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Attorneys for Cross-defendant  
CLINTON C. HUTH

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

ANTELOPE VALLEY GROUNDWATER  
CASES

Included Actions:

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

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

Wm. Bolthouse Farms, inc. v. City of  
Lancaster, Diamond Farming Co. v. City of  
Lancaster, Diamond Farming Co. v. Palmdale  
Water Dist.  
Riverside County Superior Court  
Consolidated actions  
Case Nos. RIC 353840, RIC 344436, RIC  
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**

Defendant CLINTON C. HUTH, hereby submits the following Case Management  
Statement.

At the onset of this litigation, Defendant HUTH was encouraged, as were other individual  
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 February 27, 2009, and incurring attorneys’ fees  
11 in 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.4<sup>th</sup> 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  
11 DATED: February 19, 2009

HEWITT & TRUSZKOWSKI

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14 By:                     //s//                    

15 Stephen L. Hewitt  
16 Attorneys for Cross-defendant  
17 CLINTON C. HUTH  
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