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11 Cardile, Efren and Luz Chavez, Consolidated Rock Products, Del Sur Ranch LLC, Steven Godde as  
12 Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust,  
13 Robert and Phillip Gorrindo, Gorrindo Family Trust, Laura Griffin, Healy Farms, Healy Enterprises,  
14 Inc., John Javadi and Sahara Nursery, Juniper Hills Water Group, Gailen Kyle, Gailen Kyle as  
15 Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family Trust, Julia  
16 Kyle, Wanda E. Kyle, Maritorena Living Trust, Jose and Marie Maritorena, Richard H. Miner, Barry  
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18 and Michael Nelson, Robert Jones, John and Adrienne Reca, Mabel Selak, Jeffrey L. & Nancee J.  
19 Siebert, Dr. Samuel Kremen and Tierra Bonita Ranch Company, Beverly Tobias, Triple M Property  
20 FKA and 3M Property Investment Co., Vulcan Materials Co. and Vulcan Lands Inc., Willow  
21 Springs Company, Donna Wilson, **collectively known as the Antelope Valley Groundwater  
22 Agreement Association (“AGWA”)**

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

24 **FOR THE COUNTY OF LOS ANGELES**

25 **ANTELOPE VALLEY** )  
26 **GROUNDWATER CASES** ) Judicial Council Coordination Proceeding  
27 ) No. 4408

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

Los Angeles County Waterworks District No. )  
40 v. Diamond Farming Co. Superior Court of )  
California County of Los Angeles, Case No. BC ) **AGWA’s OPPOSITION TO MOTIONS IN**  
325 201 Los Angeles County Waterworks ) **LIMINE TO PRECLUDE EVIDENCE RE**  
District No. 40 v. Diamond Farming Co. ) **RETURN FLOWS**  
Superior Court of California, County of Kern, )  
Case No. S-1500-CV-254-348 Wm. Bolthouse )  
Farms, Inc. v. City of Lancaster Diamond )  
Farming Co. v. City of Lancaster Diamond )  
Farming Co. v. Palmdale Water Dist. Superior )  
Court of California, County of Riverside, )  
consolidated actions, Case No. RIC 353 840, )  
RIC 344 436, RIC 344 668 )

1     **I. INTRODUCTION**

2           The Antelope Valley Groundwater Agreement Association (“AGWA”) opposes Los  
3 Angeles County Waterworks District No. 40’s (“District 40”) *Motion in Limine to Preclude*  
4 *Evidence re Decided Issues Including Return Flow Contribution to Safe Yield* (“District 40  
5 Motion”), as well as the *Motion in Limine of Rosamond Community Services District for an*  
6 *Order Excluding Any Evidence or Argument that the District is Not Entitled to Produce Return*  
7 *Flows From its Imported Water and Excluding Any Evidence or Testimony Contrary to or*  
8 *Inconsistent with Return Flow Formula Adopted by the Court in the Phase III Trial* (“RCSD  
9 Motion”), and Quartz Hill Water District’s *Motion in Limine re Quantity of Imported Water*  
10 *Return Flows and Motion in Limine re Right to Imported Water Return Flows* (“QHWD  
11 Motions”), all filed March 29, 2013 (collectively, the “Motions”).

12           The Motions request the Court to exclude relevant evidence related to quantification of  
13 return flows. While the Court examined *historic* return flows for the general analysis of safe  
14 yield in Phase III, utilizing this analysis to limit examination of evidence related to *current* return  
15 flows for the purpose of apportioning rights in the Basin contradicts the purpose of Phase IV. For  
16 the reasons that follow, the four Motions should be denied.

17     **II. ARGUMENT**

18           **A. The Court Did Not Make Findings on Return Flows in Phase III Sufficient for**  
19           **an Apportionment of Rights**

20           Fundamentally, the Motions misinterpret the scope of the Phase III Statement of Decision  
21 and the Court’s findings therein, and grossly exaggerate the extent to which the Court made  
22 factual findings on return flows. As stated in the Court’s Phase III Statement of Decision, “The  
23 only issues at this phase of the trial were simply to determine whether the adjudication area  
24 aquifer is in a current state of overdraft and as part of that adjudication to determine the safe  
25 yield. This Statement of Decision focuses solely on those issues.” (Statement of Decision for  
26 Phase III Trial, at 2:10-12.) While a determination of safe yield requires an initial determination  
27 of average annual natural or native recharge to the aquifer from all sources, the Court in Phase III  
28 conducted what it described as a “very general” determination of the safe yield, and whether the

1 Basin is presently in a condition of overdraft such that the Court would have the authority to  
2 impose a physical solution. After trial, the purveyors asked the Court to go further and to make  
3 specific determinations about how the safe yield should be allocated. In particular, the purveyors  
4 asked the Court to include in its Phase III Statement of Decision specific findings about what  
5 portion of the safe yield is return flows from imported water. The Court declined to make such  
6 determinations stating that, “When you are asking for a lot of detailed findings, I don’t think you  
7 are entitled to them.” (July 11, 2011 RT 13:24-26, true and correct copies of the relevant  
8 transcript pages attached hereto as Exhibit “A”.)

9 When asked about return flow findings specifically, the Court stated, “And I wouldn’t be  
10 comfortable making findings as to what for example Public Water—California Water Project  
11 Water is generated and produced into the aquifer. I can’t make that determination.” (July 11,  
12 2011 RT 13:27-14:2, relevant transcript pages attached as Exhibit “A”.) The court explained that  
13 based on the evidence presented in Phase III, “[...]that certainly is not a sufficient basis for  
14 making a finding which would give certain rights to parties who produced—obtained that water.  
15 That’s beyond the scope of this third phase of trial.” (July 11, 2011 RT 14:5-8, relevant transcript  
16 pages attached as Exhibit “A”.) Thus, while the Court certainly received evidence on return  
17 flows in order to construct a broad snapshot of the Basin at a chosen time, the Court did not  
18 receive evidence on return flows sufficient to determine current pumping and rights to allocations  
19 of those return flows.

20 The Phase III Statement of Decision expressly states that the findings in Phase III will not  
21 be used in future phases: “And since the findings here have no application to other phases... the  
22 Court makes no conclusions as to what standard of proof might be applicable to such other issues  
23 or phases of trial.” (Statement of Decision for Phase III Trial, at 3:21-24.) Accordingly, the  
24 Motions’ attempts to ignore this directive and exclude factual evidence related to return flows  
25 based on the findings in Phase III go against the express directive of the Statement of Decision.  
26 Because of this, trying the issue of the quantity of return flows is neither cumulative, nor does it  
27 amount to an improper motion for reconsideration, as alleged by the Motions.

1           **B. The Return Flow Analysis Presented by the Purveyors in Phase III Looked**  
2           **Backwards and Does not Account for Significant Changes in Return Flow**  
3           **Under Current Conditions**

4           The purveyors seek to limit evidence on return flows to that presented in the Summary  
5           Expert Report in Phase III. The return flow analysis contained in the Summary Expert Report,  
6           however, utilized a “historical” backwards looking approach to project an overall safe yield for  
7           the basin. (See, e.g., Summary Expert Report, at 3.2.1.1; Appendix D.3.3; Appendix D-6.) In  
8           contrast, AGWA intends to present evidence based on return flows modeled under *current*  
9           conditions. This analysis analyzes current conditions and looks forward in time and thus is more  
10          appropriate for purposes of Phase IV, where the Case Management Order has identified current  
11          pumping and imported water return flows as the subject of trial. AGWA will offer evidence to  
12          demonstrate that return flows in an urban setting (the setting most relevant for return flows from  
13          imported water) are dynamic and change over time depending on cultural practices, and that  
14          urban water practices have changed significantly since 2005 – the endpoint of the analysis offered  
15          by the purveyors in Phase III. AGWA will offer testimony concerning a comprehensive study of  
16          urban water use practices sponsored by the California Department of Water Resources and  
17          published in 2011, and will offer an analysis based on current Antelope Valley monitoring data  
18          that was not available during the period that was the subject of testimony in Phase III. The  
19          Motions, if granted, would improperly exclude such relevant evidence about the current state of  
20          return flows in the Basin that accounts for changes in return flows in the Basin. On this basis, the  
21          Motions should be denied.

22           **C. The Motions Would Unjustifiably Exclude Additional Relevant Evidence**  
23           **From Consideration During Phase IV**

24           The issue of amounts and rights to return flows from imported water is a key issue for  
25           ongoing management of the Basin. As described on page 5 of Quartz Hill Water District’s  
26           *Motion in Limine re Quantity of Imported Water Return Flows*, according to the purveyors’  
27           interpretation, the claimed return flows would be 28,200 acre-feet of the total safe yield of  
28           110,000. That is, according to the purveyors, return flows from imported water composed more  
          than 25% of the total safe yield. As return flows, the legal status of this water will be different

1 than that of native yield. It is likely that the purveyors will argue that a future Watermaster will  
2 have limited, if any, management control over the pumping of this water. It is likely that they  
3 will also argue that pumping of this water is beyond the assessment authority of the Watermaster,  
4 thus reducing the ability of the Watermaster to obtain funding to finance its operations.  
5 Furthermore, because it is the purveyors that claim ownership of this water, the pumping of the  
6 water will occur in the central part of the Antelope Valley, which has been identified as the area  
7 of greatest concern in this case. If the amounts claimed by the purveyors are inaccurate, or if the  
8 water does not actually augment the Basin, the Court will have sanctioned a pumping source that  
9 does not exist, and possibly put it beyond control of the Watermaster, in the most critical area of  
10 the Basin.

11 Furthermore, the majority of the return flows from imported water claimed by the  
12 purveyors is derived from partially treated and raw sewer water. The recharge of urban  
13 wastewater into the groundwater has historically caused significant water quality problems over  
14 large areas in the Antelope Valley. In addition to the question of the quantity of return flows, the  
15 Court also must consider whether the return flows that do enter the groundwater basin truly  
16 augment the supply, or rather contaminate the supply and make this supply unavailable for  
17 potable use.

18 The significance of this issue for ongoing management of the Basin is of sufficient weight  
19 that the Court should consider all issues associated with return flows from imported water in  
20 greater detail than the “very general” analysis that was appropriate for Phase III. This is  
21 particularly true where the Antelope Valley East-Kern Water Agency (“AVEK”), a party who is  
22 on the side of neither the landowners nor the purveyors, has suggested the return flow amounts  
23 asserted by the purveyors are overstated. (AVEK’s *Motion in Limine re Admission of Evidence*  
24 *and Argument Relating To Return Flows*, filed March 29, 2013, p. 4, n.3.) Because of this, trying  
25 the issue of the amount of return flows, and whether these return flows augment the water supply  
26 of the Basin, is neither cumulative nor irrelevant.

27 **D. Return Flow Amounts Should Be Based On Science**

28 A final reason given in support of District 40’s Motion is that Mr. Scalmanini testified as

1 to the return flow amounts in Phase III, and he is no longer available to testify. District 40 deems  
2 this to be the “most important” reason in support of its motion. (District 40 Motion, at 5:1-2.) But  
3 the issue of the amount of return flows from imported water is a scientific fact that should not be  
4 dependent on the personality of the particular researcher investigating the issue. If the return flow  
5 amounts advocated by the purveyors are technically accurate, then other researchers should be  
6 able to reproduce these findings and should be willing to testify as to their accuracy. If no such  
7 witnesses can be provided, then this fact alone should call the numbers into question. District 40’s  
8 argument would see the Court set in stone all of the technical issues testified to by Mr.  
9 Scalmanini, and put them forever beyond question. This is not appropriate for factual matters that  
10 are supposed to be based in science and independent review.

11 **E. A Motion in Limine is an Inappropriate Vehicle for Pretrial Determination of**  
12 **Questions of Law and Fact**

13 The Motions improperly ask this court to make pre-trial determinations regarding  
14 quantities and rights to return flow claims, but a motion in limine is not the appropriate motion  
15 for such requests. Phase IV involves factual determinations as to quantification of current  
16 pumping and claims of return flows from imported water, inherently linked issues not  
17 appropriately decided in a motion in limine. If the Court grants the Motions, the Court would be  
18 compelled to exclude evidence relevant to the resolution of these factual issues. Instead, the  
19 Court should have the benefit of all of the evidence presented at trial to make current pumping  
20 and return flow findings. Evidence sought to be introduced that is irrelevant to those factual  
21 determinations can be excluded at trial upon proper objection.

22 The Motions do not provide any proper factual basis as to why such evidence should be  
23 excluded, apart from an unpersuasive claim of “relitigating” and “undue consumption of time,”  
24 nor do they describe with any particularity what evidence should be disallowed. (See, e.g.,  
25 District 40 Motion, at 4:8-10.) Instead, District 40’s Motion only broadly requests that the Court  
26 exclude “any evidence related to issues decided in prior phases of this action, especially evidence  
27 relating to the amount of return flows.” (District 40 Motion, at 5:11-12.) Motions in limine  
28 devoid of factual support properly in the context of this phase of trial would force a court to rule

1 on evidentiary issues in a vacuum, and must be denied. (*Kelly v. New West Fed. Sav.* (1996) 49  
2 Cal.App.4th 659, 670.)


3 **III. CONCLUSION**

4 For all of the aforementioned reasons, the Motions collectively seek to improperly impute  
5 factual findings to the Phase III Statement of Decision on the issue of return flows that were not  
6 actually decided sufficient to apportion individual rights. The Motions would improperly exclude  
7 vital evidence necessary to quantify individual rights to return flow, and improperly seek to bar  
8 introduction of factual evidence that was not considered in the prior Phase III Statement of  
9 Decision. AGWA respectfully requests that the Court deny each of the Motions.

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Dated: April 19, 2013

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:   
MICHAEL T. FIFE  
BRADLEY J. HERREMA  
ATTORNEYS FOR AGWA

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**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 E. Carrillo Street, Santa Barbara, California 93101.

On April 19, 2013, I served the foregoing document described as:

**AGWA's OBJECTION TO MOTIONS IN LIMINE TO PRECLUDE EVIDENCE RE RETURN FLOWS**

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on April 19, 2013.

This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on April 19, 2013.

**LINDA MINKY  
TYPE OR PRINT NAME**

  
SIGNATURE