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10 ANTELOPE VALLEY WATER STORAGE, LLC

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11 Coordination Proceeding
12 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding No.
4408

13 **ANTELOPE VALLEY GROUNDWATER**
14 **CASES**

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

14 Included actions:

**ANTELOPE VALLEY WATER STORAGE,
LLC'S TRIAL BRIEF**

15 Los Angeles County Waterworks District No.
16 40 v. Diamond Farming Company, a
17 corporation, Superior Court of California,
18 County of Los Angeles, Case No. BC325201;

Date: May 28, 2013
Time: 9:00 A.M.
Dept: 1
Room: 534

17 Los Angeles County Waterworks District No.
18 40 v. Diamond Farming Company, a
19 corporation, Superior Court of California,
20 County of Kern, Case No. S-1500-CV-254-
21 348;

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

26 Antelope Valley Water Storage, LLC ("AVWS") hereby submits the following trial brief.

27 **I. INTRODUCTION**

28 The fourth phase of trial in this matter is scheduled to begin on May 28, 2013. The only

1 issue to be determined during this phase of trial is the amount of groundwater produced by the
2 parties during 2011 and 2012.

3 AVWS has reached a stipulation with the public water suppliers that it owns 1,838 acres
4 overlying the Antelope Valley Area of Adjudication (the "Property"), that 1,198 acre feet of
5 groundwater were pumped from the Property during 2011, and that 2,281 acre feet of
6 groundwater were pumped from the Property during 2012. A copy of the stipulation, which
7 reduces the groundwater amounts set forth in the declarations of AVWS' general manager Mark
8 Beuhler by 4% to account for the difference between gross acreage and irrigated acreage, is
9 attached hereto as Exhibit A. As is it unclear whether any parties may object to the stipulation
10 however, AVWS will be prepared to present evidence regarding the groundwater pumped from
11 the Property at trial.

12 II. FACTUAL BACKGROUND

13 A. PROPERTY OWNERSHIP

14 AVWS' Property overlies the Antelope Valley Area of Adjudication, and includes 1,758
15 acres in Kern County and 80 acres in Los Angeles County. AVWS acquired the 17 parcels that
16 together constitute 1,838 acres, along with all of the associated water rights, from the Van Dam
17 family in August 2007 and June 2008 as set forth below:

18 APN	19 Size in Acres	20 Original Owners	21 Date Acquired by AVWS
22 1. APN 261-196-02 (portion)	80	C&M Van Dam ¹	8/24/2007
23 2. APN 261-196-02 (portion)	40	C&M Van Dam	8/24/2007
24 3. APN 261-196-02 (portion)	80	C&M Van Dam	8/24/2007
25 4. APN 261-196-03	120	C&M Van Dam	8/24/2007
26 5. APN 359-041-18	158	C&M Van Dam	8/24/2007
27 6. APN 261-196-04	160	C&M Van Dam	8/24/2007
28 7. APN 359-041-11	160	C&M Van Dam	8/24/2007
1. APN 359-041-12	160	C&M Van Dam	8/24/2007
2. APN 359-041-17	160	C&M Van Dam	8/24/2007
3. APN 261-196-11	160	C&M Van Dam	8/24/2007
4. APN 261-196-09	320	C&M Van Dam	8/24/2007
5. APN 359-041-13	80	D&G Van Dam ²	6/23/2008
6. APN 359-041-20	10	D&G Van Dam	6/23/2008
7. APN 359-041-21	10	D&G Van Dam	6/23/2008
8. APN 359-041-22	10	D&G Van Dam	6/23/2008

¹ Craig and Marta Van Dam

² Delmar and Gertrude Van Dam

16. APN 359-041-23	10	D&G Van Dam	6/23/2008
17. AIN 3258-01-28 (LA Co.)	40	C&M Van Dam	8/24/2007
18. AIN 3258-01-29 (LA Co.)	40	C&M Van Dam	8/24/2007
19. APN 359-041-01	40	C&M Van Dam	8/24/2007
TOTAL	1,838	-	-

B. LAND USE AND WATER USE

1. Land Use

During 2011 and 2012, AVWS leased portions of the Property to Kern Ridge Growers and Maritorena Farms. By reviewing the lease agreements, talking with the farmers, and evaluating the Property Income and Production Questionnaires submitted to Kern County, AVWS' general manager Mark Beuhler calculated the acreage and crops that were grown on the Property during 2011 and 2012. The attached Exhibit B summarizes the crops that were grown on the Property during 2011 and 2012.

2. Water Use

Exhibit B also summarizes the amount of water used for irrigation on the Property during 2011 and 2012. In order to determine these amounts, Mark Beuhler analyzed grant deeds to determine the location and acreage of the parcels owned by AVWS, evaluated business records including lease agreements between AVWS, Kern Ridge Growers, and Maritrona Farms, and Income and Production Questionnaires submitted to Kern County, and talked with farmers to confirm the acreage and crops grown on the Property. Mr. Beuhler then used the amount of acres in irrigation multiplied by the crop duties identified by the Public Water Suppliers' crop duty expert Robert Beeby. A copy of the crop duties that have been identified by Robert Beeby is attached as Exhibit C.

AVWS used the crop duty approach to determine the amount of water used for irrigation on the Property, and the amount of groundwater used on the Property, because the records necessary to calculate water use based on pumping data do not exist. Indeed, while AVWS obtained some water meter records, pump tests, and electrical billing information, the records were incomplete and failed to account for two diesel-powered wells on the property, for which there are no records. (AVWS did obtain water records for the State Water Project water

1 purchased from Antelope Valley East-Kern Water Agency (“AVEK”), and these records were
2 used to determine how much groundwater and how much imported water was used for irrigation,
3 including the amount of AVEK water used to recharge the basin as part of the operation of the
4 Antelope Valley Water Bank.)

5 Based on the detailed analysis performed by Mark Beuhler, AVWS estimates the total
6 amount of groundwater produced on the Property during 2011 and 2012 is as follows:

Year:	Groundwater Used (AF):
2011	1,248
2012	2,376

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11 As noted above, these amounts are slightly higher than the amounts set forth in the stipulation
12 with the public water suppliers, which reduces these amounts by 4% to account for the difference
13 between gross acreage and irrigated acreage. See Exhibit A.

14 **III. LEGAL ISSUES**

15 **A. EXPERT OPINION TESTIMONY/OTHER WITNESSES**

16 Should AVWS be required to present evidence beyond the stipulation with the public
17 water suppliers at trial, AVWS intends to present its entire case in chief through the testimony of
18 its general manager Mark Beuhler. Mr. Beuhler is a registered civil engineer, with a graduate
19 degree in environmental engineering, and has been involved with water supply and treatment
20 issues for more than 35 years, including working as the Assistant General Manager at the
21 Coachella Valley Water District, and the Director of Water Quality at the Metropolitan Water
22 District of Southern California. Mr. Beuhler is also a licensed surveyor.

23 As he testified at deposition, Mr. Beuhler used his knowledge, skill, experience, and
24 training to determine the amount of water that was used on seventeen different parcels owned by
25 AVWS, over a time period of seven different years. Mr. Beuhler should therefore be qualified to
26 offer expert testimony regarding his analysis, the opinions he formed, and the basis for his
27 opinions pursuant to Evidence Code sections 804 and 801(b).

28 AVWS anticipates that some parties may object to the qualification of Mr. Beuhler as an

1 expert, or to the scope of his testimony at trial (including potentially objecting to testimony
2 regarding the documents he reviewed or the witnesses with whom he spoke). While such
3 objections are unfounded, AVWS anticipates calling at least five additional witnesses should the
4 Court rule that Mr. Beuhler is not qualified to offer expert testimony, or that he cannot explain
5 the basis for his opinions.

6 The additional witnesses would include:

- 7 1. Ari Swiller, WDS California II, LLC. Mr. Swiller will testify regarding the
8 leases he signed for WDS California II, LLC on behalf of AVWS. Mr. Swiller's
9 testimony will authenticate the leases with Kern Ridge Growers and Mariterona
10 Farms, explain the leases, and describe the business relationship between WDS
11 California II, LLC and AVWS.
- 12 2. Vaughn Easter, Kern Ridge Growers. Mr. Easter will testify regarding the
13 farming performed on the Property during 2011 and 2012. Mr. Easter's testimony
14 will verify the acreage and crops grown on the Property.
- 15 3. Marie Maritorena, Maritorena Farms. Ms. Maritorena will testify regarding the
16 farming performed on the Property during 2012. Ms. Maritorena's testimony will
17 verify the acreage and crops grown on the Property.
- 18 4. Robert Beeby, Public Water Suppliers' Crop Duty Expert. Mr. Beeby will
19 discuss the crop duties shown in Exhibit B.
- 20 5. Custodian of Records for Antelope Valley East-Kern Water Agency. The
21 custodian of records will authenticate the water records for the State Water
22 Project water delivered to the Property during 2011 and 2012.

23 **B. ORDER OF PROOF/PRE-TRIAL RULINGS**

24 Based on the uncertainty regarding the legal effect of the stipulations entered into to date,
25 and whether any parties intend to object to the information in same, it appears that numerous
26 parties may be required to prove up their ownership and groundwater use at trial by presenting
27 evidence such as grant deeds, pump records, crop duties, water delivery records, and lay and
28 expert testimony. While the presentation of such evidence will be time consuming for all parties,

1 and will quickly exhaust the two weeks scheduled for trial, the process may be expedited by
2 coordinating the presentation of evidence between parties where possible.

3 AVWS would respectfully request that the court consider the following actions:

4 1. AVEK has been asked to authenticate water records for numerous parties, and it
5 would save time for AVEK's custodian of records to do so on one occasion, rather than during
6 each party's case in chief.

7 2. Despite the Court's efforts to narrow the issues and disputes for trial, it remains
8 unclear what challenges are likely to be proffered to the evidence presented at trial. The
9 resolution of as many evidentiary objections as possible, as early as possible in the proceeding,
10 may serve to expedite the presentation of evidence (by for example reducing the number of
11 witnesses called at trial). AVWS suggests that the Court order that any party intending to object
12 to a witness or document listed on another party's witness or exhibit list be required to file a
13 written objection to same at least 2 days before the date on which the party that intends to present
14 the objectionable evidence is scheduled to put on its' case-in-chief, and to provide a detailed
15 explanation of the objection, so that the parties can resolve as many of these evidentiary
16 objections as possible (via stipulation or Court Order) prior to the presentation of evidence.

17 **IV. CONCLUSION**

18 Groundwater was produced on the Property during 2011 and 2012 as follows:

Year:	Groundwater Used (AF):
2011	1,248
2012	2,376

23 Respectfully Submitted,

24 Dated: May 23, 2013

HERUM \ CRABTREE
A California Professional Corporation

26 By: \s\William R. Carlson
27 WILLIAM R. CARLSON
Attorneys for Cross-Defendant
28 ANTELOPE VALLEY WATER STORAGE, LLC

EXHIBIT A

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

10 Coordination Proceeding
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12 **ANTELOPE VALLEY GROUNDWATER**
13 **CASES**

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

14 Included actions:

STIPULATION OF FACTS RELATED TO
ANTELOPE VALLEY WATER STORAGE,
LLC

15 Los Angeles County Waterworks District No.
40 v. Diamond Farming Company, a
16 corporation, Superior Court of California,
County of Los Angeles, Case No. BC325201;

17 Los Angeles County Waterworks District No.
40 v. Diamond Farming Company, a
18 corporation, Superior Court of California,
County of Kern, Case No. S-1500-CV-254-
19 348;

20 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Company, a
21 corporation, v. City of Lancaster, Diamond
Farming Company, a corporation vs. Palmdale
22 Water District, Superior Court of California,
County of Riverside, Case Nos. RIC 353840,
23 RIC 344436, RIC 344668.

24
25 IT IS HEREBY STIPULATED AND AGREED by and between the Parties hereto, by
Phase 4
26 their respective counsel, that, for the purpose of trial in this action, the facts listed below are
27 undisputed and may be treated by the Court as facts proved in open court, and shall be binding
28 for all purposes in this action. for Phase 4 only.

HERUM \ CRABTREE

STIPULATION OF FACTS RELATED TO ANTELOPE VALLEY WATER STORAGE, LLC

1 By this Stipulation, the Parties are not agreeing to any water rights, and they reserve their
2 respective rights to make any and all legal arguments concerning each other's water rights, and
3 to present further evidence that does not contradict the stipulated facts below, in any future
4 phases of this action.

5 The undisputed facts are as follows:

6
7 I. Antelope Valley Water Storage, LLC ("AVWS") holds fee title to the following real
8 property ("Property"), which is located within the Antelope Valley Area of
9 Adjudication:

10 APN	11 Size in Acres	12 Original Owners	13 Date Acquired by AVWS
14 1. APN 261-196-02 (portion)	80	C&M Van Dam ¹	8/24/2007
15 2. APN 261-196-02 (portion)	40	C&M Van Dam	8/24/2007
16 3. APN 261-196-02 (portion)	80	C&M Van Dam	8/24/2007
17 4. APN 261-196-03	120	C&M Van Dam	8/24/2007
18 5. APN 359-041-18	158	C&M Van Dam	8/24/2007
19 6. APN 261-196-04	160	C&M Van Dam	8/24/2007
20 7. APN 359-041-11	160	C&M Van Dam	8/24/2007
21 8. APN 359-041-12	160	C&M Van Dam	8/24/2007
22 9. APN 359-041-17	160	C&M Van Dam	8/24/2007
23 10. APN 261-196-11	160	C&M Van Dam	8/24/2007
24 11. APN 261-196-09	320	C&M Van Dam	8/24/2007
25 12. APN 359-041-13	80	D&G Van Dam ²	6/23/2008
26 13. APN 359-041-20	10	D&G Van Dam	6/23/2008
27 14. APN 359-041-21	10	D&G Van Dam	6/23/2008
28 15. APN 359-041-22	10	D&G Van Dam	6/23/2008
16. APN 359-041-23	10	D&G Van Dam	6/23/2008
17. AIN 3258-01-28 (LA Co.)	40	C&M Van Dam	8/24/2007
18. AIN 3258-01-29 (LA Co.)	40	C&M Van Dam	8/24/2007
19. APN 359-041-01	40	C&M Van Dam	8/24/2007
TOTAL	1,838		

¹ Craig and Marta Van Dam

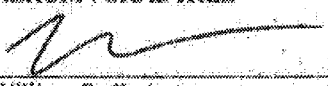
² Delmar and Gertrude Van Dam

1 2. The following amounts of groundwater (in acre feet) were pumped from the Property
2 and used on the Property for irrigation in the following years:


Year:	Groundwater Used:
2000	4,823
2001	3,765
2002	7,296
2003	3,210
2004	7,097
2011	1,198
2012	2,281

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10 (The stipulated groundwater amounts listed above have reduced the acreage to 96% of the gross
11 acreage as set forth in Mark Buehler's Declaration dated January 31, 2013, and Amended
12 Declaration dated April 11, 2013, in order to account for the difference between gross acreage
13 and irrigated acreage.)

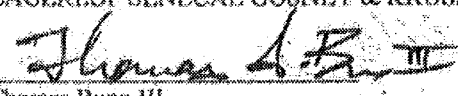
14
15 Dated: May 22, 2013

HERUM \ CRABTREE
By: 
William R. Carlson
Attorneys for ANTELOPE VALLEY WATER STORAGE, LLC

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20 Dated: May 22, 2013

BEST, BEST & KRIEGER LLP
By: 
Jeffrey B. Gunn
Attorneys for LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40


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23
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25 Dated: May 27, 2013

LAGERLOF SENECAI GOSNEY & KRUSE
By: 
Thomas Bunn III
Attorneys for PALMDALE WATER DISTRICT

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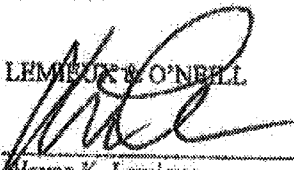
Dated: May 13, 2013

CHARLTON WEEKS LLP

By: 
Bradley T. Weeks
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Dated: May 22, 2013

LEMIEUX & O'NEILL

By: 
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Dated: May __, 2013

RICHARDS, WATSON & GERSHON

By: _____
Steven R. Orr
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Dated: May __, 2013

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By: _____
Douglas J. Evertz
Attorneys for CITY OF LANCASTER and ROSAMOND COMMUNITY SERVICES DISTRICT

Dated: May __, 2013

CALIFORNIA WATER SERVICE COMPANY

By: _____
John Tootle
Attorneys for CALIFORNIA WATER SERVICE COMPANY

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Dated: May __, 2013

CHARLTON WEEKS LLP

By: _____
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Attorneys for QUARTZ HILL WATER DISTRICT

Dated: May __, 2013

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Wayne K. Lemieux
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Dated: May 23, 2013

RICHARDS, WATSON & GERSHON

By: STO
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Dated: May 22, 2013

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By: Douglas Evertz
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Attorneys for CITY OF LANCASTER and ROSAMOND COMMUNITY SERVICES DISTRICT

Dated: May __, 2013

CALIFORNIA WATER SERVICE COMPANY

By: _____
John Tootle
Attorneys for CALIFORNIA WATER SERVICE COMPANY

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Dated: May __, 2013

CHARLTON WEEKS LLP

By: _____
Bradley T. Weeks
Attorneys for QUARTZ HILL WATER
DISTRICT

Dated: May __, 2013

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IRRIGATION DISTRICT and PALM RANCH
IRRIGATION DISTRICT

Dated: May __, 2013

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Steven R. Orr
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Dated: May __, 2013

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By: _____
Douglas J. Evertz
Attorneys for CITY OF LANCASTER and
ROSAMOND COMMUNITY SERVICES
DISTRICT

Dated: May __, 2013

CALIFORNIA WATER SERVICE
COMPANY

By: John Tootle
John Tootle
Attorneys for CALIFORNIA WATER
SERVICE COMPANY

EXHIBIT B

ESTIMATED WATER USED FOR IRRIGATION

2011

APN	Size in Acres	Crop Type	Water Duty, feet	Water Use, Acre Feet
1. APN 261-196-02 (portion)	80	Carrots (80 ac)	3.9	312
2. APN 261-196-02 (portion)	40	Carrots (40 ac)	3.9	156
3. APN 261-196-02 (portion)	80	-	-	-
4. APN 261-196-03	120	Carrots (40 ac)	3.9	156
5. APN 359-041-18	158	-	-	-
6. APN 261-196-04	160	Carrots (80 ac)	3.9	312
7. APN 359-041-11	160	Pasture	6.7	1072
8. APN 359-041-12	160	Pasture	6.7	1072
9. APN 359-041-17	160	Carrots (80 ac)	3.9	312
10. APN 261-196-11	160	Fallow	0	-
11. APN 261-196-09	320	Fallow	0	-
12. APN 359-041-13	80	Unknown	-	-
13. APN 359-041-20	10	Fallow	0	-
14. APN 359-041-21	10	Fallow	0	-
15. APN 359-041-22	10	Fallow	0	-
16. APN 359-041-23	10	Fallow	0	-
17. AIN 3258-01-28 (LA Co.)	40	Fallow	0	-
18. AIN 3258-01-29 (LA Co.)	40	Fallow	0	-
19. APN 359-041-01	40	Fallow	0	-
TOTAL	1,838			3,392

2012

APN	Size in Acres	Crop Type	Water Duty, feet	Water Use, Acre Feet
1. APN 261-196-02 (portion)	80	Carrots (0 ac)	-	-
2. APN 261-196-02 (portion)	40	Carrots (40 ac)	3.9	156
3. APN 261-196-02 (portion)	80	Carrots (70 ac)	3.9	273
4. APN 261-196-03	120	Carrots (75 ac)	3.9	293
5. APN 359-041-18	158	Carrots (74 ac)	3.9	289
6. APN 261-196-04	160	Carrots (75 ac)	3.9	293
7. APN 359-041-11	160	Fallow	-	-
8. APN 359-041-12	160	Fallow	-	-
9. APN 359-041-17	160	Pasture	6.7	1072
10. APN 261-196-11	160	Fallow	0	-
11. APN 261-196-09	320	Fallow	0	-
12. APN 359-041-13	80	Unknown	-	-
13. APN 359-041-20	10	Fallow	0	-
14. APN 359-041-21	10	Fallow	0	-
15. APN 359-041-22	10	Fallow	0	-
16. APN 359-041-23	10	Fallow	0	-
17. AIN 3258-01-28 (LA Co.)	40	Fallow	0	-
18. AIN 3258-01-29 (LA Co.)	40	Fallow	0	-
19. APN 359-041-01	40	Fallow	0	-
TOTAL	1,838	-	-	2,376

EXHIBIT C

TABLE OF APPLIED CROP WATER DUTIES

Appendix D-3: Table 4 Applied Crop Water Duties and Irrigation Efficiency Values (DU = 80%) Antelope Valley Area of Adjudication										
Crop	ET_c^1 (in)	P_e^2 (in)	ET_{AW}^3 (in)	DU^4 (%)	AW_c^5 (in)	AW_{er}^6 (in)	AW_{pr}^7 (in)	AW_T^8 (in) (ft)		E_B^9 (%)
Alfalfa	62.10	1.77	60.33	80	75.42	0	2.0	77.42	6.5	81
Carrots	27.47	0.00	27.47	80	34.33	6	6.5	46.83	3.9	85
Grain	22.94	1.42	21.52	80	26.90	0	4.0	30.90	2.6	83
Melons/Squash	23.91	0.00	23.91	80	29.88	0	4.0	33.88	2.8	82
Onions	37.57	0.00	37.57	80	46.96	3	4.0	53.96	4.5	83
Orchard (Deciduous)	47.38	0.00	47.38	80	59.22	0	0.0	59.22	4.9	80
Pasture	66.19	1.77	64.42	80	80.53	0	0.0	80.53	6.7	80
Potatoes	24.02	0.00	24.02	80	30.03	0	4.0	34.03	2.8	82
Stlage	27.31	0.00	27.31	80	34.14	0	4.0	38.14	3.2	82
Sugar Beets	40.55	0.00	40.55	80	50.68	0	4.0	54.68	4.6	81
Vineyard (Grapes)	35.33	0.00	35.33	80	44.16	0	0.0	44.16	3.7	80

¹ $ET_c = K_c \cdot ET_c$, where ET_c = average ET_c for specified periods, based on data from Victorville CIMIS Station, 1994-2003; K_c values from Univ. California Cooperative Extension

² P_e = effective precipitation offsetting ET_c , up to 1/2 of the average precipitation, in Dec. - Feb., inclusive

³ ET_{AW} = evapotranspiration of applied water = $ET_c - P_e$

⁴ DU = irrigation distribution uniformity

⁵ AW_c = applied water for crop requirement = $ET_{AW} \cdot DU$

⁶ AW_{er} = applied water for erosion control

⁷ AW_{pr} = applied water for field preparation and pre-irrigation

⁸ AW_T = applied crop water duty = $AW_c + AW_{er} + AW_{pr}$

⁹ E_B = overall irrigation efficiency for beneficial uses = $(ET_{AW} + AW_{er} + AW_{pr}) / AW_T$

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PROOF OF SERVICE

I, Carol Bracken, certify and declare:

I am over the age of 18 years and not a party to this action. My business address is:
HERUM \ CRABTREE, 5757 Pacific Avenue, Suite 222, Stockton, California 95207. On the
date set forth below, I served the following document(s):

ANTELOPE VALLEY WATER STORAGE LLC'S TRIAL BRIEF

[X] BY ELECTRONIC SERVICE. By posting the document(s) listed above to the Santa Clara Superior Court website regarding the Antelope Valley Groundwater matter (Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No. 1-05-CV-049053) pursuant to the Court's Clarification Order.

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

Dated: May 23, 2013

\s\ Carol Bracken
CAROL BRACKEN