 overdraft. Reliable estimates of the long-term extractions from the Basin have exceeded reliable
24 estimates of the Basin's recharge by significant margins, and empirical evidence of overdraft in
25 the Basin corroborates that conclusion. The Basin has sustained a significant loss of groundwater
26 storage since 1951. While pumping in recent years has reduced and moderated the margin
27 between pumping and recharge as cultural conditions have changed and precipitation has
28 increased with the appearance of "wetter" parts of the historical cycle, pumping in some areas of

1 the aquifer is continuing to cause harm to the basin. The evidence is persuasive that current
2 extractions continue to exceed recharge and therefore that the Basin continues to be in a state of
3 overdraft, although by a much reduced amount. Since 1951³ there is evidence of substantial
4 pumping (principally agricultural in the early years of the period), with continuous lowering of
5 water levels and subsidence extending to the present time, with intervals of only slight rises in
6 water levels in some areas.

7 In the areas of increased pumping, in particular in the Palmdale and Lancaster areas, there
8 is a continual lowering of water levels such that it may have a serious effect on water rights in
9 other areas, causing cones of depression, altering natural water flow gradients, causing the
10 lowering of water levels in adjacent areas, and causing subsidence and loss of aquifer storage
11 capacity. Given population growth, and land use changes, the Antelope Valley is at risk of an
12 even more serious continuing overdraft in the future.

13 While the lowering of current water levels has slowed, and water levels in some wells in
14 some areas have risen in recent years, significant areas within the Basin continue to show
15 declining levels, some slightly so, but many show a material lowering of water levels. Overall,
16 water levels and storage in the Basin are declining.

17 Thus, the Antelope Valley Adjudication Area has been in a state of overdraft for more
18 than 50 years, and based on estimates of extraction and recharge, corroborated by physical
19 evidence of conditions in the Basin as a whole including loss of groundwater in storage, land
20 subsidence and changes in the amount and direction of groundwater flow to Edwards Air Force
21 Base. While the annual amount of overdraft has lessened in recent years with decreased pumping
22 and increased precipitation and recharge, the effects of overdraft remain and are in danger of
23 being exacerbated with increased pumping and the prospective cyclical precipitation fluctuations
24 shown by the historical record. The physical evidence establishes that there was significant
25 subsidence occurring throughout the Antelope Valley Adjudication Area ranging from two to six
26 feet or more in certain areas caused by such pumping and that measurable water levels fell in a
27 substantial part of the Valley. While some of the ongoing subsidence may be attributable to

28 ³ Precipitation and well records prior to that year are too intermittent to be relied upon.

1 residual subsidence (from earlier periods of shortfall) a preponderance of the evidence establishes
2 that ongoing and continued subsidence is caused, in part, by ongoing groundwater extractions in
3 excess of the Basin's safe yield.

4 5 Safe Yield

6 A safe yield calculation is necessary to manage a basin and create a physical solution to a
7 potential or actual continuing overdraft. A determination of safe yield requires an initial
8 determination of average annual natural or native recharge to the aquifer from all sources. The
9 only sources of natural or native recharge for the Antelope Valley are precipitation from the
10 surrounding mountains that recharges the Basin and it is therefore necessary to ascertain average
11 annual precipitation. The calculation of annual average precipitation can only be properly
12 determined by using a baseline study period that covers precipitation in periods of drought and
13 periods of abundant precipitation over a sufficient period of time that a reliable estimate of
14 average future recharge based on precipitation can be made.

15 One Landowner Group expert selected two shorter base periods (the total time span of
16 which was considerably less than the 50 year period used by the Public Water Suppliers' experts
17 which the Court believes are more credible), each having different estimated average natural
18 recharge based upon different precipitation averages from each base period. If the purpose of
19 selecting a base period is to determine average recharge over time based on precipitation,
20 choosing two consecutive periods of time with two different average numbers would not serve
21 that purpose and would preclude estimating a single safe yield. A base period that calculates
22 average precipitation over a representative period of time permits reliable predictions about future
23 natural recharge based on regular recurring precipitation cycles. A period of precipitation
24 fluctuations from 1951 to 2005 satisfies that standard. Shorter periods do not and the Court does
25 not find those shorter base periods to produce accurate results. The Court accepts the base period
26 selected by the Public Water Supplier experts as the more credible and accurate representation of
27 long-term conditions in the Basin.

28 The pumping extractions are not seriously in dispute by any of the experts who testified.

1 All seem to agree that pumping currently is estimated to range from 130,000 to 150,000 acre feet
2 a year. The major area of dispute between the parties is the average annual natural recharge,
3 which also involves disputes concerning return flows, the amount of native vegetation water
4 needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag time,
5 bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the Basin,
6 including artificial recharge-water introduced into the Basin from external sources are not in
7 dispute.

8 Evidence established that during the entire historical period presented, population
9 increased within the Valley and water use changed in a variety of ways. There has been a shift in
10 some areas to urban uses and away from agriculture although in recent years agricultural pumping
11 has also increased. The nature of agricultural water duties has changed as well. The type of
12 irrigation used by farmers has become more efficient and less water is needed per acre (depending
13 on the crops grown) with more efficient uses of water. But there has also been an increase as well
14 as a change in the nature of the type of agriculture in the Valley in material quantities in recent
15 years. Other such changes may occur and it is important to both current and future generations to
16 ensure that the water resources within the Basin are managed prudently.

17 The Court heard from a very large number of experts, some of whom have provided
18 opinion testimony about what constitutes safe yield. All the experts testifying acknowledged that
19 changes in the selection of a base study period, lag time, agricultural water duties
20 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration
21 return flows, playa evaporation relating to run off and bedrock infiltration, chloride
22 measurements, satellite imaging, and agricultural and municipal pumping estimates, among;
23 others, would affect the ultimate opinion of natural recharge and return flows including return
24 flows from State Water Project water.

25 The opinions of all the experts are estimates, based upon their professional opinion. All of
26 the opinions were critiqued by other experts who often had different opinions. The Court
27 recognizes the imprecision of the various estimates and the fact that an estimate by definition is
28 imprecise. But because estimates lack precision does not mean that the Court cannot rely upon

1 such estimates. The scientific community relies upon such estimates in the field of hydrogeology
2 and the Court must do the same.

3 Reasonable experts can differ as to reasonable estimates of natural recharge and virtually
4 all other components of water budgets, computations of change of storage, and the like, all the
5 while using the same formulae and scientific principles to reach their conclusion. For example,
6 all the experts could agree on the definition of "Darcy's Law" and the physics principle of
7 "conservation of mass" but still reach different conclusions.

8 Some of the experts opined that the Basin was not in overdraft and that recharge was in
9 excess of or in balance with extractions so that there was a surplus in the Basin. One Landowner
10 Group expert opined that loss of storage was merely space for temporary storage. The evidence
11 presented and observable conditions in the valley are inconsistent with those conclusions. If there
12 were a surplus, even in the shortened base periods used by the Landowner Group experts, there
13 would not be land subsidence, nor declining water levels. The Basin's physical conditions are
14 inconsistent with those Landowner Group expert estimates that there is and has been a surplus of
15 water in the Basin and the Court finds these opinions unreliable.

16 Selecting a safe yield number for an aquifer the size of the Antelope Valley is made
17 difficult because its size and its geologic complexity. As reflected above, hydraulic connectivity
18 varies considerably between various parts of the Basin. Hydraulic connectivity between some
19 portions of the Basin and other portions is so slight as to be almost (apparently) nonexistent.
20 Pumping in those areas may have little or no effect on other areas of the Basin. The Basin is not
21 like a bathtub where lowering and raising of water levels is equal in all parts of the "tub."

22 Therefore, different areas of the Basin may require different levels of pumping in order to
23 maintain equilibrium. No attempt has been made in this phase of trial to define geological
24 differences in the Basin that would justify different pumping regimes for different parts of
25 Antelope Valley as a result of the decision in Phase Two regarding hydraulic connectivity.

26 Weighing the various opinions, however, the Court finds by a preponderance of the
27 evidence that setting a total safe yield at a conservative 110,000 acre feet per year will permit
28 management of the Basin in such a way as to preserve the rights of all parties in accordance with

1 the Constitution and laws of the State of California. Some Basin areas receive more recharge
2 than others and pumping requirements vary. These differences require management decisions
3 that respect the differences in both the geology and the cultural needs of the diverse parts of the
4 valley. However, the amount of hydro-conductivity between Basin areas was beyond the scope
5 of the Phase III trial.

6 Out of the total safe yield of 110,000 acre feet annually, the Court finds, by a
7 preponderance of the evidence, the native safe yield is 82,000 acre feet per year and the
8 supplemental safe yield is 28,000 acre feet annually. The native safe yield is the amount of
9 precipitation that recharges the Basin. The native safe yield is the total of the long-term average
10 annual natural recharge to the Basin in the amount of 60,000 acre feet, and the long-term average
11 annual return flows attributable to pumping the native recharge in the amount of 22,000 acre feet.

12 Supplemental safe yield is the amount of imported water (i.e., State Water Project water)
13 that recharges the Basin, plus the return flows from such water after it is pumped and re-applied
14 to municipal and industrial or agricultural use. (See Scalmanini Exhibits 94 and 95.) The Court
15 finds that the supplemental safe yield of the Basin is 28,000 acre feet annually, based on
16 estimated return flow percentages of 28.1% for municipal and industrial use, and 25% for
17 agricultural use. (See Scalmanini Exhibits 94 and 95.) The Court finds that all subsequent
18 pumping of return flows are subject to these respective percentages as shown by Scalmanini
19 Exhibit 95.

20 The Court makes the findings herein based on a preponderance of the evidence presented
21 by the Public Water Suppliers, the City of Los Angeles and the United States. The Court finds
22 that the opinion testimony and evidence presented by the Public Water Suppliers⁴, the City of Los
23 Angeles and the United States to be credible and that the opinion testimony and evidence
24 presented by the Landowner Group parties to not be as credible as to the safe yield and overdraft
25 issues.

26 It should not be assumed that the safe yield management number may not change as

27 ⁴ As previously noted, Rosamond Community Services District is a public water producer but it did not align itself
28 with the Public Water Producers. Instead, Rosamond Community Services District and the City of Lancaster aligned
themselves and supported the Landowner Group parties.

climate circumstances and pumping may change, or as the empirical evidence based on experience in managing the Basin suggests it is either too high or too low, that is why the Court will retain jurisdiction over any physical solution to the Basin's overdraft

Dated: _____

Hon. Jack Komar
Judge of the Superior Court

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On June 6, 2011, I served the within document(s):

STATEMENT OF DECISION RE PHASE III TRIAL

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on June 6, 2011, at Irvine, California.


Kerry V. Keefe