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**EXEMPT FROM FILING FEES
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SECTION 6103**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 ANTELOPE VALLEY GROUNDWATER
CASES
17 Included Actions:
Los Angeles County Waterworks District No.
18 *40 v. Diamond Farming Co.*, Superior Court of
California, County of Los Angeles, Case No.
BC 325201;
19 *Los Angeles County Waterworks District No.*
20 *40 v. Diamond Farming Co.*, Superior Court of
California, County of Kern, Case No. S-1500-
21 CV-254-348;
22 *Wm. Bolthouse Farms, Inc. v. City of*
Lancaster, Diamond Farming Co. v. City of
23 *Lancaster, Diamond Farming Co. v. Palmdale*
Water Dist., Superior Court of California,
County of Riverside, Case Nos. RIC 353 840,
24 RIC 344 436, RIC 344 668
Rebecca Lee Willis v. Los Angeles County
25 *Waterworks District No. 40, et al.*, Superior
Court of California, County of Los Angeles,
26 Case No. BC364533
Richard Wood v. Los Angeles County
27 *Waterworks District No. 40, et al.*, Superior
Court of California, County of Los Angeles,
28 Case No. BC391869

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

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

**DECLARATION OF JEFFREY V.
DUNN IN SUPPORT OF OPPOSITION
TO ANTELOPE VALLEY EAST –
KERN WATER AGENCY’S MOTION
TO DISQUALIFY BEST BEST &
KRIEGER AS LEGAL COUNSEL IN
ANTELOPE VALLEY
GROUNDWATER CASES**

Date: December 7, 2016
Time: 10:00 a.m.
Dept.: Room 222

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare:

I am a partner of Best Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40. The following matters are of my own personal knowledge and I could and would so testify in court.

1. Best Best & Krieger LLP has been attorneys for record for Los Angeles County Waterworks District No. 40 for over 12 years in the coordinated and consolidated cases known as the Antelope Valley Groundwater Adjudication, Judicial Council Coordination Proceeding 4408.

2. Since at least November 29, 2004, Best Best & Krieger LLP has represented District No. 40 in multiple phases of trial, appeared before the court on many occasions, and represented District No. 40 in lengthy mediation with the Honorable Ron Robie, Justice of the Court of Appeal, as well as in a lengthy settlement conference that ultimately resulted in an almost global settlement.

3. The Antelope Valley Groundwater Adjudication began with groundwater rights lawsuits filed by two large agribusinesses, Diamond Farming Company and Wm Bolthouse Farms, Inc. They filed lawsuits against public water suppliers in the area commonly known as the Antelope Valley. On October 29, 1999, Diamond Farming Company filed a complaint in the Riverside County Superior Court (Case No. Case No. RIC 344436) against the City of Lancaster, Palmdale Water District, Antelope Valley Water Company, Palm Ranch Irrigation District, Quartz Hill Water District, Rosamond Community Services District, and Mojave Public Utility District. On February 22, 2000, Diamond Farming filed another complaint in the Riverside County Superior Court (Case No. RIC 344468). The two Diamond Farming actions were subsequently consolidated by the Riverside County Superior Court. AVEK was not named as a party in these lawsuits.

4. On January 25, 2001, Wm. Bolthouse Farms, Inc. ("Bolthouse") filed a complaint in the Riverside County Superior Court (Case No. RIC 353840) against the same public water supplier defendants named in the Diamond Farming lawsuits but also adding Littlerock Creek Irrigation District and Los Angeles Waterworks Districts Nos. 37 and 40 as defendants. District

1 No. 37 was later dismissed. AVEK was not named as a party in this lawsuit.

2 5. The Diamond Farming and Bolthouse lawsuits sought judicial determinations of
3 the parties' respective groundwater rights to the groundwater basin commonly known as the
4 Antelope Valley Groundwater Basin ("Basin"). The Riverside County Superior Court
5 consolidated the Diamond Farming and Bolthouse lawsuits in 2001.

6 6. Much of the early litigation and discussion between plaintiffs Diamond Farming
7 and Bolthouse and the defendant public water suppliers concerned identification of all known
8 public water suppliers in the Antelope Valley. The stated reason was that both Diamond Farming
9 and Bolthouse expressed their mutual intent to name, as defendants, all public water suppliers in
10 the Antelope Valley.

11 7. Plaintiffs Diamond Farming and Bolthouse did not name the Antelope Valley East
12 Kern Agency ("AVEK") as a defendant because AVEK is not a public water supplier. AVEK is
13 one of the State Water Contractors and it wholesales State Project water to public water supplier
14 defendants as well as to a relatively small number of private landowners for their agricultural or
15 industrial operations.

16 8. At the time of the Diamond Farming and Bolthouse lawsuits, Best Best & Krieger
17 LLP was legal counsel to Rosamond CSD, a small public entity water provider in a sparsely
18 populated and remote area of Kern County near Edwards Air Force Base. Best Best & Krieger
19 LLP was also legal counsel to AVEK with attorney Mike Riddell primarily responsible and
20 providing the legal services.

21 9. Defendant Los Angeles County Waterworks District No. 40 ("District No. 40"),
22 the largest of the Antelope Valley public water suppliers, was represented by the law firm of
23 Redwine and Sherrill. Rosamond CSD was represented Best Best & Krieger LLP attorneys
24 Jeffrey Dunn and Eric Garner. Mr. Dunn and Mr. Garner do not provide legal services to AVEK.

25 10. In August 2002, a Phase 1 trial commenced in the Riverside County Superior
26 Court. The Phase 1 trial was to determine a geographic boundary for the parties' respective
27 groundwater right claims. The trial, however, was not completed and the court did not make any
28 make any factual findings or rulings on legal issues. What followed for the next several years

1 were continued litigation, settlement discussions and eventually mediation before the Honorable
2 LeRoy Simmons, retired Judge of the Superior Court.

3 11. The mediation before Judge Simmons was unsuccessful. At the close of the
4 mediation, he told the parties that they could not resolve their disputes because the Basin required
5 a physical solution to an overdraft condition and that he did not have all of the parties with
6 interests in the Basin before him to make a physical solution possible. For that reason, he
7 suggested that a Basin wide adjudication would be necessary to achieve the physical solution and
8 to resolve the parties' respective groundwater right claims. It was at this time in 2004 that
9 representatives of District No. 40 approached me and my partner, Eric L. Garner, about our
10 potential representation of District No. 40.

11 12. In 2004, Mr. Garner and I were representing the City of Santa Maria in pending
12 consolidated groundwater right lawsuits in the Santa Clara County Superior Court. The cases had
13 become commonly known as the Santa Maria Groundwater Cases with the earliest of the
14 consolidated cases filed in 1997.

15 13. After Rosamond CSD agreed to have Best Best & Krieger LLP also represent
16 District No. 40 in the Antelope Valley cases, Best Best & Krieger LLP began to defend the two
17 defendant public entities. The joint representation was beneficial to both entities because they
18 could share the cost of the legal representation and Rosamond CSD could afford to initiate
19 groundwater adjudication proceedings with District No. 40 that would have been too expensive
20 for Rosamond CSD alone to bear.

21 14. After much deliberation by both entities, District No. 40 and Rosamond CSD filed
22 a complaint in the Los Angeles County Superior Court for declaratory and injunctive relief
23 seeking a physical solution to the Basin's overdraft condition including a comprehensive
24 adjudication of groundwater rights on November 29, 2004. The complaint included a cause of
25 action for a court declaration that Rosamond CSD and Los Angeles County Waterworks District
26 No. 40 had pumped from the Basin for at least 5 years during chronic overdraft conditions and
27 thereby had acquired prescriptive water rights as against private property owners in the Basin. A
28 similar complaint was filed on December 1, 2004 in the Kern County Superior Court because the

1 Basin is located within both Los Angeles and Kern Counties.

2 15. Best Best & Krieger LLP filed the adjudication complaints naming all known
3 persons and entities with groundwater right claims in the Antelope Valley. Like the Diamond
4 Farming and Bolthouse complaints, the District No. 40 and Rosamond CSD complaints did not
5 name AVEK because it is a State Water Project wholesaler and a public entity not subject to a
6 claim of prescriptive rights. Moreover, AVEK had already entered into a written agreement with
7 District No. 40 that AVEK would assist District No. 40 in an adjudication of District No. 40's
8 groundwater rights. As shown below, AVEK later publicly stated that it had no position on the
9 adjudication lawsuit claims and that it would remain neutral on the lawsuit issues.

10 16. The agreement, "Water Services Agreement between Antelope Valley-East Kern
11 Agency and Los Angeles County Waterworks District Nos. 4 and 34 [predecessors in interest to
12 Los Angeles County Waterworks District No. 40] dated July 17, 1970, in relevant parts, provides:
13 "groundwater supplies are seriously depleted" and that "[i]n the event there is an adjudication
14 of the basin or any of its sub-units, the Agency [AVEK] will assist the Consumers [District
15 No. 40 and other AVEK retail customers including Rosamond CSD] *if the latter so desire, in
16 retaining their rights to the groundwater supply.*" [Emphasis added.] A true and correct copy
17 of the written agreement is attached hereto as Exhibit "A."

18 17. After the two adjudication complaints were filed by District No. 40 and Rosamond
19 CSD, there followed judicial proceedings to coordinate the complaints with the Diamond Farming
20 and Bolthouse complaints pending in Riverside County Superior Court. Ultimately, the Judicial
21 Council entered an order coordinating all the cases and assigning them to the Honorable Jack C.
22 Komar, Judge of the Santa Clara County Superior Court in 2005. Judge Komar was then
23 presiding over the Santa Maria Groundwater Cases the earliest of which had been filed in 1997.

24 18. Obviously aware that Best Best & Krieger LLP could not represent it on certain
25 matters including the adjudication proceedings, AVEK also retained attorney Bill Brunick from
26 the San Bernardino law firm of Brunick McElhaney & Kennedy (the "Brunick firm") to represent
27 AVEK regarding the groundwater adjudication proceedings. AVEK also interviewed six law
28 firms for potential representation on AVEK's Urban Water Management Plan and then retained

1 attorney Ed Casey as its legal counsel or about November 12, 2005. AVEK, however, decided to
2 keep Best Best & Krieger LLP as legal counsel on other matters not including the adjudication
3 proceedings.

4 19. In the adjudication proceedings, there were court hearings on procedural matters
5 throughout 2005. As result of those hearings, the court directed District No. 40 to file
6 adjudication cross-complaints to the original Diamond Farming and Bolthouse complaints. On
7 January 18, 2006, District No. 40 filed the adjudication cross-complaints essentially seeking the
8 same relief as plead in the two original District No 40 adjudication complaints.

9 20. After District No. 40 filed the adjudication cross-complaints, certain other parties
10 filed their respective complaints or cross-complaints. There were complaints by the Willis and
11 Wood Classes, respectively. There was a cross-complaint by a large group of property owners
12 represented by Mr. Michael Fife of the Brownstein firm. There was also a cross-complaint by
13 AVEK against private landowners and public entities including District No. 40 and Rosamond
14 CSD.

15 21. The AVEK cross-complaint was filed on or about August 30, 2006 by the Brunick
16 firm and not by Best Best & Krieger LLP. In 2006, AVEK also made the decision to use Mr.
17 Brunick for AVEK's public meetings replacing Best Best & Krieger LLP attorney Mike Riddell.
18 Mr. Brunick continued that legal representation while also representing AVEK in the adjudication
19 proceedings. During 2009, however, AVEK decided to return Best Best & Krieger LLP attorney
20 Mike Riddell to represent AVEK in its public meetings while keeping Mr. Brunick as legal
21 counsel in the adjudication proceedings.

22 22. From at least August 30, 2006 when the Brunick firm filed its AVEK cross-
23 complaint to the present, the Brunick firm has been representing AVEK in the adjudication
24 proceedings and doing so *for over 10 years*.

25 23. In October, 2006, the court conducted the first phase of trial which was to
26 determine the Basin's boundaries. Legal counsel for District No. 40 was primarily involved with
27 the presentation of evidence in the Phase 1 trial.

28 24. At no time during 2006 did AVEK claim a conflict in interest on the part of Best

1 Best & Krieger LLP and ask that it not represent District No. 40 in the adjudication proceedings
2 which began *almost two years earlier* in 2004.

3 25. In 2007, the court held numerous hearings on class certification and other matters.
4 At no time during 2007 did AVEK claim a conflict in interest on the part of Best Best & Krieger
5 LLP and ask that it not represent District No. 40 in the adjudication proceedings.

6 26. AVEK made public representations that it had no position on the adjudication
7 lawsuits' major issues and it was widely reported that AVEK would be "neutral" in the
8 adjudication proceedings. A September 29, 2008 local newspaper article quotes AVEK
9 representatives as stating that "[AVEK] would like to be part of the solution, not try to drive how
10 the adjudication goes." The AVEK representative further stated that AVEK's governing board
11 "confirmed" that its attorney, "Bill Brunick 'has not and will not state that AVEK has taken any
12 position on any of the major concerns in the adjudication.'" A true and correct copy of the
13 September 29, 2008 article in the Antelope Valley Press "avhighDesert Forum" is attached hereto
14 as Exhibit "B."

15 27. In late 2008, the court conducted the Phase 2 trial on certain parties' claims that
16 they should be excluded from the adjudication proceedings because those parties claimed that
17 they overlie areas that are not hydro-geologically connected to the Basin. During the trial,
18 District No. 40's legal counsel, Best Best & Krieger LLP, was primarily involved with the
19 defense against such claims. Yet, at no time during 2008 did AVEK claim a conflict in interest
20 on the part of Best Best & Krieger LLP and ask that it not represent District No. 40 in the
21 adjudication proceedings.

22 28. In 2009 and 2010, the parties prepared for the Phase 3 trial concerning the Basin's
23 safe yield and District No. 40's contention that the Basin was and is in an overdraft condition.
24 The parties engaged in extensive discovery including depositions of expert witnesses. It was in
25 the latter half of 2010 that District No. 40's long-time retained and designated expert witness,
26 Joseph Scalmanini, was diagnosed with amyotrophic lateral sclerosis, commonly known as Lou
27 Gehrig's disease. It is a terrible neurological disease that leads to complete paralysis. There is no
28 cure.

1 29. Mr. Scalmanini wanted to testify in the Phase 3 trial but he was physically unable
2 to do so. For that reason, District No. 40 sought the court's assistance in providing
3 accommodations for Mr. Scalmanini's debilitating condition and the Court ordered that his trial
4 testimony be videotaped at the Walnut Creek office of Best Best & Krieger LLP, an office close
5 to his home. His videotaped testimony took approximately 11 days because Mr. Scalmanini
6 could only testify for relatively short periods of time in the morning and afternoon. He required
7 an extended lunch break for him to eat which was already difficult due to his weakening physical
8 condition.

9 30. At no time during the extensive trial preparations for the Phase 3 trial and the other
10 case matters throughout 2009 and 2010 did AVEK claim a conflict in interest on the part of Best
11 Best & Krieger LLP and ask that it not represent District No. 40 in the adjudication proceedings.
12 At that point in time, the adjudication had been proceeding for over 5 years and for over 4 years
13 since AVEK retained the Brunick firm to represent it in the proceedings.

14 31. AVEK did not oppose District No. 40 in the Phase 3 trial. The Phase 3 trial began
15 in early 2011 with the video testimony of Mr. Scalmanini. The trial lasted from January 4, 2011
16 to April 13, 2011 with scheduled breaks from time to time. Legal counsel for District No. 40 was
17 primarily involved with the presentation of evidence in the Phase 3 trial. At no time during the
18 Phase 3 trial did AVEK claim a conflict in interest on the part of Best Best & Krieger LLP and
19 ask that it not represent District No. 40 in the adjudication proceedings.

20 32. During 2010, 2011, 2012 and 2013, the parties engaged in settlement discussions
21 including mediation with Justice Robie. There were numerous mediation sessions with Justice
22 Robie in Sacramento during that time period.

23 33. During a mediation session with Justice Robie in 2012, the Court of Appeal issued
24 its decision in the Santa Maria Groundwater Cases, *City of Santa Maria v. Adam* (2012) 211
25 Cal.App.4th 266. The decision upheld the lower court's findings on important issues in
26 California groundwater disputes including affirming a prescriptive rights award to the City of
27 Santa Maria. The published decision played a key role in future mediation session and provides
28 guidance to courts throughout California in resolving groundwater right disputes.

1 34. While Justice Robie’s extraordinary service was both greatly valuable and
2 appreciated, the parties could not reach a complete resolution of the their respective claims and
3 disputes.

4 35. In 2012 and 2013, the parties continued to appear before the court and were
5 involved in case issues relating to Water Code requirements for reporting groundwater use,
6 parties’ return flow claims, and other issues.

7 36. In 2013 there was a Phase 4 trial for a court findings on each party’s groundwater
8 use. As the court is aware, the adjudication proceedings involve hundreds of parties and Best
9 Best & Krieger LLP took the responsibility to gather data on all parties’ respective groundwater
10 uses and then spearhead the analysis of the data for all parties’ benefit. This extraordinarily time
11 consuming and expensive process of reviewing each party’s response to court-ordered
12 information requests required extensive engineering analysis and satellite imaging review of
13 actual land use over time, all of which was of great benefit to the court and the parties. The entire
14 work was coordinated by Best Best & Krieger LLP attorney Stefanie Morris together with a team
15 of the law firm’s paralegals working with civil engineers and others in the Los Angeles County
16 Department of Public Works. As a result of that difficult effort, the Phase 4 trial consisted of the
17 entry of undisputed evidence in the form of written declarations for each party. Instead of many
18 weeks or even months of trial over disputed groundwater use claims, the work done by Best Best
19 & Krieger LLP led to an expedited process with a streamlined presentation of written evidence
20 over the course of just a few days. At no time during the extensive trial preparations for the
21 Phase 4 trial and the other case matters throughout 2011 and 2012 did AVEK claim a conflict in
22 interest on the part of Best Best & Krieger LLP and ask that it not represent District No. 40 in the
23 adjudication proceedings which had been proceeding for nearly 7 years and 6 years since AVEK
24 retained the Brunick firm to represent it in the adjudication proceedings.

25 37. After the Phase 4 trial during the first half of 2013, the court and parties were
26 involved with hearings regarding the next phase of trial as well as a summary adjudication motion
27 by AVEK seeking a court finding on AVEK’s claim that had rights to return flows from State
28 Water Project purchased by District No. 40. On January 30, 2014, the court denied the motion

1 and its ruling, in relevant part, stated that AVEK had no rights to return flows. A true and correct
2 copy of the order is attached hereto as Exhibit "C." Although District No. 40 had opposed the
3 AVEK motion, at no time during 2013 did AVEK claim a conflict in interest on the part of Best
4 Best & Krieger LLP and ask that it not represent District No. 40 in the adjudication proceedings
5 which had been proceeding for nearly 8 years and 7 years since AVEK retained the Brunick firm
6 to represent it in the adjudication proceedings.

7 38. In 2013 and early 2014 the court and the parties conducted hearings regarding the
8 next phase of trial, a Phase 5 trial on the federal reserve right claimed by the United States for
9 Edwards Air Force Base as well as a trial on return flow claims for those parties asserting return
10 flow rights including AVEK and District No. 40.

11 39. The court began the Phase 5 trial on February 10, 2014 with a presentation of
12 evidence by the United States concerning its federal reserve right claim. Shortly after the trial
13 commenced, AVEK's legal counsel and myself stood before the court and announced on the court
14 record that AVEK and District No. 40 had reached a tentative settlement of the issues between the
15 two parties. Mr. Brunick and I jointly explained to the court that the tentative settlement between
16 AVEK and District No. 40 could lead to a resolution of all parties' respective claims, and AVEK
17 and District No. 40 jointly requested that the court suspend the Phase 5 trial and order the parties
18 to immediate settlement discussions at the Los Angeles office of Best Best & Krieger LLP. The
19 court discussed the matter with the parties and then suspended the Phase 5 trial with an order for
20 parties to immediately engage in settlement negotiations at the Los Angeles office of Best Best &
21 Krieger LLP.

22 40. On that day, the parties commenced settlement discussions. The discussions
23 continued between the parties for many weeks and ultimately led to a proposed written settlement
24 agreement acceptable to all parties except for Phelan Pinion Hills Community Services District
25 ("Phelan"), and a small number of landowner parties including Tapia Trust. (The Willis Class
26 had earlier settled its lawsuit against certain public water suppliers but indicated that it objected to
27 the proposed written settlement agreement.) The settling parties were later able to inform the
28 court of their proposed settlement and the court scheduled a trial on November 4, 2014 for

1 Phelan’s groundwater right claims.

2 41. The court held a Phase 6 trial on Phelan’s claims and decided against Phelan on or
3 about November 5, 2014. A later trial was held on August 25, 2015 to decide Phelan’s
4 contentions that it had additional groundwater right claims not decided in the Phase 6 trial in
5 November, 2014. The court decided against Phelan on its additional claims and contentions on
6 August 25, 2015.

7 42. In February 2015, the Los Angeles County Board of Supervisors, the governing
8 body of District No. 40, approved the proposed settlement. AVEK’s Board of Directors had also
9 approved the proposed settlement. The approved settlement by AVEK and District No. 40
10 includes an agreement that the two entities will cooperate and work together to support the
11 Judgment: AVEK and District No. 40 “will cooperate in good faith and take any and all
12 necessary and appropriate actions to support the Judgment until such time as this Judgment is
13 entered by the Court, and appeals, if any, are final” (Stipulation, paragraph 5.) The
14 settlement also provides that it resolves all groundwater disputes between AVEK and District No.
15 40: “a. The Judgment is a determination of all rights to Produce and store Groundwater in the
16 Basin. b. The Judgment resolves all disputes in this Action among the Stipulating Parties.”
17 (Stipulation, paragraph 2.) True and correct copies of the excerpts from the stipulation are
18 attached hereto as Exhibit “D.”

19 43. The Court’s physical solution and judgment resolves all groundwater disputes
20 between AVEK and District No. 40. Section 5.2.2 of the Court’s physical solution provides:
21 “The right to Produce Imported Water Return Flows from water imported through AVEK belongs
22 exclusively to the Parties identified on Exhibit 8, attached hereto, and incorporated herein by
23 reference. . . . This right shall be in addition to that Party’s Overlying or Non-Overlying
24 Production Right. Production of Imported Water Return Flows is not subject to the Replacement
25 Water Assessment. All Imported Water Return Flows from water imported through AVEK and
26 not allocated to Parties identified in Exhibit 8 belong exclusively to AVEK, unless otherwise
27 agreed by AVEK.” True and correct copies of the excerpts from the physical solution are
28 attached hereto as Exhibit “E.”

1 44. In August of 2015, the court conducted hearings including a Final Fairness
2 Hearing for the Wood Class settlement agreement with certain public water suppliers. (An earlier
3 settlement between the Wood Class and a few public water suppliers had been previously
4 approved by the court.)

5 45. During the latter half of 2015, the court conducted evidentiary hearings on the
6 proposed written settlement that had been formally approved by each settling party including
7 District No. 40 and AVEK. The court received evidence from both settling and non-settling
8 parties and held closing arguments on November 4, 2015.

9 46. On November 4, 2015, the court made its decision to approve a physical solution
10 for the Antelope Valley including approval of the parties' written settlement agreement after over
11 10 years of litigation and many years of settlement negotiations including mediation with Justice
12 Robie.

13 47. On December 28, 2015, the court entered a final judgment in the Antelope Valley
14 Groundwater Adjudication, Judicial Council Proceeding 4408, and later conducted post-judgment
15 proceedings on various matters including hearings related to the Wood Class Counsel requests for
16 attorney fees and costs against certain public water suppliers (including District No. 40) as well as
17 a motion to set aside the judgment by a few non-settling parties.

18 48. On or about January 19, 2016, AVEK terminated its legal services agreement with
19 Best Best & Krieger LLP. Best Best & Krieger LLP confirmed the legal services termination in
20 written correspondence dated January 22, 2016. A true and correct copy of the letter is attached
21 hereto as Exhibit "F."

22 49. After the AVEK and District No. 40 settlement agreement and the court's final
23 judgment, AVEK hired an attorney who sent a letter January 27, 2016, to District No. 40's legal
24 counsel, Best Best & Krieger LLP, demanding that it stop representing its client, District No. 40.
25 A true and correct copy of the letter is attached hereto as Exhibit "G." *It is important to note that*
26 *before the letter was sent on January 27, 2016, AVEK had already terminated its legal services*
27 *agreement with Best Best & Krieger LLP.* Moreover, the letter was sent *after* the Court approved
28 the settlement agreement between AVEK and District No. 40.

1 50. After over 10 years of extensive litigation summarized above during which time
2 AVEK had the Brunick firm as its legal counsel in the adjudication, the letter was the first time
3 that AVEK asked Best Best & Krieger LLP to not represent District No. 40. At no time during
4 the litigation prior to the final judgment in this matter, did AVEK notify District No. 40 that
5 AVEK believed a conflict of interest existed and BBK should be disqualified as counsel for
6 District No. 40.

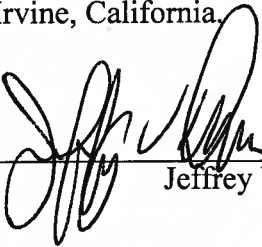
7 51. After AVEK sent the letter demanding that Best Best & Krieger LLP stop
8 representing its client, District No. 40, AVEK responded to a court filing by Best Best & Krieger
9 LLP in the post-judgment proceedings: AVEK filed a "joinder" to the Best Best & Krieger LLP
10 filing on behalf of District No. 40. A true and correct copy of the AVEK "joinder" is attached
11 hereto as Exhibit "H."

12 52. At no time during the entire representation of District No. 40 did I or my
13 colleagues working on the Antelope Valley Groundwater Adjudication share any information that
14 could be reasonably deemed confidential with Mike Riddell or anyone else at Best Best &
15 Krieger LLP.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this ___ day of November, 2016, in Irvine, California.

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27
28



Jeffrey V. Dunn

EXHIBIT A

**WATER SERVICE AGREEMENT
BETWEEN
ANTELOPE VALLEY-EAST KERN WATER AGENCY
AND**

**LOS ANGELES COUNTY WATERWORKS DISTRICTS NOS.
4 AND 34
FOR WATER SERVICE**

DATED JUL 17 1970

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WATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of ____ 19__, by and between the Antelope Valley-East Kern Water Agency, established by Chapter 2146 of the 1959 Statutes of the State of California, hereinafter referred to as the "Agency" and Los Angeles County Waterworks Districts Nos. 4 and 34, hereinafter referred to as the "Consumer;"

WITNESSETH:



WHEREAS, water is needed within the Agency to supplement existing water supplies and for new areas requiring water supplies; and



WHEREAS, groundwater supplies within the Agency are seriously depleted; and

WHEREAS, the Agency and the State of California entered into an agreement entitled "Water Supply Contract Between the State of California, Department of Water Resources, and Antelope Valley-East Kern Water Agency," dated September 20, 1962, as amended by Amendment No. 1, dated September 22, 1964; Amendment No. 2, dated August 24, 1965; Amendment No. 3, dated February 16, 1967; and Amendment No. 4, dated May 11, 1967, whereby the State of California will furnish a water supply to the Agency; and

WHEREAS, the Agency desires to make available under terms and conditions which, as far as practicable and consistent with the ultimate use of water made available pursuant to said Contract and Amendments, shall be fair and equitable; and

WHEREAS, the inhabitants and lands of the Consumer are in need of additional water for beneficial uses; and

WHEREAS, the Consumer desires to contract with the Agency for a water supply to be for the use and benefit of the Consumer, and for which Consumer will make payment to the Agency upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

Article 1. Definitions

When used in this Agreement, the following terms shall have the meanings hereinafter set forth:

(a) "Agency" as used herein shall mean Antelope Valley-East Kern Water Agency.

(b) "Consumer" as used herein shall mean any public body, including the United States of America and the State of California, and any of their agencies and departments empowered to contract, counties, cities, districts, local agencies or political subdivisions of the State of California; corporations, public utility water companies, mutual water companies or persons; or any other entity or individual able to and which does execute a Water Service Agreement with the Agency for a water supply; but shall not include any party with whom the Agency may contract to deliver water for a term of years and under special provisions which require the joint use of facilities for the particular benefit of said party and the Agency.

(c) "Agreement" as used herein shall mean this agreement for water service between Agency and Consumer.

(d) "Master Contract" shall mean the contract entitled "Water Supply Contract between the State of California Department of Water Resources and the Antelope Valley-East Kern Water Agency," dated September 20, 1962, as amended by Amendment No. 1, dated September 22, 1964, Amendment No. 2, dated August 24, 1965, Amendment No. 3, dated February 16, 1967, and Amendment No. 4, dated May 11, 1967, and any revisions, amendments or supplements thereto hereafter made.

(e) "Agency Law" shall mean the Antelope Valley-East Kern Water Agency Law, Chapter 2146, Statutes of 1959 of the State of California, as

amended and as the same may be hereafter amended, supplemented, re-enacted, or codified.

(f) "Project Water" shall mean water made available to the Agency by the State of California pursuant to the terms of the Master Contract.

(g) "Treatment and Distribution System" means all fixed installations owned and operated by the Agency having the purpose of treatment, conveyance, control, measurement, spreading and delivery of water.

(h) "Rules and Regulations" means the Rules and Regulations for Distribution of Water, Antelope Valley-East Kern Water Agency, as they may be amended and supplemented from time to time by the Board of Directors of the Agency. The Rules and Regulations set forth the conditions under which water will be distributed to the Consumer.

(i) "Year" means the same as the term "Year" means in the Master Contract.

Article 2. Term of Agreement

This Agreement shall become effective on the date first above written and shall remain in effect during the period necessary to repay any bonds designed to finance the Agency's water system.

Article 3. Relationship to Master Contract, and Application of Agency Law

(a) Consumer acknowledges having read the Master Contract and having general familiarity with its terms and that Agency's ability to supply water is governed by said Master Contract and any subsequent modification and supplements thereof.

(b) Consumer also agrees that this Agreement and the rights and obligations of the parties hereunder shall be subject to the Agency Law as it now exists and as it may be hereafter amended or codified by the Legislature of the State of California.

Article 3a. Water Rights

Because it may be necessary that consumer maintain and operate his own wells to provide for his own system peak demands and as an emergency reserve water supply, it is advisable that consumer retain and protect his rights to groundwater.

In the event there is an adjudication of the groundwater basin or any of its sub-units, the Agency will assist the Consumers, if the latter so desire, in retaining their rights in the groundwater supply.

Those Consumers who wish the assistance of the Agency, in the event there is an adjudication of the groundwater basin or any of its sub-units, shall submit evidence of the amount of water pumped from each individual well during at least the preceding five-year period and longer if the information is available. This information may be submitted to the Agency at the time of execution of this Agreement or to the State Water Resources Control Board. The Consumer shall also keep continuous records of the amount of water pumped from each individual well for each year following execution of this Agreement. Each year the Consumer may file this information in writing with the Agency, or with the State Water Resources Control Board.

Agency agrees that in the event of such an adjudication as is mentioned in this Article, the evidence of groundwater use of the basin by the Consumers as may have been filed with the Agency will be presented to the Court or other reviewing officer in aid of the Consumers' retention of their rights in the groundwater supply.

This section is not intended in any way to relieve Consumer of any rights or responsibilities it may have under the Recordation Act of 1955 (Water Code, Sec. 4999, et seq.).

Article 4. Delivery of Water

Agency will deliver water to Consumer through the Agency's treatment and distribution system at water service connections. Water delivered pursuant to this Agreement will be delivered to Consumer in accordance with the conditions and procedures set forth in the Rules and Regulations. Consumer shall make application for water delivery turn-ons and shut-offs in accordance with the procedures set forth in the Rules and Regulations. Consumer agrees to be bound by such Rules and Regulations insofar as the same pertain to the subject matter of this Agreement and by any subsequent amendments or supplements thereof that may be adopted by the Board of Directors of the Agency hereafter from time to time. Agency agrees that amendments or supplements to said Rules and Regulations shall not be made without providing Consumer at least 45 days prior written notice of each such proposed amendment or supplement and of the meeting of the Board at which such amendment or supplement is to be acted upon by said Board.

Despite the foregoing provisions and other terms and conditions contained in other Articles of this Agreement, it is understood and acknowledged that Agency's obligations to deliver water pursuant to this Agreement is conditioned upon its being able to provide a water distribution system with which Consumer can be served and that if Agency is unable to provide such a water system, neither it nor its officers, directors or agents shall have any liability to provide water to Consumer nor be subject to any claims, demands or causes of actions on such account.

Article 5. Water Service Connection(s)

Consumer shall make application to Agency for water service connections through which all or a portion of the water to be delivered pursuant to this Agreement shall be delivered to Consumer. Consumer agrees to pay any and all costs incurred by Agency for the design, construction, inspection, operation and maintenance of water service connection(s) serving Consumer. Application and payment for water service connections shall be in accordance with the procedures set forth in the Rules and Regulations. After the same have been constructed, Agency shall own the water service connections and all appurtenances and facilities a part thereof and related thereto. The water service connection, appurtenances and facilities do not include any portion of consumer's water delivery system designed, constructed, acquired or otherwise owned, operated and maintained by Consumer.


Article 6. Water Delivery Schedules

On or before August 1 of each year, Consumer shall submit in writing to the Agency its requested water deliveries by month from each water service connection for the succeeding five years. All requests shall be submitted in the manner set forth in the Rules and Regulations. All water orders, emergency turnoff, and any other request by Consumer which may alter the requested water delivery schedule shall be reported to Agency so that Agency can revise its delivery schedule with the State pursuant to the Master Contract. Because of the fact that the Agency anticipates being in a position to first deliver water in 1972, a Schedule 1 is attached hereto and hereby made a part hereof by reference whereby Consumer indicates its requested water deliveries by month from each water service connection for the succeeding five-year period, such requests, if this contract is dated before 1972, being shown as zero for each of the months involved prior to 1972. If the contract is entered into after the Agency is in a position to deliver water then the requested water deliveries will reflect Consumer's anticipated water requirements for the entire five-year period. Consumer agrees to take from the Agency when the latter is in a position to deliver water to Consumer, the water requested for the first year of service, and the Agency agrees to deliver such water to the Consumer, subject to the other provisions contained in this Agreement and to the Agency's Rules and Regulations.

Article 7. Measurement

All water furnished pursuant to this Agreement shall be measured by the Agency at each water service connection established pursuant to Article 5 hereof with equipment satisfactory to the Agency. Said equipment shall be installed, owned, operated and maintained by the Agency. All determinations relative to the measuring of water shall be made by the Agency and upon request by the Consumer, the accuracy of such measurement shall be investigated by the Agency in the manner set forth in the Rules and Regulations. Any error appearing therein will be adjusted pursuant to conditions set forth in the Rules and Regulations. The Agency will install, or cause to be installed, backflow prevention devices in connection with such measuring devices to prevent water delivered to the Consumer or other consumers from returning to the Agency's treatment and distribution system.

Article 8. Limitations on Obligation of Agency to Furnish Water.

 (a) Notwithstanding any provisions of this Agreement to the contrary, the obligation of the Agency to furnish water hereunder shall be limited to the times and to the extent that water and facilities necessary for furnishing the same are available to the Agency pursuant to the Master Contract with the State of California.

(b) The Agency shall not be liable for the failure to perform any portion of this Agreement to the extent that such failure is caused by the failure of the State of California to perform any obligation imposed on the State of California by the Master Contract; provided, however, that the Agency shall diligently and promptly pursue all rights and remedies available to it to enforce the rights of the Agency, the Consumer and other consumers against the State of California under the Master Contract relative to such failure to perform.

Article 9. Water Shortages

(a) No Liability for Shortages.

Neither the Agency, nor any of its officers, agents or employees, shall be liable for any damage, direct or indirect, arising from any shortages which may occur from time to time in the amount of water to be made available for delivery to the Consumer pursuant to the Master Contract or any other cause beyond the control of the Agency.

(b) Allocation of Water in Times of Shortage.


The Agency reserves the right in the event that at any time the quantity of water available to the Agency pursuant to the Master Contract is less than the aggregate of the requests of all consumers to allocate the quantity of water available to the Agency to the extent permitted by law.

Article 10. Curtailment of Delivery for Maintenance Purposes

The Agency may temporarily discontinue or reduce the amount of water to be furnished to the Consumer for purposes of maintaining, repairing, replacing and investigating or inspecting, any of the facilities necessary for the furnishing of such water to the Consumer. Insofar as it is feasible the Agency will give the Consumer due notice in advance of any such temporary discontinuance or reduction, except in the case of emergency, in which case no notice need be given. In the event of such discontinuance or reduction, the Agency will make available upon resumption of service, as nearly as may be feasible, and to the extent water is available to it, the quantity of water which would have been available to the Consumer in the absence of such discontinuance or reduction.

Article 11. Responsibilities for Delivery and Distribution of Water Beyond Water Service Connection(s)

After such water has passed the Water Service Connection(s) established in accordance with Article 5, neither the Agency nor its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water supplied to the Consumer or for claim of damages of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water beyond said Water Service Connection; and the Consumer shall indemnify and hold harmless the Agency and its officers, agents, and employees from any such damages or claims of damages, and including reasonable attorneys' fees incurred as against the unsuccessful party in defending against any claims or actions for damages on such account.

Article 12. Water Quality

The quality of water delivered by the Agency to the Consumer pursuant to this Agreement shall depend upon the quality of the water furnished to the Agency under the Master Contract, except as the same may be modified by the Agency's local treatment of water. The Agency undertakes no responsibility to Consumer to furnish water pursuant to this Agreement of any particular quality except as may result from the above-mentioned source of supply and any treatment provided by the Agency.

Article 13. Payments

Payment of all charges shall be made at the rates, times and in the manner provided for in the "Rules and Regulations for Distribution of Water, Antelope Valley-East Kern Water Agency," as the same may be amended and supplemented from time to time by the Board of Directors of the Agency. On or before July 1st of each year, the Agency shall adopt by resolution of the Board of Directors the water rate in dollars per acre-foot which will be charged for water to be delivered in the next succeeding year. At this time, the Agency shall make available to the Consumers the estimated water rates in dollars per acre-foot to be charged for water to be delivered in the second and third succeeding years.

Article 14. Excess Lands

The provisions of Article 30 of the Master contract to the extent applicable shall be binding upon Consumer, and Consumer agrees to obtain and furnish to the Agency such certifications and information as are required to be furnished by the Agency to the State of California by said Article 30.

Article 18. Default

In the event of default by the Consumer in payment to the Agency of any money required to be paid hereunder and pursuant to the Rules and Regulations, the Agency may in its discretion, and in accordance with the Rules and Regulations, suspend delivery of water to the Consumer during the period that the latter is delinquent in its payments.

Article 16. Interest on Overdue Payments.

Upon each charge to be paid by the Consumer to the Agency pursuant to this Agreement which shall remain unpaid after the same shall have become due and payable, interest shall accrue at the rate of one-half of one percent (1/2%) per month of the amount of such delinquent payment from and after the date when the same becomes due until paid, and the Consumer hereby agrees to pay such interest. In no event shall such interest be compounded.

Article 17. Changes in Organization of Consumer

The Consumer will furnish the Agency with maps showing the territorial limits of the Consumer and the service area or areas of its water distribution system. Throughout the term of this Agreement, the Consumer will promptly notify the Agency of any changes, either by inclusion or exclusion, in said territorial limits and service area or areas. Consumer agrees to conform to the requirement of Article 15(a) of the Master Contract that any water wholly or partly delivered by the Agency to Consumer will not be delivered outside of the territorial boundaries of the Agency without written consent having first been obtained.

Article 18. Remedies Not Exclusive

Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive the party using the same from also using any other remedies provided by this Agreement or by law.

Article 19. Amendments

This Agreement may be amended or supplemented at any time by mutual written agreement of the parties in any manner that may be consistent with the applicable law. In amending or supplementing this Agreement, however, the Agency will bear in mind that substantial uniformity of Agreements between the various Consumers of the Agency is thought to be desirable as to the main contracting concepts and principles that are to be used and therefore will attempt to maintain uniformity between the various Consumers' Agreements in such respects.

Article 20. Opinions and Determinations

Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable. In the event legal action is brought to enforce or determine the rights of either party under this agreement, the prevailing party in such action shall be entitled to court costs and reasonable attorney's fees.

Article 21. Waiver of Rights

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other breach, default or matter.

Article 22. Notices

All notices that are required either expressly or by implication to be given by any party to the other under this Agreement shall be signed for the Agency and for the Consumer by such officers and persons as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this Agreement.

Article 23. Assignment

The provisions of this Agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this Agreement, nor any part hereof nor interest herein by the Consumer shall be valid until and unless approved by the Agency, except an assignment to an affiliate of the Consumer, or to a party or parties, which by merger, consolidation, dissolution, purchase or otherwise, shall succeed to substantially all of the assets and business of the Consumer. Affiliate, as used herein, shall mean a corporation that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the assigning party.

Article 24. Inspection of Books and Records

The proper officers or agents of the Consumer shall have full and free access at all reasonable times to the account books and official records of the Agency insofar as the same pertain to the matters and things provided for in this Agreement, with the right at any time during office hours to make copies thereof at the Consumer's expense, and the proper representatives of the Agency and designated personnel and agents shall have similar rights in respect to the account books and records of the Consumer.

Article 25. Validation

At any time after the execution of this Agreement, either party may if it so desires submit this Agreement to a Court of competent jurisdiction for a determination of its validity, and whichever party elects to follow such a procedure the other party agrees to cooperate therein to any extent that may be necessary or advisable and that shall be requested by the plaintiff. The plaintiff shall bear the costs and attorneys' fees incurred in such a proceeding.

Article 26. Uniformity of Provisions

It is intended by the parties that this Agreement shall be uniform as to form and content as between the Agency and the various Consumers entering into this Agreement with the Agency and for this reason any subsequent amendments and supplements hereof that may be entered into that will substantially affect the interests of Agency's Consumers generally in the Agency's opinion shall as provided in Article 19 hereof be made available to all Consumers entering into this Agreement with the Agency on an equal basis.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

Approved as to Form and Sufficiency

By: [Signature]
Attorney for Agency

ANTELOPE VALLEY-EAST KERN WATER AGENCY
554 West Lancaster Boulevard
Lancaster, California 93534
(805) 942-8439

ATTEST:

BY: [Signature]
Secretary
Antelope Valley-East Kern Water Agency

By: [Signature]
President

DISTRICTS:

LOS ANGELES COUNTY WATERWORKS DISTRICTS NOS. 4 AND 34

(SEAL)

ERNEST E. DEBS

Chairman of the Board of Supervisors of the County of Los Angeles, State of California, as the governing body of said Districts.

Approved as to Form:

John D. Maharg, County Counsel

By: [Signature]
Deputy

JUL 17 1970
Date Executed

(SEAL)

Attest:

James S. Mize, Executive Officer-Clerk of the Board of Supervisors of the County of Los Angeles

By: FRANCES L. HUSBY
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

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JUL 14 1970

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[Signature]
JAMES S. MIZE
EXECUTIVE OFFICER

EXHIBIT B



Local and Community News For the western Antelope Valley

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NEW REPLY NEW THREAD

AVEK directors maintain neutral stand on water issues Threaded Mode | Linear Mode

Author Message

shirley Senior Member

Profile picture and stats for shirley: Posts: 327, Joined: Mar 2008, Reputation: 0

AVEK directors maintain neutral stand on water issues Post: #1

AVEK directors maintain neutral stand on water issues

Monday, September 29, 2008. Antelope Valley Press By ALISHA SEMCHUCK Valley Press Staff Writer

PALMDALE - Most entities tangled in a web of complaints and cross-complaints that comprise the Antelope Valley Groundwater Adjudication lawsuit took one side or the other in the water rights battle, but Antelope Valley-East Kern Water Agency officials stayed neutral.

So when AVEK staff and directors discussed their stance on the adjudication case at a board meeting Tuesday night, they concluded that their position was to take no position on the major concerns, such as the safe yield for pumping water from the ground; whether the Valley is one large basin or several smaller basins; and the issue of transferability, according to Russ Fuller, AVEK's general manager.

They talked about transferability "in the broad sense," Fuller said, "transferring water anywhere, under any circumstance."

Whether the geology of the Valley is described as one large groundwater basin or multiple sub-basins will be a decision left to the courts. The next date on the court calendar is set for the morning of Oct. 6 at the Stanley Mosk Courthouse in downtown Los Angeles, with Santa Clara Superior Court Judge Jack Komar presiding.

The issue of transferability has been a sore spot with landowners and the Valley's farming community, who fear that AVEK's plans to develop two water banks - one in Los Angeles County and the other on the Kern side of the county line - will involve pumping groundwater to sell outside of the region.

Their concerns stem from the physical characteristics of this Valley. Aside from the matter of one basin or many, the Antelope Valley is called a "closed basin" underground, just like a bowl with high sides that prevent water from flowing out or seeping in.

The AV Basin has been described in a state of overdraft for decades, beginning in the 1920s. Overdraft means that more water was pumped from the ground each year than could be replaced through rain and other natural sources.

In other words, many water experts contend that groundwater is in limited supply, and therefore should not be shared beyond the perimeters of this Valley.

AVEK had no wells back in Oct. 1999 when the court case surfaced after Diamond Farming Co. filed a suit against the city of Lancaster, the Antelope Valley Water Company, Palmdale Water District and a few other agencies. AVEK's only source of water for years as a State Water Project contractor came from the California Aqueduct. So as more and more agencies, landowners and farmers joined the fight, AVEK stayed on the sidelines.

But, AVEK became landowners after purchasing two separate sites to develop water banks - the first deal came about in spring 2007 when the agency bought acreage in Rosamond from longtime onion and carrot grower John Calandri, and the second instance occurred in late 2007 when the agency purchased more acreage, this time in Lancaster, land that had belonged to rancher Forrest Godde.

Both sites contain wells to pump groundwater.

AVEK became part of the legal snarl once that agency filed a cross-complaint against the Antelope Valley Ground Water Agreement Association, a group of farmers and landowners led by Valley alfalfa rancher Gene Nebeker. Also named in that cross-complaint was William Bolthouse Farms, Inc. and Grimmway Farms - both carrot growers.

Nebeker's group, the AV Ground Water Agreement Association, also filed a cross-complaint against AVEK. Which came first depends on who answers the question, kind of like the chicken and the egg puzzle.

"We filed a cross-complaint in response to the county and all other public water suppliers," Nebeker said, referring to the Ground Water Agreement Association. Los Angeles County had earlier filed a cross-complaint for groundwater rights against various entities.

Nebeker said he asked for AVEK officials to dismiss their cross-complaint.

"They dismissed all the farmers named in their cross-complaint except Bolthouse, Grimmway and myself," Nebeker said. "AVEK filed against me personally. I think a lot of the public water suppliers feel threatened by our group, and they feel threatened by me personally. We're trying to do what's right for the entire community. Most of the public agencies are not doing that. Evidence of that is simply the lawsuit."

When pointed out that Diamond Farming, and not the public agencies, initiated the lawsuit, Nebeker said, "that's true. But, Diamond initiated kind of a small lawsuit," he added. "They asked for enough water to be pumped on their own land."

During the AVEK meeting, board member Keith Dyas recommended dropping the cross-complaint against Nebeker. And, it was suggested that could happen if Nebeker dropped his complaint against AVEK.

When asked if that would be agreeable to Nebeker, he said, the cross-complaint against AVEK wasn't from him alone, but from the Ground Water Agreement Association. So, he didn't know if all members would agree.

However, Nebeker added, "We certainly would be happy to consider that."

Fuller said AVEK officials just want the adjudication resolved and that's why they didn't take sides on any of the issues.

"We would like to be part of the solution," Fuller said, "not try to drive how the adjudication goes."

During the board discussion, Fuller said, directors confirmed that agency attorney Bill Brunick "has not and will not state that AVEK has taken any position on any of the major concerns in the adjudication."

There's "some confusion we want to clear up. Brunick made some suggestions he thought potentially could bring all the sides together in the litigation," Fuller said. "His efforts were misinterpreted. People tried to jump to the conclusion that his attempt to solve the problem was AVEK's position. That was not the case."

"The parties involved are so far apart," Fuller said, "there is no middle ground is what we've learned, no meeting of the minds at this point. That's the way it appears."

asemchuck@avpress.com

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NEW THREAD

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EXHIBIT C

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

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

**ORDER AFTER HEARING ON
JANUARY 27, 2014**

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

**1. Motion by Cross-Complainant
Antelope Valley-East Kern Water
Agency ("AVEK") for Summary
Judgment/Summary Adjudication**

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.
RIC 353 840, RIC 344 436, RIC 344 668

Hearing Date(s): January 27, 2014
Time: 10:00 a.m.
Location: Old Dept 1A (Mosk)

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

Judge: Honorable Jack Komar, Ret.

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

1 AVEK seeks summary adjudication of its 4th Cause of Action and the Public Water
2 Suppliers' 6th Cause of Action of its Cross-Complaint.

3 AVEK contends it has absolute right to all return flows from water it imports and sells to
4 member cities and others, that the facts are not in dispute, and it is entitled to judgment as a
5 matter of law.

6 REQUESTS FOR JUDICIAL NOTICE:

7 AVEK requests that the court take judicial notice of 14 documents (Exhibit 1 through 14)
8 related to the trial court decisions in the City of San Fernando and Santa Maria cases. AVEK's
9 request for judicial notice of those exhibits is denied on the ground that these exhibits are
10 irrelevant. Trial exhibits are not useful in determining the law stated in an appellate opinion.
11 PWS request for judicial notice of DWR web site documents. The request is denied as lacking a
12 proper foundation.

13 EVIDENTIARY OBJECTIONS

14 The court rules as follows on the evidentiary objections of the Public Water Suppliers:
15 Evidentiary objections 1-15 to the Declaration of Dwayne Chisam are sustained on grounds of
16 lack of foundation and personal knowledge. Evidentiary objections to the Declaration of Dan
17 Flory are sustained as to objections 1-31 on grounds of lack of foundation and personal
18 knowledge; objections 25-26 are also sustained as legal conclusions. Evidentiary objections 1-8
19 to the Declaration of Kathleen Kunysz are sustained on grounds of irrelevance.

20 It is noted that the Public Water Suppliers did not comply with the law regarding a
21 separate statement of objections to evidence and further that evidence to which objections were
22 sustained did not affect the outcome of the ruling on the motions.

23 The Public Water Suppliers object to the late filing of the supplemental brief by AVEK.
24 The objection is overruled. Responding party had time to and did respond to the filing in a
25 timely fashion. Moreover, the late filed papers did not affect the outcome of the motion.

26 This motion is about the right to return flow of imported water when the net aquifer is
27 augmented and by return flows which are stored and which results from water that is used in the
28 environment whether agricultural, industrial, or municipal.

1 AVEK has a contractual right to receive and convey water to buyers who will use the
2 water from the Department of Water Resources (DPR). AVEK pays for the water and then sells
3 it to various private and public water producers and users. Palmdale, Lancaster, and others may
4 be customers who use the water by selling it at retail to their residents and recycling portions of it
5 so that it returns to the aquifer. That use by their customers results in a certain percentage of
6 return flows. For example, water for household use may be returned through recycling pools and
7 systems of a percentage of the water used by households. When that water is reintroduced into
8 the aquifer, it becomes part of the ground water in the basin and to the extent it is separate
9 because there is storage room, the municipality may be entitled to store that return flow. To the
10 extent that there is no storage, and it merges, there may still be value in drought or overdraft
11 conditions.

12 It is noted that there is insufficient evidence submitted that would permit granting
13 summary adjudication of an entire cause of action or defense and the motion could be denied on
14 that basis.

15 Water Code § 7075 provides that water that has been appropriated “may be turned into
16 the channel of another stream, mingled with its water, and then reclaimed; but in reclaiming it
17 the water already appropriated by another shall not be diminished.” Thus, “one who brings
18 water into a watershed may retain a prior right to it even after it is used.” City of Santa Maria v.
19 Adam (2012) 211 Cal.App.4th 266, 301 (citing City of Los Angeles v. City of Glendale (1943)
20 23 Cal. 2d 68, 76-77). To preserve its right to return flows, an importer must manifest its intent
21 to recapture or otherwise use return flows.

22 AVEK contends that it owns wells capable of recapturing return flows and that it also
23 spreads water with the express intent of recapturing the resulting return flows. [Undisputed Facts
24 #28-30, 47] Water that has been banked or spread is not in issue here, however. The assertion
25 that a portion of the imported water augments the aquifer by such use is not sufficient for the
26 court to award summary adjudication of an entire cause of action. Moreover, manifesting intent
27 to recapture return flows or preserve the right to do so is effective only where there is a right to
28 be preserved. Such manifestation does not, without more, create such a right.

1 AVEK purports to offer evidence that it has not transferred, abandoned or otherwise
2 relinquished any right to recapture return flows from the water it sells. [UF #33-34] As with
3 AVEK's purported manifestation of intent to recapture return flows, however, the fact that it may
4 not have transferred, abandoned or relinquished any such right is meaningless if no such right
5 exists to be relinquished. AVEK presents no competent evidence that it is entitled to use the
6 water it imports and sells. The buyers present evidence that they in fact use the water and create
7 return flows.

8 The return flows result from use of imported water; not just from importation. On the
9 undisputed evidence before the court, AVEK has failed to establish that, as a State Water Project
10 ("SWP") contractor with a contractual entitlement to receive and deliver SWP water to public
11 water suppliers and private property owners, it is an appropriator or importer of SWP water such
12 that it may retain a prior right to recapture return flows from the water delivered to and used by
13 others. AVEK has thus failed to establish it is entitled to summary adjudication of its return flow
14 claim as a matter of law. The entirety of case law supports that proposition that water users who
15 have imported the water into the basin and who have augmented the water in the aquifer
16 through use are entitled rights to the amount of water augmenting the aquifer. If on the trial of
17 this matter AVEK can establish some quantity of water augments the aquifer because of its use,
18 beyond what it may sell to other water producers/providers, it may establish such rights.

19 The Motion is **DENIED**.

20
21 Dated: 1-30-2014

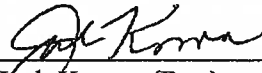

22 Hon. Jack Komar (Ret.)
23 Judge of the Superior Court
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EXHIBIT D

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

Coordination Proceeding
Special Title (Rule 1550 (b))

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

[Assigned to The Honorable Jack Komar, Judge
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

**AMENDED STIPULATION FOR ENTRY OF
JUDGMENT AND PHYSICAL SOLUTION**

1. The undersigned Parties (“Stipulating Parties”) stipulate and agree to the entry of the proposed Judgment and Physical Solution (“Judgment”), attached hereto as Exhibit 1 and incorporated herein by reference, as the Judgment in this Action. This Stipulation is expressly conditioned, as set forth in Paragraph 4 below, upon the approval and entry of the Judgment by the Court.

2. The following facts, considerations and objectives, among others, provide the basis for this Stipulation for Entry of Judgment (“Stipulation”):

- a. The Judgment is a determination of all rights to Produce and store Groundwater in the Basin.
- b. The Judgment resolves all disputes in this Action among the Stipulating Parties.

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- c. The Stipulating Parties represent a substantial part of the total Production within the Basin.
- d. There exists now and has existed for many years an Overdraft on the Groundwater supply within the Basin.
- e. It is apparent to the Stipulating Parties that protection of the rights of the Stipulating Parties and protection of the public interest within the Basin require the development and imposition of a Physical Solution.
- f. The Physical Solution contained in the Judgment is in furtherance of the mandate of the State Constitution and the water policy of the State of California.
- g. Entry of the Judgment will avoid the time, expense, and uncertainty associated with continued litigation.
- h. The Judgment will create incentives, predictability and long-term certainty necessary to promote beneficial use of the Basin's Groundwater resources to the fullest extent practicable and for the greatest public benefit.
- i. The Judgment will create opportunities for state and local funding as may be available to promote greater development and beneficial use of the Basin's Groundwater resources.
- j. The Judgment will aid in securing a reliable and cost-effective water supply to serve the Stipulating Parties' constituencies and communities.

3. Defined terms in the Judgment shall have the same meaning in this Stipulation.

4. The provisions of the Judgment are related, dependent and not severable. Each and every term of the Judgment is material to the Stipulating Parties' agreement. If the Court does not approve the Judgment as presented, or if an appellate court overturns or remands the Judgment entered by the trial court, then this Stipulation is *void ab initio* with the exception of Paragraph 6, which shall survive.

5. The Stipulating Parties will cooperate in good faith and take any and all necessary and appropriate actions to support the Judgment until such time as this Judgment is entered by the Court, and appeals, if any, are final, including:

- a. Producing evidentiary testimony and documentation in support thereof;

1 b. Defending the Judgment against Non-Stipulating Parties, including, as
2 appropriate, providing evidence of the Stipulating Parties' prescriptive and self-help
3 rights.

4 6. Each Stipulating Party has agreed to this Stipulation without admitting any factual or
5 legal provisions of this Stipulation or the proposed Judgment. In the event that this Stipulation is void,
6 or if trial is necessary against any Non-Stipulating Party to determine issues provided for in the
7 Judgment, the resulting factual or legal determinations shall not bind any Stipulating Party or become
8 law of the case.

9 7. As consideration and as a material term of this Stipulation, the Stipulating Parties hereby
10 declare that they are not aware of any additional Person pumping Groundwater, or landowner owning
11 property in the Basin, that is not either named as a Party in the Action, included in the Non-Pumper
12 Class or Small Pumper Class, or a Defaulting Party.

13 8. The Stipulating Parties, in order to protect the Basin from over-pumping, have stipulated
14 and agreed to the terms of the Judgment and have agreed to substantial cuts to water allocation
15 compared with what they claim under California law, and in the case of the United States, also under
16 federal law. In return, the Stipulating Parties have agreed to provisions in the Physical Solution which
17 are only available by stipulation. These provisions include, without limitation, the right to transfer
18 Production Rights and the right to Carry Over rights from year to year, as set forth in the Judgment.
19 Non-Stipulating Parties, or any other Parties contesting the Judgment, shall not be entitled to the benefit
20 of these provisions, and shall have only the rights to which they may be entitled by law according to
21 proof at trial.

22 9. The Stipulating Parties agree to request the Court to order the representatives of the Non-
23 Pumper Class and the Small Pumper Class to identify any Persons which have opted out of the Classes
24 and provide the identities of any opt-outs to District No. 40 within twenty (20) days of the Court's order
25 approving this Stipulation. District No. 40 will assure that all Persons opting out of the Classes have
26 been named, served, and defaulted or otherwise adjudicated, and will provide a report to the Court and
27 the Stipulating Parties.

28

1 10. As consideration for this Stipulation between the Stipulating Parties, District No. 40
2 specifically agrees to the following:

3 a. District No. 40 agrees to identify all landowners in the Basin, to confirm that each
4 landowner was served, and to confirm that each landowner is a part of the Non-Pumper
5 Class, the Small Pumper Class, the Stipulating Parties, a Defaulting Party, or a Party that
6 has appeared, as the case may be. District No. 40 will file a report containing this
7 information with the Court and with all Parties.

8 b. District No. 40 agrees to take all available steps and procedures to prevent any
9 Person that has not appeared in this Action from raising claims or otherwise contesting
10 the Judgment.

11 11. The Public Water Suppliers and no other Parties to this Stipulation shall pay all
12 reasonable Small Pumper Class attorneys' fees and costs through the date of the final Judgment in the
13 Action, in an amount either pursuant to an agreement reached between the Public Water Suppliers and
14 the Small Pumper Class or as determined by the Court. The Public Water Suppliers reserve the right to
15 seek contribution for reasonable Small Pumper Class attorneys' fees and costs through the date of the
16 final Judgment in the Action from each other and Non-Stipulating Parties. Any motion or petition to the
17 Court by the Small Pumper Class for the payment of attorneys' fees in the Action shall be asserted by the
18 Small Pumper Class solely as against the Public Water Suppliers (excluding Palmdale Water District,
19 Rosamond Community Services District, City of Lancaster, Phelan Piñon Hills Community Services
20 District, Boron Community Services District, and West Valley County Water District) and not against
21 any other Party.

22 12. In consideration for the agreement to pay Small Pumper Class attorneys' fees and costs as
23 provided in Paragraph 11 above, the other Stipulating Parties agree that during the Rampdown
24 established in the Judgment, a drought water management program ("Drought Program") shall be
25 implemented as provided in Paragraphs 8.3, 8.4, 9.2 and 9.3 of the Judgment.

26 13. The Stipulating Parties do not object to the award of an incentive to Richard Wood, the
27 Small Pumper Class representative, in recognition of his service as Class representative. The Judgment
28 shall provide that Richard Wood has a Production Right of up to five (5) acre-feet per year for

1 reasonable and beneficial use on his parcel, free of a Replacement Water Assessment. This Production
2 Right shall not be transferable and is otherwise subject to the provisions of the Judgment. If the Court
3 approves this award of an additional two (2) acre-feet of water, such award shall be in lieu of any
4 monetary incentive payment.

5 14. The Stipulating Parties agree that an orderly procedure for obtaining the Court's approval
6 of the Judgment is a material term to this Stipulation. The Parties agree that the Case Management
7 Order attached hereto as Appendix 1 is an appropriate process for obtaining such approval.

8 15. The Stipulating Parties agree that this Stipulation shall bind and benefit them, and will be
9 binding upon and benefit all their respective heirs, successors-in-interest and assigns.

10 16. Each signatory to this Stipulation represents and affirms that he or she is legally
11 authorized to bind the Stipulating Party on behalf of whom he or she is signing. The Stipulating Parties
12 understand that this Stipulation and the Judgment are not effective as to the Small Pumper Class until
13 the Court grants approval of a settlement agreement in *Wood v. Los Angeles County Waterworks District*
14 *No. 40 et al.*

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1 LOS ANGELES COUNTY WATERWORKS
2 DISTRICT NO. 40

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By: *Gail Farber*
Gail Farber
Director of Public Works

Date: 2/24/15

Approved as to form by:
Mark J. Saladino, County Counsel

By: *Warren R. Wellen*
Warren R. Wellen
Principal Deputy County Counsel

Approved as to form by: Eric L. Garner

By: *Eric L. Garner* *Jeffrey V. Ann and Eric L. Garner*
~~Eric L. Garner~~
Best Best & Krieger

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ANTELOPE VALLEY-EAST KERN WATER AGENCY

BY: 
FRANK S. DONATO, Director, Div. 3

BRUNICK, McELHANEY & KENNEDY

Date: 4/13/2015


BY: 
WILLIAM J. BRUNICK
Attorneys for Cross-Complainant,
ANTELOPE VALLEY-EAST KERN WATER AGENCY

EXHIBIT E

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

Coordination Proceeding Special Title
(Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Judicial Council Coordination Proceeding No.
4408

Santa Clara Case No.: 1-05-CV-049053

Judge: The Honorable Jack Komar, Dept. 17

**[PROPOSED] JUDGMENT AND PHYSICAL
SOLUTION**

1 shall be subject to all provisions of this Judgment, including reduction in Production necessary to
2 implement the Physical Solution and the requirements to pay assessments, but shall not be
3 entitled to benefits provided by Stipulation, including but not limited to Carry Over pursuant to
4 Paragraph 15 and Transfers pursuant to Paragraph 16. If the total Production by Non-Stipulating
5 Parties is less than seven percent (7%) of the Native Safe Yield, such Production will be
6 addressed when Native Safe Yield is reviewed pursuant to Paragraph 18.5.9. If the total
7 Production by Non-Stipulating Parties is greater than seven percent (7%) of the Native Safe
8 Yield, the Watermaster shall determine whether Production by Non-Stipulating Parties would
9 cause Material Injury, in which case the Watermaster shall take action to mitigate the Material
10 Injury, including, but not limited to, imposing a Balance Assessment, provided however, that the
11 Watermaster shall not recommend any changes to the allocations under Exhibits 3 and 4 prior to
12 the redetermination of Native Safe Yield pursuant to Paragraph 18.5.9. In all cases, however,
13 whenever the Watermaster re-determines the Native Safe Yield pursuant to Paragraph 18.5.9, the
14 Watermaster shall take action to prevent Native Safe Yield Production from exceeding the Native
15 Safe Yield on a long-term basis.

16 **5.2 Rights to Imported Water Return Flows.**

17 **5.2.1 Rights to Imported Water Return Flows.** Return Flows from
18 Imported Water used within the Basin which net augment the Basin Groundwater supply are not a
19 part of the Native Safe Yield. Subject to review pursuant to Paragraph 18.5.11, Imported Water
20 Return Flows from Agricultural Imported Water use are 34% and Imported Water Return Flows
21 from Municipal and Industrial Imported Water use are 39% of the amount of Imported Water
22 used.

23 **5.2.2 Water Imported Through AVEK.** The right to Produce Imported
24 Water Return Flows from water imported through AVEK belongs exclusively to the Parties
25 identified on Exhibit 8, attached hereto, and incorporated herein by reference. Each Party shown
26 on Exhibit 8 shall have a right to Produce an amount of Imported Water Return Flows in any
27 Year equal to the applicable percentage multiplied by the average amount of Imported Water used
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1 by that Party within the Basin in the preceding five Year period (not including Imported Stored
2 Water in the Basin). Any Party that uses Imported Water on lands outside the Basin but within the
3 watershed of the Basin shall be entitled to Produce Imported Water Return Flows to the extent
4 such Party establishes to the satisfaction of the Watermaster the amount that its Imported Water
5 Return Flows augment the Basin Groundwater supply. This right shall be in addition to that
6 Party's Overlying or Non-Overlying Production Right. Production of Imported Water Return
7 Flows is not subject to the Replacement Water Assessment. All Imported Water Return Flows
8 from water imported through AVEK and not allocated to Parties identified in Exhibit 8 belong
9 exclusively to AVEK, unless otherwise agreed by AVEK. Notwithstanding the foregoing, Boron
10 Community Services District shall have the right to Produce Imported Water Return Flows, up to
11 78 acre-feet annually, based on the applicable percentage multiplied by the average amount of
12 Imported Water used by Boron Community Services District outside the Basin, but within its
13 service area in the preceding five Year period (not including Imported Stored Water in the Basin)
14 without having to establish that the Imported Water Return Flows augment the Basin
15 Groundwater supply.

16 **5.2.3 Water Not Imported Through AVEK.** After entry of this
17 Judgment, a Party other than AVEK that brings Imported Water into the Basin from a source
18 other than AVEK shall notify the Watermaster each Year quantifying the amount and uses of the
19 Imported Water in the prior Year. The Party bringing such Imported Water into the Basin shall
20 have a right to Produce an amount of Imported Water Return Flows in any Year equal to the
21 applicable percentage set forth above multiplied by the average annual amount of Imported Water
22 used by that Party within the Basin in the preceding five Year period (not including Imported
23 Stored Water in the Basin).

24 **5.3 Rights to Recycled Water.** The owner of a waste water treatment plant
25 operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive
26 right to the Recycled Water as against anyone who has supplied the water discharged into the
27 waste water collection and treatment system. At the time of this Judgment those Parties that
28

Rights to Produce Imported Water Return Flows

A.V. MATERIALS, INC.
ANTELOPE VALLEY COUNTRY CLUB
ANTELOPE VALLEY EAST-KERN WATER AGENCY
ANTELOPE VALLEY WATER COMPANY
ANTELOPE VALLEY WATER STORAGE, LLC
BORON COMMUNITY SERVICES DISTRICT
CALIFORNIA DEPARTMENT OF PARKS
CALIFORNIA WATER SERVICE COMPANY
COPA DE ORO LAND COMPANY, A CALIFORNIA GENERAL PARTNERSHIP
CRYSTAL ORGANIC FARMS, LLC
DESERT LAKE COMMUNITY SERVICES DISTRICT
DIAMOND FARMING COMPANY
EDGEMONT ACRES MWC
EL DORADO MUTUAL WATER COMPANY
EYHERABIDE, RAY/EYHERABIDE SHEEP CO.
GEORGE LANE, AS TRUSTEE OF THE GEORGE AND CHARLENE LANE
FAMILY TRUST, DATED 12/19/2007
GOODE, FORREST G. 1998 TRUST
GRANITE CONSTRUCTION COMPANY
GRIMMWAY ENTERPRISES, INC.
H & N DEVELOPMENT CO. WEST
HARTER, SCOTT
LANDALE MUTUAL WATER CO.
LITTLEROCK CREEK IRRIGATION DISTRICT
LITTLEROCK SAND AND GRAVEL, INC.
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40
PALMDALE WATER DISTRICT
PALM RANCH IRRIGATION DISTRICT
QUARTZ HILL WATER DISTRICT
ROSAMOND COMMUNITY SERVICES DISTRICT

SAINT ANDREW'S ABBEY, INC.
SHADOW ACRES MUTUAL WATER COMPANY.
SUNNYSIDE FARMS MUTUAL WATER COMPANY, INC.
TEJON RANCHCORP/TEJON RANCH CO.
U.S. BORAX & CHEMICAL CO.
WARNACK, A.C. AS TRUSTEE OF THE A.C. WARNACK TRUST
WEST SIDE PARK MUTUAL WATER CO.
WHITE FENCE FARMS MUTUAL WATER CO.

EXHIBIT F



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ATTORNEYS AT LAW

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Michael T. Riddell
(951) 826-8210
michael.riddell@bbklaw.com
File No. 15402.00000

January 22, 2016

Keith Dyas
President, Board of Directors
Antelope Valley-East Kern Water Agency
6500 W. Avenue N
Palmdale, CA 92351

Dear Keith:

Thank you for your telephone call (and Dan's) to let me know that the Board has decided to make a change. When I interviewed for the position in 1987, I promised the Board that I would be "the guy" for as long as the Board wanted me to be the guy, and that I would assist with transition if the Board ever decided to make a change. I have been eager to keep that promise, and thankful for the opportunity to work with the Agency over the last three decades. In that same spirit, I have now adjusted the records here in the firm to reflect that we have been relieved as General Counsel for the Agency.

If I can be of any assistance by delivering copies of any files or documents in our possession, or in lending my memory of past events or transactions, or in offering my own thoughts about pending or future decisions, I will be happy to do that or anything else that may be of help to the Agency. I greatly value the associations that have been developed over the years, and would be happy to see or hear from anyone at the Agency, any time.

Thanks. I look forward to our next opportunity to interact.

Sincerely,

Michael T. Riddell
of BEST BEST & KRIEGER LLP

MTR/mb

cc: Dan Flory

15402.00000\24404338.1

EXHIBIT G

BANKS & WATSON
ATTORNEYS

901 F STREET, SUITE 200 · SACRAMENTO, CALIFORNIA 95814-0733
TELEPHONE 916 325.1000 · FAX 916 325.1004
WWW.BANKSFIRM.COM

January 27, 2016

JAMES J. BANKS

VIA ELECTRONIC & FIRST CLASS MAIL

Mr. Michael T. Riddell
(Michael.Riddell@bbklaw.com)
Best Best & Krieger
3390 University Avenue
Riverside, CA 92501

Re: Antelope Valley East - Kern Water Agency

Dear Mr. Riddell:

We write on behalf of Antelope Valley East – Kern Water Agency (“AVEK”) to inform you and Best Best & Krieger (“BB&K”) that BB&K’s concurrent representation of: (1) AVEK as AVEK’s general counsel for many years; and (2) the Los Angeles County Water Works District No. 40 (“District 40”) in the coordinated proceeding entitled *Antelope Valley Groundwater Cases*, Santa Clara Superior Court Case No. 1-05-CV-049053 (“Action”), constitutes clear breaches of your duties of loyalty and of confidentiality to AVEK. Because BB&K’s dual representation of AVEK and District 40 constituted a direct and simultaneous conflict of interest, BB&K should immediately recuse itself from its representation of District 40 in the Action. BB&K undertook this conflicting representation without obtaining the informed written consent of AVEK as required by the Rules of Professional Conduct and applicable law. For the reasons set forth *infra*, and pursuant to the Rules of Professional Conduct and other applicable law, AVEK insists that BB&K withdraw as counsel to District No. 40 in the Action.

As part of its representation of District 40, BB&K argued various positions directly contrary to AVEK’s interests, both as to AVEK’s interests as a party to the Action and to AVEK’s interests as a client with an ongoing, long-term attorney-client relationship with BB&K. By choosing to represent District 40 in the Action, BB&K violated its duty of loyalty to AVEK.

As one instance where BB&K has advocated for its client District 40 in a manner adverse to its client AVEK’s interests, AVEK and District 40 have made exclusive claims to ownership of “return flows” resulting from state water project (“SWP”) water that AVEK imports into the Antelope Valley groundwater basin. These arguments regarding

Mr. Michael T. Riddell
January 27, 2016
Page 2

the “return flows” issue demonstrate a direct, concurrent conflict between the interests of AVEK and those of District 40:

- In the Sixth Cause of Action of its cross-complaint filed in the Action, dated January 18, 2006, District 40, as represented by BB&K, asserted that it and other similarly situated customers of AVEK had the exclusive right to use the return flows from the SWP water that AVEK sells and delivers to them, to the exclusion of AVEK. (See Cross-Complaint of Municipal Purveyors for Declaratory Relief and Adjudication of Water Rights dated, January 18, 2006, at ¶¶ 26, 69 and 71.)
- In its 2006 cross-complaint in the Action, AVEK asserted that AVEK alone is entitled to recapture and use the return flows resulting from the SWP water it imports into the area of adjudication and then sells to its customers. (See Cross-Complaint of AVEK for Declaratory Relief, dated August 30, 2006, at ¶¶ 35-40.) This basic dispute between AVEK and District 40 as to return flows has been extant in the Action since at least 2006.
- In both 2013 and 2015, the numerous parties to the Action litigated AVEK’s claim that it was entitled to the exclusive right to use the pertinent return flows. One party contesting AVEK’s claims was District 40, represented by BB&K. BB&K opposed AVEK’s Motion for Summary Adjudication principally arguing that AVEK does not have groundwater rights in the basin or the right to return flows. (See Opposition to AVEK’s Motion for Summary Adjudication, dated December 27, 2013, at 6:25-8:3.)
- AVEK made the same argument in its trial brief filed in September 2015, prefatory to the Phase Six trial in the captioned litigation. District 40 filed its own trial brief in which it made arguments contrary to AVEK’s position regarding its entitlement to return flows. (See Public Water Suppliers’ Phase Six Trial Briefs, dated September 22, 2015, 3:4-8:6.)
- Some of the many parties to the Action entered into a compromise and proposed stipulated judgment which allocates return flow rights among all of the parties, including AVEK and District 40. Certain non-stipulating parties may appeal that judgment. There likely will be further proceedings to effectuate the settlement.

BB&K’s representation of two distinct parties who both sought the same “return flows” rights to the same water constitutes an actual, simultaneous conflict of interest. As the parties currently face continued litigation and likely appeals in the Action, these conflicts will continue in the future. Because BB&K has concurrently represented District 40 and advocated against its concurrent client AVEK’s interests, BB&K has breached its

duty of loyalty to AVEK. It is subject to mandatory disqualification. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 284-286.)

A second point of direct conflict between AVEK and District 40 in the Action – while both were concurrently represented by BB&K – involved an effort by BB&K and District 40 to shift its liability for any attorneys’ fees award imposed against District 40 (and other similarly situated parties) to other parties to the Action against whom the attorneys’ fees sanction was not sought, including AVEK. In response to this argument by BB&K and District 40, AVEK was required to file an opposition to BB&K’s motion for equitable apportionment:

- In its Brief for Equitable Apportionment of Willis Class Fee Award dated March 3, 2011, BB&K (on behalf of District 40) argued that any attorneys’ fees award imposed against District 40 should be redistributed to other parties, including AVEK: “the Court should apportion fees to each party [which would include AVEK] that pumps from the Antelope Valley Groundwater Basin (“Basin”) based on a pro rata share of their pumping.” (Los Angeles County Waterworks District No. 40’s Brief Re Equitable Apportionment of Willis Class Fee Award, dated March 9, 2011, at 1:7-9.)
- AVEK, in its opposition to this attempt by BB&K and District 40 to force AVEK to pay some part of an attorneys’ fees award imposed against District 40, objected that “based upon Waterworks 40’s request, AVEK will be exposed to thousands of dollars in attorney’s fees based on its current pumping.” (Antelope Valley-East Kern Water Agency’s Opposition to Los Angeles County Waterworks District No. 40’s Brief Re Equitable Apportionment of Willis Class Fee Award, dated March 18, 2011, at 3:1-2) In direct opposition to District 40’s position, AVEK argued that “the Court should deny Waterworks 40’s request as to AVEK’s requirement to pay any portion of the *Willis Class* attorney fees.” (*Id.* at 3:19-20.)
- In its Order on this attorneys’ fees award issue, the Court awarded \$1,839,494 in attorneys’ fees to the Willis Class and against District 40 and other similarly situated public water purveyors. (Order After Hearing on Motion by Plaintiff Rebecca Lee Willis and the Class for Attorneys’ Fees, Reimbursement of Expenses and Class Representative Incentive Award, dated May 4, 2011, at 11:21-12:2.) The Court denied BB&K and District 40’s equitable apportionment motion, stating that imposing such a sanction against parties other than those named by the Willis Class (including AVEK) “would be going beyond the scope of the requested relief.” (*Id.* at 9: 16-17.)

Again, with respect to this separate issue regarding potential redistribution of an attorneys' fees award, BB&K has asserted positions on behalf of its client District 40 that directly conflict with the interests of its concurrent client, AVEK. As both of these examples demonstrate, by representing District 40 in the Action while it represented AVEK as general counsel, BB&K had taken on the simultaneous representation of two parties who have a direct, active and indisputable conflict of interest.¹

As a result of such misconduct, BB&K is in breach of its obligations under Rules of Professional Conduct, rule 3-310(C). This rule provides:

- (C) A member shall not, without the informed written consent of each client:
- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
 - (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

See also ABA Model Rule 1.7 (“(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client . . .”).

BB&K's simultaneous representation of AVEK and District 40 represents a clear violation of rule 3-310(C) and applicable California law: despite the prohibition against representing two clients with direct conflicts of interest, BB&K has undertaken to represent AVEK as its general counsel and at the same time represent District 40 as its litigation counsel in the Action, an entity whose interests in the Action run clearly and concurrently adverse to AVEK. (See rule 3-310(C); see also *Mindscape, Inc. v. Media Depot, Inc.* (ND CA 1997) 973 F.Supp. 1130, 1132 [ordering disqualification of attorney who simultaneously represented clients with adverse interests].) In fact, BB&K's concurrent

¹ Your September 5, 2015 email to Mr. Flory underscores the inadequacy of BB&K's response to a problem wholly of its own making. You argue AVEK purportedly created its own conflict because it allegedly reversed its position regarding the return rights issue. It was BB&K's obligation to seek AVEK's informed, written consent under Rules of Professional Conduct, rule 3-310(C) because that representation at a minimum presented at least a potential conflict at the time BB&K elected to commence its representation of District 40. BB&K admittedly did not do so. BB&K cannot foist its failure to comply with rule 3-310 on AVEK.

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representation of AVEK and District 40 constitutes the “paradigmatic instance of such prohibited dual representation—one roundly condemned by courts and commentators alike—[. . .] where the attorney represents clients whose interests are *directly adverse in the same litigation.*” (*Flatt v. Superior Court, supra*, 9 Cal.4th at 284 n.3 (original emphasis).) BB&K’s joint representation of two clients with actively conflicting and mutually exclusive interests in the same matter constitutes a violation of BB&K’s duty of absolute loyalty to AVEK, as well as of its concomitant duty to preserve AVEK’s secrets. (*Id.* at 284-286; *M’Guinness v. Johnson* (2015) 243 Cal.App.4th. 602, 613-615 [discussing the duties of loyalty and confidentiality]; *Truck Ins. Exchange v. Fireman’s Fund Ins. Co.* (1992) 6 Cal.App.4th 1050, 1056-1057 [stating that “if this duty of undivided loyalty is violated, public confidence in the legal profession and the judicial process is undermined.” (omitting quotations)].)

Moreover, because BB&K did not obtain AVEK’s informed written consent, or refer AVEK to independent counsel to evaluate whether AVEK should consent to BB&K’s representation of District 40, it is subject to per se or automatic disqualification. (*Flatt v. Superior Court, supra*, 9 Cal.4th at 284 [“in all but a few instances, the rule of disqualification in simultaneous representation cases is a *per se* or ‘automatic’ one.”]; *M’Guinness v. Johnson, supra*, 243 Cal.App.4th. at 614 [“This per se rule is appropriate” in instances of concurrent representation”].) Since BB&K’s simultaneous representation falls squarely within the circumstances that trigger the rule of per se disqualification, no remedy short of its voluntary withdrawal or involuntary disqualification is sufficient to protect AVEK’s interests. (*Flatt v. Superior Court, supra*, 9 Cal.4th at 284 [discussing the per se rule]; *Concat LP v. Unilever, PLC* (ND CA 2004) 350 F.Supp.2d 796, 822 [“Although an ethical wall may, in certain limited circumstances, prevent a breach of confidentiality, it cannot, in the absence of an informed waiver, cure a law firm’s breach of its duty of loyalty to its client.”].) All attorneys at BB&K should withdraw from any further representation of District 40 in the Action. (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 847-848 [normally an attorney’s conflict is imputed to the entire law firm as a whole]; see also ABA Model Rule 1.10(a) [“While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so.]; see also Rest.3d Law Governing Lawyers, § 123 - Imputation of Conflict of Interest to Affiliated Lawyer.)

Finally, although some parties to this Action have stipulated to settlement of certain claims, that settlement does not resolve the problem of BB&K’s simultaneous representation, nor does it mitigate the application of the mandatory disqualification rule. (*State Farm Mutual Auto Insurance Co. v. Federal Insurance Co.* (1999) 72 Cal.App.4th 1422, 1432-1433 [“although this fortuitous settlement acted to sever [counsel’s] relationship with its preexisting client, it did not remove the taint of a three-month concurrent representation.”] There also remains the possibility of appeal of various issues raised to date, including the right to return flows from imported SWP water. Consequently,

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the mandatory disqualification rule applies.) For all of these reasons, BB&K should withdraw from the Action immediately.

We would request that you respond to this letter in writing by no later than February 14, 2016, confirming that BB&K will withdraw as counsel for District 40 in the Action by no later than February 21, 2016. If BB&K chooses not to comply with this request, AVEK reserves its right to seek any and all legal remedies for BB&K's breach of its ethical and legal obligations toward AVEK, including without limitation, filing a motion to disqualify BB&K from representing any party in the Action.

Mr. Riddell, your anticipated courtesy and cooperation are appreciated.

Very truly yours,



JAMES J. BANKS

JJB:jdy

cc: (via electronic mail only)
Mr. Leland P. McElhaney

1 William J. Brunick, Esq. [SB No. 46289]
Leland P. McElhaney, Esq. [SB No. 39257]
2 **BRUNICK, McELHANEY & KENNEDY PLC**
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3 San Bernardino, California 92408-3303

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lmcelhaney@bmklawplc.com

8 Attorneys for Cross-Complainant,
9 ANTELOPE VALLEY-EAST KERN WATER AGENCY

*Exempt from filing fee pursuant to
Gov't. Code Section 6103*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12
13
14 Coordination Proceeding
Special Title (Rule 1550(b))

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

17 **Included Actions:**

18 Los Angeles County Waterworks District
19 No. 40 vs. Diamond Farming Company, a
corporation, Superior Court of California,
20 County of Los Angeles, Case No.
BC325201;

21 Los Angeles County Waterworks District
22 No. 40 vs. Diamond Farming Company, a
corporation., Superior Court of California,
23 County of Kern, Case No. S-1500-CV-254-
348;

24 Wm. Bolthouse Farms, Inc. vs. City of
25 Lancaster, Diamond Farming Company, a
corporation, vs. City of Lancaster, Diamond
26 Farming Company, a corporation vs.
Palmdale Water District, Superior Court of
27 California, County of Riverside, Case Nos.
RIC 353840, RIC 344436, RIC 344668.

Judicial Council Coordination Proceeding
No. 4408

Santa Clara Case No.
1-05-CV-049053
The Honorable Jack Komar, Dept.17

**JOINDER OF ANTELOPE VALLEY-
EAST KERN WATER AGENCY IN
RICHARD WOOD'S AND LOS
ANGELES COUNTY WATERWORKS
DISTRICT NO. 40's OPPOSITION TO
MOTION TO SET ASIDE JUDGMENT
AGAINST MARK RITTER,
SUCCESSOR TRUSTEE OF THE
RITTER FAMILY TRUST AND MARK
S. RITTER AND DANA E. RITTER**

Date: February 10, 2016
Time: 10:00 a.m.
Dept.: Court Approved Telephonic Hearing

28 **JOINDER OF ANTELOPE VALLEY-EAST KERN WATER AGENCY IN RICHARD WOOD'S AND LOS
ANGELES COUNTY WATERWORKS' OPPOSITION TO MOTION TO SET ASIDE JUDGMENT AGAINST
MARK RITTER, SUCCESSOR TRUSTEE OF THE RITTER FAMILY TRUST AND MARK S. RITTER
AND DANA E. RITTER**

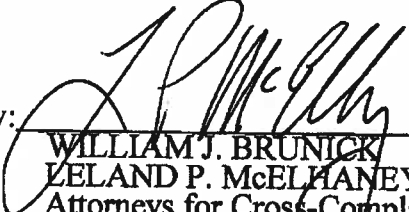
1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 Please take notice that the Antelope Valley-East Kern Water Agency hereby joins in
3 Richard Wood's and Los Angeles County Waterworks District No. 40's Opposition to Motion
4 to Set Aside Judgment against Mark Ritter, Successor Trustee of the Ritter Family Trust and
5 Mark S. Ritter and Dana E. Ritter filed February 1, 2016.

6 Dated: February 8, 2016

BRUNICK, McELHANEY & KENNEDY

7
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9 By:


WILLIAM J. BRUNICK
LELAND P. McELHANEY
Attorneys for Cross-Complainant,
ANTELOPE VALLEY-EAST KERN
WATER AGENCY

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JOINDER OF ANTELOPE VALLEY-EAST KERN WATER AGENCY IN RICHARD WOOD'S AND LOS ANGELES COUNTY WATERWORKS' OPPOSITION TO MOTION TO SET ASIDE JUDGMENT AGAINST MARK RITTER, SUCCESSOR TRUSTEE OF THE RITTER FAMILY TRUST AND MARK S. RITTER AND DANA E. RITTER

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PROOF OF SERVICE

**STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}**

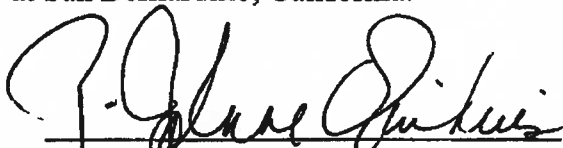
I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 1839 Commercenter West, San Bernardino, California 92408-3303.

On February 9, 2016, I served the foregoing document(s) described as: **JOINDER OF ANTELOPE VALLEY-EAST KERN WATER AGENCY IN RICHARD WOOD'S AND LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40's OPPOSITION TO MOTION TO SET ASIDE JUDGMENT AGAINST MARK RITTER, SUCCESSOR TRUSTEE OF THE RITTER FAMILY TRUST AND MARK S. RITTER AND DANA E. RITTER** in the following manner:

■ **BY ELECTRONIC SERVICE AS FOLLOWS** by posting the document(s) listed above to the Santa Clara website in the action of the *Antelope Valley Groundwater Litigation*, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No. 1-05-CV-049053.

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

Executed on February 9, 2016, at San Bernardino, California.


P. Jo Anne Quihuis

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

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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, 18101 Von Karman Avenue, Suite 1000, Irvine, California, 92612. On November 22, 2016, I served the within document(s):

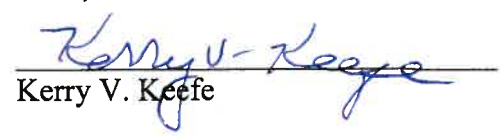
DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF OPPOSITION TO ANTELOPE VALLEY EAST – KERN WATER AGENCY’S MOTION TO DISQUALIFY BEST BEST & KRIEGER AS LEGAL COUNSEL IN ANTELOPE VALLEY GROUNDWATER CASES

- 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 November 22, 2016, at Irvine, California.


Kerry V. Keefe