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9 **Attorneys for:** B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri
10 2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence
11 A. Godde, Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen
12 Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family
13 Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Inc., Edgar C. Ritter Paula
14 E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, Hines Family Trust , Malloy
15 Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as
16 Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas
17 Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Dennis L. & Marjorie E.
18 Groven Trust, Scott S. & Kay B. Harter, Habod Javadi, Eugène V., Beverly A., & Paul S. Kindig,
19 Paul S. & Sharon R. Kindig, Jose Maria Maritorena & Marie Pierre Maritorena, Trustees of the
20 Maritorena Living Trust, Richard H. Miner, Jeffrey L. & Nancee J. Siebert, Barry S. Munz, Terry A.
21 Munz and Kathleen M. Munz, Beverly Tobias, Leo L. Simi, White Fence Farms Mutual Water Co.
22 No. 3, William R. Barnes & Eldora M. Barnes Family Trust of 1989, **collectively known as the**
23 **Antelope Valley Ground Water Agreement Association ("AGWA")**

24
25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26
27 **FOR THE COUNTY OF SANTA CLARA**

28 **ANTELOPE VALLEY**
29 **GROUND WATERS CASES**

) Judicial Council Coordination Proceeding
) No. 4408

30 Included Actions:

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

31 Los Angeles County Waterworks District No.
32 40 v. Diamond Farming Co. Superior Court of
33 California County of Los Angeles, Case No. BC
34 325 201 Los Angeles County Waterworks
35 District No. 40 v. Diamond Farming Co.
36 Superior Court of California, County of Kern,
37 Case No. S-1500-CV-254-348Wm. Bolthouse
38 Farms, Inc. v. City of Lancaster Diamond
39 Farming Co. v. City of Lancaster Diamond
40 Farming Co. v. Palmdale Water Dist. Superior
41 Court of California, County of Riverside,
42 consolidated actions, Case No. RIC 353 840,
43 RIC 344 436, RIC 344 668

) **PARTIAL JOINDER AND PARTIAL**
) **OPPOSITION TO AVEK OPPOSITION**

) **Date: August 20, 2007**
) **Time: 9:00 A.M.**
) **Dept: 1**

1 On August 6, 2007, the Antelope Valley East Kern Water Agency (“AVEK”) filed its
2 *Opposition to Motion for Appointment of Bill Dendy as Settlement Conference Referee.*

3 AGWA supports the relevant substance of the AVEK pleading that Mr. Bill Dendy should
4 retain his status as a settlement facilitator and should not be appointed by the Court into a more
5 formal role. AGWA also agrees with the general tenor of AVEK position that there is a serious
6 urgency to complete the adjudication and that the only realistic method of doing so is through a
7 negotiated settlement. AGWA notes that the adjudication to date has been dominated by litigation
8 rather than settlement, to the great and unnecessary expense of many individual families and to the
9 public as a whole.
10

11 However, AGWA objects to the improper submission of hearsay evidence by AVEK that is
12 irrelevant to the substance of the pleading. These submissions have no relevance to the question of
13 whether Mr. Dendy should be appointed as a settlement conference referee, and rather deal with
14 subjects that will be addressed in the trial of the next phase of the case, should such a phase be
15 necessary. This hearsay will be inadmissible if offered in the context of the phase two trial.
16

17 Of particular note, AVEK has submitted several excerpts from a *draft* report of a group that
18 is purporting to develop an Integrated Regional Water Management Plan (“IRWMP”) for the
19 Antelope Valley. AVEK alleges glowingly that this report is being drafted with the, “active input of
20 a variety of agricultural and industrial water users.” (AVEK Objection 4:2.) What this allegation
21 fails to mention is that the “active input” that the landowners are providing is a consistent set of
22 complaints that the IRWMP process is dominated exclusively by the purveyors and the report under
23 development appears to be nothing more than propaganda that the purveyors will later attempt to
24 submit to the Court as “evidence” to support their positions. See, for example, correspondence from
25 Nebeker Ranch, Inc. to the Regional Water Management Group, dated July 30, 2007, a true and
26 correct copy of which is attached to this pleading as Exhibit “A.”
27
28

1 These complaints now appear to have been validated, and what little credibility the IRWMP
2 process for the Antelope Valley had left has evaporated with the AVEK filing.

3 AVEK has also improperly submitted what appears to be a printout from an undisclosed
4 webpage about a United States Geological Survey ("USGS") report about the Antelope Valley. If
5 this report is submitted for a relevant portion of the trial, and is for some reason allowed in to
6 evidence by the Court, AGWA and other landowners will offer testimony that the report, among
7 other problems, concerns a geographic area that is different from the current adjudication boundary
8 and that the report is inapplicable to the basin at issue in this adjudication and was *never intended by*
9 *its authors* to be applicable to the basin at issue in this adjudication.
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13 Dated: August 10, 2007

HATCH & PARENT, A LAW CORPORATION

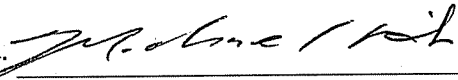
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15 By: 
16 MICHAEL T. FIFE
17 BRADLEY J. HERREMA
18 ATTORNEYS FOR AGWA
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Exhibit "A"



NEBEKER RANCH, INC.

LANCASTER, CALIFORNIA

MAIL ADDRESS:
400 N. Rockingham Avenue
Los Angeles, CA 90049
310-440-8862

July 30, 2007

TRANSMITTED BY U.S. MAIL AND EMAIL TO MS. REBECCA JOHNSON

Regional Water Management Group
c/o LA County Department of Public Works
Attention: Melinda Barrett
Waterworks Division
P. O. Box 1460
Alhambra, CA 91802-1460

Subject: Comments on Antelope Valley Integrated Regional Water Management Plan
(AVIRWMP) Public Review Draft Report, July 2007

Dear Sir or Madam:

Thank you for the opportunity to comment on the subject document. The planning for regional water management is a very important activity. I have noticed the excellent skills Dr. Ken Kirby has demonstrated and appreciate the effort Kennedy/Jenks has shown in assembling this document. However, aside from the above, very significant and fundamental problems exist with the intent and content of this document.

General Comments and Concerns

The primary concern is that the participants in the "Regional Water Management Group (Group)," consist primarily of water districts and cities, and the interests of the landowners in the Antelope Valley (Valley) have been ignored throughout the process.

Because this process is controlled exclusively by members of the Group, the appearance that is created is that the process will be used primarily to assist the members of the Group in advancing their aggressive actions against the landowners of the Valley. Members of the Group are looking toward the groundwater pumped by landowners as a source of water for the Group's use and are targeting the land owned by landowners in order to produce a large revenue stream by storing groundwater for the Group and parties outside the Antelope Valley. In the current groundwater adjudication process, most of the participants in the Group have sued or will sue the owners of approximately 190,000 parcels of land in Antelope Valley to take away their current rights to pump groundwater. They

assert that they have already taken away these rights because they have been pumping unlawfully for so many years that their unlawful pumping has ripened into a prescriptive right. One complaint in the adjudication by a member of the Group (LA County Waterworks District No. 40) asserts that using water for irrigation in the Valley is an unreasonable use and is thereby unlawful. The members of the Group are also asserting an exclusive right to control groundwater storage space in the Valley to the detriment of the rights of landowners. Many attempts have been made by landowners to encourage the members of this Group to share in the ownership and control of a groundwater storage district, but to no avail. Not only are these actions by members of the Group very threatening to the property rights and life savings of the landowners, but these aggressive actions have already cost the landowners and taxpayers millions of dollars in lawyer and consultant fees.

As a result, some landowners have asked the Court to enjoin members of this Group from pumping groundwater, storing groundwater, and to make up the water deficit which their unlawful pumping has caused. Recent statements in the press from AVEK indicate that members of the Group should be prevented from issuing "will-serve" notices.

Of the 190,000 parcel owners, probably less than 0.05% know of the adjudication or the AVIRWMP. Therefore, to allege that the AVIRWMP is a truly collaborative process misrepresents that most of the landowners have no knowledge of the process, and cannot be said to approve of the current process where many members of the Group are trying to take away from the landowners some of their most precious and important property rights.

Because of the contentiousness of these issues, the Court has been asked to prevent many members of the Group from implementing the very activities envisioned in many of the projects that have been discussed in the subject document and will be proposed for grant funding. To promote a document that does not acknowledge these controversies, and especially to submit such a document to funding entities without full acknowledgement of the potential legal impediments to the projects that are sought for funding, risks the long term credibility of the Valley as a whole.

Although the AVIRWMP process can be valuable and if properly conducted can create a useful document, I believe the concerns discussed above should be included and fully addressed in this document. A better and more prudent approach would be to finish the adjudication as soon as possible, especially since a facilitator for the process has been retained and a settlement of the adjudication may be imminent. Once the adjudication is complete, the subject AVIRWMP document can be modified to be consistent with the Court judgment. Otherwise, I fear the AVIRWMP process will be caught up in litigation that the community does not need.

Specific Comments

Water Supplies from Local Precipitation, Page H-6, Paragraph 1, Line 6: As discussed later, the adjudication process and the subsequent studies conducted by a Watermaster will

most likely develop data to indicate the water from precipitation to be much greater than these estimates.

Water Supply Summary, Page H-7, Figure H-3: The low value of natural recharge of 30,300 is unrealistic. Some believe the correct value is greater than 100,000 AF/yr or higher. This will have an impact on the conclusions inferred by this figure. Better estimates of natural recharge are being prepared at this time.

“Adjudication Will Do Nothing to Provide Additional Water Supplies,” Page H-8, Paragraph 3, Line 17: The adjudication will be very important to obtaining additional water supplies because an institutional framework will be set up for those outside Antelope Valley to bank water in the Valley for the benefit of those in the Valley, the Watermaster can assure efficient and wise use of water, and if managed correctly, the yield of the Basin can be increased.

Water Quality, Page H-9, Paragraph 1, Line 5: Total Dissolved Solids (TDS) is also an important and increasing contaminant of concern in Antelope Valley.

Maximize Beneficial Reuse of Wastewater, Page H-10, Last Element in Water Quality Management: The process of 100% reuse of wastewater should start today! Every year the Valley is losing about 25,000 AF/yr of wastewater. For example, by 2015, over 200,000 AF will be squandered. In a basin that many feel is in overdraft, this is foolhardy.

Stakeholder Prioritized Projects, Page H-11, Table H-2: No landowner groups are included (see General Comments and Concerns above).

Stakeholder Prioritized Projects, Page H-11, Table H-2, Water Quality Projects: These projects should focus on the most immediate, most important needs. These include degradation and contamination of the groundwater by nitrate and TDS beneath wastewater ponds and improper wastewater disposal practices currently used in the Valley. These practices are currently degrading and contaminating the groundwater. The Lahontan Regional Board staff in Victorville may be a good source of detailed information.

“..Atmosphere of Mistrust..,” Page 1-1, Paragraph 2, Line 6. I am concerned that the community still cannot work together. The atmosphere of mistrust has spread from among the eleven public agencies in the Group to the landowners, who now have reason to not trust the public agencies (see General Comments and Concerns above). I do not believe this is the way to solve important community issues.

“..The AVSWCA Accepted Responsibility as the Facilitator for Groundwater Banking,” Page 1-6, Paragraph 1, Last Line: Please add to the subject document that the AVSWCA refused to participate with the landowners in spite of being advised that

the efforts of AVSWCA to store groundwater were unlawful.

Mutual Water Companies, Page 1-13, Paragraph 1, Line 2: Palm Ranch Irrigation District is not a mutual water company and should be considered a water district.

AB3030, Page 1-25, Paragraph 2: In the past, some attempts have been made to manage/control the groundwater in the Valley. AB3030 would be politically impossible to implement.

Percolation, Page 2-13, Paragraph 3, Line 4, and Page 2-18, Paragraph 1, Line 4: Percolation from snowmelt and rainfall occur in the mountains by at least six hydrological mechanisms, one of which is flow down the stream beds and percolation into the alluvial fans. For the most part, the literature fails to estimate the effect of this mechanism properly and to recognize the other five mechanisms, which are difficult to quantify. Therefore, the past literature estimates of natural recharge are considered low and more recent work will probably provide improved estimates. Percolation on the floor of the Valley occurs from return flows from municipal and agricultural irrigation.

Aquifers, Page 2-15, Paragraph 4, Line 1: The USGS now believes three aquifers exist.

Groundwater Subunits, Page 2-16: Many question that these subunits exist and current and future investigation may provide data to re-define the existence of subunits.

Groundwater Extraction, Page 2-20, Paragraph 4, Line 1: "According to the USGS (2003), groundwater extractions have exceeded the estimated natural recharge of the basin since the 1920's. This statement is incorrect because the USGS, four years ago, did not estimate the natural recharge correctly and did not know the accurate amount of extractions. They could not check their work properly because they did not have enough static groundwater level data. Many of the values in Paragraph 4 and 5 are suspect. Current efforts will provide more accurate results.

Artificial Recharge (Blended), Page 3-2, Figure 3-1: Artificial recharge with blended wastewater is unnecessary in the appropriate circumstances. In the Santa Ana River watershed, there are over a dozen such projects and the County Sanitation Districts are engaged in this activity in the Santa Clara River. This type of recharge is often referred to as "incidental recharge." Please correct this Figure to show recharge with and without blending.

Percolation, Page 3-8, Paragraph 1: Percolation occurs on the Valley floor by return flows from municipal and agricultural irrigation.

Natural Recharge, Page 3-8, Section 3.1.3.3: As stated above, percolation from snowmelt and rainfall occur in the mountains by at least six hydrological mechanisms, one of

which is flow down the stream beds and percolation into the alluvial fans. For the most part, the literature fails to estimate the effect of this mechanism properly and to recognize the other five mechanisms, which are difficult to quantify. Therefore, the past literature estimates of natural recharge are considered low and more recent work will probably provide improved estimates. Some believe natural recharge could be over 100,000 AF/yr.

Time Delay for Natural Recharge and Return Flows, Page 3-10, Paragraph 2, Line 3: Time delays for both types of recharge probably occur and are extremely difficult to estimate. In addition, times vary by the geographical location.

Urban Return Flows, Page 3-10: In the high desert, the outdoor water use varies between 60 to 75% of total residential demand. Therefore, the estimates by Mr. Petersen are reasonable.

Recycled Water Infrastructure, Page 3-24, Paragraph 1, Line 1: I believe the County Sanitation Districts owns the water distribution system, not the City of Lancaster.

Estimate of Future Recycled Water Supply, Page 3-26, Paragraph 2, Line 1: 65,000 AF/yr is an accurate estimate of recycled water supply if groundwater recharge was used. I and many community members have encouraged the Sanitation Districts to properly treat their wastewater and use it for groundwater recharge. They have refused. The City of Lancaster should be commended for their efforts to recharge treated wastewater.

Future Agricultural Demand, Page 3-29, Table 3-9: Agricultural demand in the future is difficult to estimate. Therefore, assuming increased demand also may be useful in your analysis.

Agricultural Water Demand, Page 3-30: The assumption of the Kern County acreage by the USGS as 18% of the Los Angeles County acreage was reasonable prior to 2000. The reason this percentage was no longer true starting in 2000 was because carrot and potato farming became popular in the Kern County portion of the Valley.

Crop Acreages, Page 3-36: I have historical data on the crops grown with similar crop water use requirements, so the difficulty mentioned under Agricultural Commissioner Crop Reports does not exist. I recommend that you redo this table to group crops with similar water requirements together and suggest that you select other designations for these groups. In this way, this table will be clearer and easier to examine. The AVEK agricultural data is from satellite imagery and therefore, the exact crop grown is difficult to identify and multiple cropping patterns are difficult to ascertain because the imagery is not done frequently enough.

Water Leaving, Section 3.1.7: These numbers are questionable and I would check them with

other literature references or independent analysis.

Water Supply Summary, Figures 3-11, 3-12, and 3-13: As stated earlier, the low value of natural recharge of 30,300 is unrealistic. Some believe the correct value is greater than 100,000 AF/yr higher. This will have an impact on the conclusions inferred by this figure. Better estimates of natural recharge are being prepared at this time.

Pumping Has Exceeded Recharge, Page 3-54, Paragraph 6, Line 3: As stated earlier, the USGS, four years ago, did not estimate the natural recharge correctly and did not know the accurate amount of extractions. They could not check their work properly because they did not have enough static groundwater level data. As mentioned above, current efforts will provide more accurate results.

Local Groundwater Quality, Page 3-62, Section 3.2.1: TDS is also a problem. At every location in the Valley that wastewater has been disposed or held in ponds, a problem exists with nitrates, TDS, or both. Please contact the Lahontan Regional Board for details.

Wastewater and Recycled Water Quality, Section 3.2.3: The end-of pipe water quality has not been specified and it is believed that these treatment plants will not remove sufficient nitrate to allow groundwater recharge and produce treated wastewater that will not degrade the groundwater if handled improperly.

Stabilize Groundwater Levels at Current Conditions, Page 4-5, Line 3: This objective may be risky in the vicinity of the extensive groundwater depressions around Lancaster and Palmdale. A wise approach may be to fill in these groundwater depressions.

"Prevent Unacceptable Degradation of Aquifer..," Page 4-6, Line 18: My understanding is that the aquifer has been significantly damaged in Palmdale over a 10-square mile area, some of which is beneath the best natural and artificial recharge area in the Valley, Littlerock Creek. Large degradation is ongoing at this time in many areas of the Valley and should be mentioned in this document. The Lahontan Regional Board will be a source of information.

"Maximize Beneficial Reuse of Wastewater," Page 4-7, Paragraph 3: Activities towards this goal should be begun immediately. Analysis of the amount of wastewater versus the amount of land available for reuse as a function of time shows that not enough land will ever be available unless a massive new consumptive use is planned. The Sanitation Districts are planning to develop 10,000 acres of alfalfa farming which will consume about 70,000 AF/yr of water. The community should direct the Districts to cease such an endeavor and use the water not used for irrigation of established uses for groundwater recharge like they are doing in Valencia, for example. Such a process could be established in a relatively short period of time. I believe that it is a waste and unreasonable use of water, given the contents of the

subject document which shows a need for water, to establish a massive new consumptive use which will waste about 45,000 AF/yr of water.

“Planned Water Quality Management Activities/Actions,” Section 5.2.2.3: The highest priority of projects should be the cessation of groundwater degradation/contamination activities that are occurring in the Valley at the present time. Wastewater treatment activities are currently creating most of the problems. Information can be obtained from the Lahontan Regional Board and should be incorporated into this document.

“Make Further Use of Recycled,” Page 6-11, Paragraph 4: Recycled water should not be limited to landscaping and other non-potable use projects. As stated above, groundwater recharge, like projects in the Santa Ana River Watershed and Santa Clara River, should be number one in priority. These can be done more quickly than surface water projects and less expensively.

“Protect Natural Streams and Recharge Areas From Contamination,” Page 8-15, Last Paragraph: The nitrate and TDS plume from treated wastewater from Sanitation District No. 20 has already passed under Littlerock Creek and will compromise groundwater recharge. What is even worse is that hundreds of tons per year of nitrogen are still being released into the soil at this location.

I appreciate the opportunity to comment on the subject document and hope these suggestions will be helpful. I believe we all should push to complete the adjudication as soon as possible, especially since a facilitator for the process has been retained and a settlement of the adjudication may be imminent. Once the adjudication is complete, the subject AVIRWMP document can be modified to be consistent with the Court judgment.

Yours truly,



Eugene B. Nebeker, Ph.D., P.E.
President

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

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

On August 10, 2007, I served the foregoing document described as:

**PARTIAL JOINDER AND PARTIAL OPPOSITION
TO AVEK OPPOSITION**

on the interested parties in this action.

X By sending an electronic copy to the court to be filed. The filing will be posted to the courts website. All parties will receive an electronic copy via e-mail from the court. The electronic filing was transmitted at 5:20 p.m./a.m. on August 10, 2007. The electronic transmission was reported as complete and without error.

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

Executed at Santa Barbara, California, on August 10, 2007.

Rachel Roberto
TYPE OR PRINT NAME

[Signature]
SIGNATURE

HATCH AND PARENT
21 East Carrillo Street
Santa Barbara, CA 93101

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