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

17 **ANTELOPE VALLEY GROUNDWATER
CASES**

18 **Included Actions:**
19 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
20 California, County of Los Angeles, Case No.
BC 325201;

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

24 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
Diamond Farming Co. v. City of Lancaster,
25 Diamond Farming Co. v. Palmdale Water Dist.,
Superior Court of California, County of
26 Riverside, Case Nos. RIC 353 840, RIC 344
436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

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

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40'S REPLY BRIEF TO
AVEK'S OPPOSITION TO QUARTZ HILL
WATER DISTRICT'S MOTION *IN LIMINE*
NO. TWO

1 Los Angeles County Waterworks District No. 40 (“District No. 40”) hereby submits its
2 brief in support of Quartz Hill Water District’s Motion In Limine No. 2 and in response to
3 Antelope Valley-East Kern Water Agency’s (“AVEK’s”) opposition to the motion in limine.
4 Specifically, District No. 40 objects to AVEK’s misleading characterization of the Court of
5 Appeal decision in *City of Santa Maria v. Adam* (2012) 211 Cal. App.4th 266. 301-303, which
6 held that retail purchasers of State Water Project (“SWP”) water are entitled to return flows
7 attributed to their respective water purchases. Stated simply, retail purchasers like the Public
8 Water Suppliers here, are the “importers” of SWP water.

9 AVEK spends pages attempting, unsuccessfully, to distinguish *City of Santa Maria* from
10 the present action by referencing contract and resolutions that allegedly assigned *City of Santa*
11 *Maria’s* public water suppliers specific entitlements to Santa Barbara County Flood Control and
12 Water Conservation District’s SWP contract rights; whereas here the Public Water Suppliers did
13 not enter such agreements with AVEK. (AVEK Opp. at 5.) This is a distinction without a
14 difference.

15 Like Central Coast Water Authority, the SWP wholesaler in *City of Santa Maria, supra*,
16 AVEK is a SWP wholesaler that delivers SWP water only when a retail water purchaser requests
17 and pays for the SWP water. It is only because of the purchase by the retail water purchasers, like
18 District No. 40 here, and the City of Santa Maria in *City of Santa Maria, supra*, that SWP water is
19 actually imported. If purchasers, like District No. 40 do not buy and import the SWP water into
20 the Antelope Valley Basin, AVEK would not wholesale purchase the SWP water and the SWP
21 water would not reach the Basin.

22 In recognizing the public water supplier’s right to the return flows, the *City of Santa*
23 *Maria, supra*, Court held the return flow right “means that one who brings water into a watershed
24 may retain a prior right to it even after it is used.” (Glendale, *supra*, at pp. 76–77.) The practical
25 reason for the rule is that the importer should be credited with the “fruits ... of his endeavors in
26 bringing into the basin water that would not otherwise be there.” (211 Cal. App. 4th at p. 301.)

27 A wholesaler entity, like AVEK or Central Coast Water Authority in *Santa Maria, supra*,
28 only delivers SWP water when a public water supplier retailer or other purchaser pays for it. It is

1 the public water supplier or other purchaser of SWP water who imports the SWP water into the
2 Basin that would not otherwise be there. The true water importers here, as in *City of Santa*
3 *Maria, supra*, are the public water suppliers and other SWP purchasers because without their
4 purchases, no SWP water would be imported into the Basin.

5 For the reasons stated above, District No. 40 respectfully requests that the Court grant
6 Quartz Hill's Motion In Limine No. 2.

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