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CLINTON C. HUTH

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 ANTELOPE VALLEY GROUNDWATER
CASES

12 Included Actions:

13 Los Angeles County Waterworks District No.
14 40 v. Diamond Farming Co.
Los Angeles County Superior Court Case No.
15 BC 325201

16 Los Angeles County Waterworks District No.
17 40 v. Diamond Farming Co.
Kern County Superior Court
Case No. S-1500-CV-254-348

18 Wm. Bolthouse Farms, inc. v. City of
19 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
20 Water Dist.
Riverside County Superior Court
21 Consolidated actions
Case Nos. RIC 353840, RIC 344436, RIC
22 344668

Judicial Council Coordination No. 4408
Assigned to Hon. Jack Komar, Dept. 1

For filing purposes only:
Santa Clara County Case No. 1-05-CV-049053

**CASE MANAGEMENT STATEMENT BY
DEFENDANT CLINTON C. HUTH**

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25 Pursuant to this Court's ORDER AFTER the Case Management on November 25, 2008,
26 Defendant CLINTON C. HUTH, hereby submits the following Case Management Statement.

27 At the onset of this litigation, Defendant HUTH was encouraged, as were other individual
28 parties, to appear and file generic answers to the complaint which had been served in these

1 coordinated proceedings. At that time, Defendant HUTH and his counsel were advised that, fairly
2 soon thereafter, parties such as Defendant HUTH would be permitted to opt out of the everyday
3 litigation by joining Defendant or Plaintiff class actions. Defendant HUTH and counsel were
4 further advised that filing an answer was nonetheless necessary to avoid the entry of defaults and
5 to ensure that the Court obtained personal jurisdiction over all potentially interested parties.

6 On or about November 5, 2008, Defendant HUTH filed his generic Answer and tendered
7 payment for his first appearance fees as well as e-filing fees. Notwithstanding his general
8 appearance, the generic Answer expressly alleged “I do not intend to participate at trial or other
9 proceedings unless ordered by the Court to do so.” However, Defendant will be appearing via
10 court call at the Case Management Conference on January 9, 2009, and incurring attorneys’ fees in
11 connection therewith.

12 On September 2, 2008, the Court certified the “Small Pumpers Class” defined as property
13 owners “that have been pumping less than 25 acre-feet per year on their property during any year
14 from 1946 to present.” Defendant believes he was and remains a member of the “Small Pumpers
15 Class.”

16 Throughout this litigation, Defendant has been assured that he would not be required to
17 actively participate in the action or suffer a prejudicial default once the various classes including
18 the “Small Pumpers Class” were certified. Defendant was assured that once the classes were
19 certified and class notice served, he would be afforded the opportunity to opt in to the Small
20 Pumpers Class, his Answer would be stricken without prejudice to his rights as a class member,
21 and his rights would be defended and determined through the class process. Instead litigation has
22 proceeded on the merits. Most recently, the Court concluded the phase two trial regarding the
23 hydrologic nature of the Antelope Valley.

24 It is imperative that the class notices be served as soon as possible so that the Defendant
25 and others similarly situated can be afforded the promised opportunity to opt in to the Small
26 Pumpers Class and enjoy the benefit of the class action without the vulnerability of interlocutory
27 or final judgment being set aside, and, perhaps most importantly, stop incurring expense of having
28 generally appeared. Indeed, Defendant had concerns that this litigation cannot proceed further on

1 the merits, lest adjudication – particularly those in favor of class members, are impaired or
2 invalidated due to one-way intervention or other due process errors. (*Fireside Bank v. Superior*
3 *Court* (2007) 30 Cal.4th 1069, 1080-1087 [155 P.3d 268] error to grant judgment on the pleadings
4 before class was certified and notice served because absent class members might elect to stay in a
5 class after favorable merits ruling but opt out after unfavorable ones, accord *Home Savings &*
6 *Loan Association v. Superior Court* (1974) 42 Cal.App.3d 1006, 1010-1011 [Cal.Rptr.485])

7 For these reasons, Defendant respectfully requests that the Court direct that the class
8 notices be served forthwith and, in any event, prior to any further adjudications regarding the
9 merits of the parties' claim and defenses.

10 DATED: December 31, 2008

HEWITT & TRUSZKOWSKI

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12 By: //s//

13 Stephen L. Hewitt
14 Attorneys for Cross-defendant
15 CLINTON C. HUTH

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