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Exempt from filing fee
Government Code § 6103

Attorneys for City of Lancaster and
Rosamond Community Services District

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Actions:

- Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Superior Court of California, County of
Los Angeles, Case No. BC325201;
- 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
- 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.

LASC Case No. BC 325201

Judicial Council Coordination
Proceeding No. 4408

CLASS ACTION

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

**PUBLIC WATER SUPPLIERS'
EVIDENTIARY OBJECTIONS TO THE
DECLARATION OF DAN FLORY IN
SUPPORT OF ANTELOPE VALLEY-
EAST KERN WATER AGENCY'S
MOTION FOR SUMMARY
ADJUDICATION; [PROPOSED] ORDER**

Date: January 27, 2014
Time: 9:00 a.m.
Dept.: TBD

Trial Date: February 10, 2014 (Phase V)

1 **EVIDENTIARY OBJECTIONS TO DECLARATION OF DAN FLORY**

2 The Public Water Suppliers¹ hereby submit their Objections to the Declaration of Dan Flory
 3 (“Flory”) submitted by Antelope Valley-East Kern Water Agency (“AVEK”) in support of its Motion
 4 for Summary Adjudication.

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
1. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 2, ¶ 2, lines 5-8: “In 1959, residents of Kern, Ventura and Los Angeles Counties formed the Antelope Valley-East Kern Water Agency ("AVEK") for the purpose of contracting with the State of California for the purchase and delivery of Supplemental Water (California Water Code Appendix 98-1, et seq.)”	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows the purpose of Kern, Ventura and Los Angeles County residents in forming AVEK in 1959. Flory provides no foundation regarding how he determined the purpose of AVEK’s formation. Flory’s statement further references a document that is not attached to his Declaration and which is not listed on AVEK’s Request for Judicial Notice. To the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on a writing, then the statement amounts to testimony to prove the content of a writing - - California Water Code</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

26 ¹ The Public Water Suppliers, for the purposes of these objections, consist of City of Lancaster,
 27 Rosamond Community Services District, Los Angeles County Waterworks District No. 40, Quartz
 28 Hill Water District, California Water Service Company, Palm Ranch Irrigation District, Palmdale
 Water District, North Edwards Water District and Desert Lakes Community Services District.

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>Appendix 98-1, et seq. - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.).</p>	
2.	<p>Page 2, ¶ 3, lines 9-10: "In 1962, AVEK signed a Water Supply Contract with the State (Exhibit 1 hereto) to insure delivery of AVEK Imported Water to supplement Antelope Valley Groundwater."</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows if and why AVEK signed a Water Supply Contract with the State in 1962. Flory's statement fails to explain how Flory has personal knowledge of the purported signing of the Water Supply Contract in 1959. Flory's statement is further vague and uncertain because he references a document, "Water Supply Contract with the State, (Exhibit 1 hereto)" that is not attached to his Declaration. To the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on a writing, then the statement amounts to testimony to prove the content of a writing - - Water Supply Contract with the State - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		(Evid. Code, §§ 1521, subd. (b), 1523.)	
3.	Page 2, ¶ 4, lines 11-13: "Of the 29 State Project Water Contractors, AVEK has the third largest water entitlement, which allows AVEK to take an annual maximum entitlement of up to 141,400 AF of Imported Water."	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows the number of State Project Water Contractors, AVEK's ranking for entitlement to water or AVEK's maximum entitlement to water. Flory's statement further contains no facts to support or explain the conclusions asserted regarding his calculation as to how much water AVEK is entitled to. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>
4.	Page 2, ¶ 5, lines 14-16: "Due to environmental, supply and climate limitations inherent	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows that environmental, supply and</p>	<p>Sustained:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
	<p>in the State Water Project, AVEK's contract with the State of California has a delivery reliability factor of approximately 60% of AVEK's annual entitlement of 141,400 AF."</p>	<p>climate limitations are inherent in the State Water Project or that AVEK's contract with the State of California has a delivery reliability factor of approximately 60% of its annual entitlement. Flory's statement further lacks personal knowledge as to what AVEK's annual entitlement is. Flory's statement further fails to provide any foundation to support or explain the conclusions asserted - - that the State Water Project has inherent limitations and that this results in AVEK's contract having a delivery reliability factor of 60%. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
5.	Page 2, ¶ 6, lines 17-18: "AVEK imports more State Project Water into the Antelope Valley Adjudicated Basin (AVAA) than does any other State Project Water Contractor."	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows that AVEK imports more State Project Water into AVAA than any other State Project Water Contractor. Flory's statement further fails to provide any foundation to support or explain the conclusions asserted - - that AVEK imports more State Project Water into AVAA than any other State Project Water Contractor. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>
6.	Page 2, ¶ 7, lines 19-20: "Initial funds for the construction of the State Water Project facilities were obtained through a	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows that initial funds for the construction of the State Water Project facilities were obtained through a \$1.75 billion bond issue</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
	\$1.75 billion bond issue, ratified by California voters in 1960.”	<p>that was ratified by California voters in 1960. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>_____</p>
7.	Page 2, ¶ 8, lines 21-24: “AVEK and its taxpayers have paid a total of \$475,777,218.84 to insure participation in the California State Water Project, and to construct the “infrastructure” needed to import, transport, treat and deliver AVEK Imported Water to its customers (including the Public Water	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows that AVEK and its taxpayers have paid \$475,777,218.84 to ensure participation in the California State Water Project and to construct the “infrastructure” needed to import, transport, treat and deliver AVEK Imported Water to its customers. Flory’s statement further fails to provide any foundation to support or explain the conclusions asserted regarding the total amount paid. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
	Suppliers).”	<p>relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
8.	Page 2, ¶ 9, lines 25-27: “All direct payments to the State of California have been paid by AVEK (and indirectly by its taxpayers) for the required infrastructure construction, and for the purchase and importation of the State Project Water contracted for by AVEK.”	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted as to how Flory knows that all direct payments to the State of California have been paid by AVEK and its taxpayers. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p> <p><u>Vague</u></p> <p>Flory’s statement is vague and uncertain as to “all direct payments.” Flory’s statement does not define this term.</p>	
9.	Page 3, ¶ 10, lines 1-2: “Public Water Suppliers, on the other hand, have not made any direct payments to the State of California for the State Project contracted for by AVEK.”	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted - - that Public Water Suppliers have not made any direct payments to the State of California. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p>	

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
10.	Page 3, ¶ 12, lines 5-6: "The adjudicated boundaries in this action represent 58% of the total land area serviced by AVEK."	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows that the adjudicated boundaries represent 58% of the total land area serviced by AVEK. Flory's statement further fails to provide any foundation to support or explain the conclusions asserted - - that the adjudicated boundaries represent 58% of the total land area serviced by AVEK. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
11.	<p>Page 3, ¶ 15. Lines 11-12: “In 2011 and 2012 alone, AVEK delivered to its agricultural, industrial and municipal customers within the AVAA a total of 100,718 AF of Imported Water.”</p>	<p><u>Lacks personal knowledge, lack of foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows the amount of water AVEK delivered to its customers in 2011 and 2012. Flory’s statement further fails to provide any foundation to support or explain the conclusions asserted regarding how he determined the amount of water delivered. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>
12.	<p>Page 3, ¶ 16, lines 13-16: “AVEK taxpayers also have directly paid for, and</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
	<p>continue to pay for, construction of the internal treatment and distribution systems whereby AVEK Imported Water is eventually delivered to AVEK's agricultural, industrial and municipal customers both within and outside the AVAA."</p>	<p>contains no facts to support or explain the conclusions asserted - - that AVEK taxpayers have directly paid for, and continue to pay for, construction of the internal treatment and distribution systems. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>_____</p>
13.	<p>Page 3, ¶ 20, lines 25-26: "The first bond issue, Series A, of \$23 million was used for project start-up construction. AVEK taxpayers have completely repaid the Series A bonds."</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows that the AVEK taxpayers have completely repaid the Series A bonds. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>(a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
14.	<p>Page 3, ¶ 21, lines 27-28: “The second bond issue in 1976, Series B, of \$19 million has also been completely repaid AVEK taxpayers.”</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows the Series B bond issue has been completely repaid by AVEK taxpayers. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
15.	<p>Page 4, ¶ 22, lines 1-2: “In 1977, the \$18 million Series C bond issue authorized Phase Three of the DAWN facilities construction; the Series C bonds have been completely repaid by AVEK taxpayers.”</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows that the Series C bonds have been completely repaid by AVEK taxpayers. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		(Evid. Code, §§ 1521, subd. (b), 1523.)	
16.	Page 4, ¶ 23, lines 4-7: "In August, 1986, the final Phase of the DAWN Project construction commenced when AVEK's Board of Directors authorized expenditure of the remaining \$11 million in Series D bonds; these funds were used to construct internal local facilities to distribute AVEK Imported Water."	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows the \$11 million in Series D bonds were used to construct internal local facilities to distribute AVEK Imported Water. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>
17.	Page 4, ¶ 24, lines 8-9: "The attached AVEK map (Exhibit 2) depicts existing AVEK owned facilities and improvements under construction including future banking	<p><u>Lacks personal knowledge, speculative, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge as to how Flory knows what the information purportedly on the AVEK map depicts. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay. The "Exhibit 2" that Flory references is not attached to the</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
	improvements.”	<p>Declaration, nor is “Exhibit 2” listed in the accompanying Request for Judicial Notice.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p>	
18.	<p>Page 4, ¶ 25, lines 10-14: “AVEK’s Water Supply Stabilization Project No. 2 (WSSP2) is a groundwater banking project that will increase the reliability of the Antelope Valley Region’s water supplies by storing excess water available from the State Water Project (SWP) during wet periods and recovering it to serve to customers during dry and high demand periods or during a disruption in deliveries from the SWP.”</p>	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows that WSSP2 will increase the reliability of the Antelope Valley Region’s water supplies. Flory’s statement further fails to provide any foundation to support or explain the conclusions asserted - - storing excess water from the State Water Project will increase the reliability of the water supply. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
1 2 3 4 5 6 7 8 9		<p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>19. Page 4, ¶ 26, lines 15-16: “By banking excess water for future use, the WSSP2 will significantly reduce the Region's dependence on constant water deliveries of State Water Project from the Delta.”</p>	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and contains no facts to support or explain the conclusion asserted - - that WSSP2 will “significantly” reduce the Region’s dependence on constant water deliveries of State Water Project from the Delta. Flory’s statement has provided no foundation setting forth his qualifications as an expert on water usage and means to reduce dependence. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings or statistics, then the statement amounts to testimony</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
20.	<p>Page 4, ¶ 27, lines 17-18: "The WSSP2 will also help to stabilize the groundwater basin and preserve agricultural land and open space."</p>	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge and contains no facts to support or explain the conclusion asserted - - that WSSP2 will help to stabilize the groundwater basin and preserve agricultural land and open space. Flory's statement provides no foundation setting forth his qualifications as an expert on stabilization of groundwater basin or preservation of agricultural land and open space. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		(Evid. Code, §§ 1521, subd. (b), 1523.)	
21.	Page 4, ¶ 28, lines 19-21: “From 2011 through 2012, AVEK banked a total of approximately 36,502 AF, and claims the right to recapture 90% of that amount, or 32,851 AF, as Return Flow resulting therefrom.”	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows or calculated the total amount banked. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>
22.	Page 4, ¶ 29, lines 22-24: “When deemed necessary by AVEK due to water supply shortfalls from SWP water or other operational strategies, AVEK will recover not more than 90% of the volume of water that is put into the	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted - - that AVEK will not recover more than 90% of the volume of water that is put into the water bank. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17</p>	<p>groundwater bank.”</p>	<p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
<p>18 19 20 21 22 23 24 25 26 27 28</p>	<p>23. Page 4, ¶ 30, lines 25-27: “Recovery operations will take place with the construction of 10 groundwater recovery wells with depths averaging about 600 feet; well yields will range between 500 gpm to 2,800 gpm.”</p>	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted as to how recovery will take place and what yields will be obtained and it provides no foundation for Flory’s expertise regarding the recovery process. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
1 2 3 4 5 6 7 8 9 10 11 12		<p>Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>24. Page 5, ¶ 31, lines 1-4: “Since inception of the State Water Project, AVEK taxpayers have paid a total of \$475,777,218.84 to insure participation in the California State Water Project, and to construct AVEK’s treatment and distribution systems for the delivery of AVEK Imported Water.”</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted regarding how much AVEK’s taxpayers have paid and what those funds have been used for. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
<p>25.</p>	<p>Page 5, ¶ 33, lines 8-9: "AVEK has not assigned or transferred to any other person its right to recapture or use the Return Flows resulting from AVEK Imported Water."</p>	<p><u>Lacks personal knowledge, lacks foundation, legal conclusion, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted regarding whether AVEK has assigned or transferred its right to recapture or use the Return Flows resulting from AVEK Imported Water. Flory's statement provides no foundation for the premise that AVEK is entitled to recapture or use Return Flows resulting from AVEK Imported Water. Flory's statement further asserts a legal conclusion - - that AVEK has not "assigned or transferred" its "right."</p> <p>Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
26.	<p>Page 5, ¶ 34, lines 10-11: “AVEK has not abandoned or otherwise relinquished its claimed right to recapture and use Return Flows resulting from AVEK Imported Water.”</p>	<p><u>Lacks personal knowledge, lacks foundation, legal conclusion, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted regarding whether AVEK has abandoned or otherwise relinquished its claimed right to use Return Flows resulting from AVEK Imported Water. Flory’s statement further asserts a legal conclusion - - that AVEK has not “abandoned” its claimed right.” Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>
27.	<p>Page 5, ¶ 35, lines 12-18: “AVEK’s Board of Directors has determined that,</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
	<p>in the exercise of AVEK's claimed right to recapture and control the use of Return Flows, and except in emergencies (i.e., in the event AVEK's allocation of State Project Water is not sufficient to meet the critical needs of its customers, requiring AVEK to recapture Return Flows to meet those needs), AVEK's preference is to maintain all Return Flows from AVEK Imported Water in the Basin, to gradually increase the groundwater supply and raise water levels over a period of time, and thereby augment the AVAA's available supply."</p>	<p>how Flory knows what the Board of Directors preference regarding Return Flows is. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>_____</p>
<p>28.</p>	<p>Page 5, ¶ 36, lines 19-20: "This practice will benefit AVEK's existing and future customers and taxpayers, both inside and outside to AVAA."</p>	<p><u>Lacks personal knowledge, lacks foundation, speculative, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted regarding how the practice will benefit AVEK's customers and taxpayers, inside and outside AVAA. Flory's statement further provides no foundation for his expertise regarding the benefits of the practice. Furthermore, to the extent this statement is based on writings or statistics reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>(a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings or statistics, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
29.	<p>Page 5, ¶ 37, lines: "In the case at bar, the PWS are not "member agencies" of AVEK, their representatives do not sit on AVEK's Board of Directors, and they do not determine the rates paid for the AVEK Imported Water they receive."</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted - - that the PWS are not member agencies and that they do not determine the rates paid for the AVEK Imported Water they receive. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

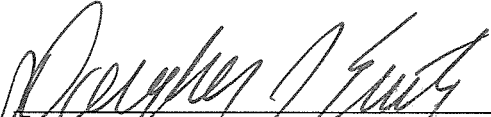
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	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
		<p>741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s map - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	
30.	<p>Page 5, ¶ 38, line 24: “The PWS are merely customers of AVEK.”</p>	<p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory’s statement lacks personal knowledge as to how Flory knows whether the PWS are merely customers of AVEK. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), [“The relevance of the proffered evidence depends on the existence of the preliminary fact.”], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] [“In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient.”]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] [“[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court.”]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory’s statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK’s map - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
31.	Page 5, ¶ 39, lines 25-27: "AVEK owns wells which can be used to recapture Return Flows from AVEK Imported Water; AVEK is currently drilling additional wells, and is contemplating purchasing other property with water well production capability."	<p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p> <p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted as to how Flory knows whether AVEK's wells can be used to recapture Return Flows from AVEK Imported Water. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subds. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK's map - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>
32.	Page 6, ¶ 40, lines 1-3: "DWR has never claimed a right to Return Flows resulting from AVEK Imported Water; DWR has never manifested an "intent" to	<p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p> <p><u>Lacks personal knowledge, lacks foundation, inadmissible hearsay</u></p> <p>Flory's statement lacks personal knowledge and contains no facts to support or explain the conclusions asserted as to how Flory knows whether DWR has ever claimed a right to Return Flows resulting from AVEK Imported Water or manifested an intent to recapture such Return Flows, or whether it has production wells capable</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

	Material Objected to:	Grounds for Objection:	Ruling on the Objection:
	recapture such Return Flows; and DWR does not have production wells in the AVAA capable of capturing Return Flows."	<p>of capturing Return Flows. Furthermore, to the extent this statement is based on writings reviewed by Flory, the statement is based on inadmissible hearsay.</p> <p>(Evid. Code, §§ 350, 403, subd. (a)(2), ["The relevance of the proffered evidence depends on the existence of the preliminary fact."], 702, subd. (a), 1200, subs. (a), (b); see <i>Tri-State Mfg. Co. v. Super. Ct.</i> (1964) 224 Cal.App.2d 442, 445 [36 Cal.Rptr. 750] ["In an affidavit facts must be positively set forth, and an affidavit which merely states conclusions or opinions of the affiant is insufficient."]; <i>Ware v. Stafford</i> (1962) 206 Cal.App.2d 232, 237-238 [24 Cal.Rptr. 153] ["[A]llegations in an affidavit must show facts and circumstances from which the ultimate facts sought to be proved may be deduced by the court."]; <i>Snider v. Snider</i> (1962) 200 Cal.App.2d 741 750-754 [19 Cal.Rptr. 709].)</p> <p><u>Inadmissible testimony regarding content of a writing</u></p> <p>If Flory's statement is based on writings, then the statement amounts to testimony to prove the content of a writing - - AVEK's records - - where Flory and/or AVEK are in possession and control of the writing. A copy of the writing should have been attached and properly authenticated to prove its content.</p> <p>(Evid. Code, §§ 1521, subd. (b), 1523.)</p>	

DATED: December 27, 2013 MURPHY & EVERTZ LLP

By: 
 Douglas J. Evertz, Attorney for City of Lancaster
 and Rosamond Community Services District

ORDER

IT IS SO ORDERED.

Dated: _____

 JUDGE OF THE SUPERIOR COURT

1 **PROOF OF SERVICE**

2 **ANTELOPE VALLEY GROUNDWATER CASES**
3 Judicial Council Coordination, Proceeding No. 4408

4 Santa Clara Case No. 1-05-CV 049053
5 Assigned to the Honorable Jack Komar
6 Los Angeles County Superior Court, Central, Dept. 1

7 I am a resident of the State of California, over 18 years of age and not a party to this action. I
8 am employed in the County of Orange, State of California. My business address is 650 Town Center
9 Drive, Suite 550, Costa Mesa, California 92626.

10 On December 21, 2013, I served the within document(s):

11 **PUBLIC WATER SUPPLIERS' EVIDENTIARY OBJECTIONS TO THE**
12 **DECLARATION OF DAN FLORY IN SUPPORT OF ANTELOPE VALLEY-EAST KERN**
13 **WATER AGENCY'S MOTION FOR SUMMARY ADJUDICATION: [PROPOSED]**
14 **ORDER**

15 by posting the document(s) listed above to the website <http://www.scefiling.org>, a
16 dedicated link to the Antelope Valley Groundwater Cases; Santa Clara Case
17 No. 1-05-CV 049053, Assigned to the Honorable Jack Komar, said document(s) is
18 electronically served/distributed therewith.

19 By transmitting via e-mail the document(s) listed above to the e-mail address(es) and/or
20 fax number(s) set forth below on this date.

21 by placing the document(s) listed above in a sealed Overnight Express envelope/package for
22 overnight delivery at Costa Mesa, California addressed as set forth below.

23 by causing personal delivery by Nationwide Legal of the document(s) listed above, to the
24 person(s) at the address(es) set forth below.

25 I am readily familiar with Murphy & Evertz, LLP's practice for collecting and processing
26 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service
27 on the same day that the correspondence is placed for collection and mailing, it is deposited in the
28 ordinary course of business with the United States Postal Service, in a sealed envelope with postage
fully prepaid.

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

Executed on December 21, 2013, at Costa Mesa, California.


Stephanie Patis