

1 William J. Brunick, Esq. [SB No. 46289]
2 **BRUNICK, McELHANEY & KENNEDY PLC**
3 1839 Commercenter West
4 San Bernardino, California 92408

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Gov't. Code Section 6103*

5 MAILING:
6 P.O. Box 13130
7 San Bernardino, California 92423-3130

8 Telephone: (909) 889-8301
9 Facsimile: (909) 388-1889
10 E-Mail: bbrunick@bmblawoffice.com

11 Attorneys for Cross-Complainant,
12 ANTELOPE VALLEY-EAST KERN WATER AGENCY

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

17 Coordination Proceeding
18 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding
No. 4408

19 **ANTELOPE VALLEY**
20 **GROUNDWATER CASES**

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

21 **Included Actions:**

**ANTELOPE VALLEY-EAST KERN
WATER AGENCY'S OPPOSITION TO
MOTION *IN LIMINE* OF ROSAMOND
COMMUNITY SERVICES DISTRICT**

22 Los Angeles County Waterworks District
23 No. 40 vs. Diamond Farming Company, a
24 corporation, Superior Court of California,
25 County of Los Angeles, Case No.
26 BC325201;

Trial Date: May 28, 2013
Time: 9:00 a.m.
Room: 1 (Los Angeles Superior Court)

27 Los Angeles County Waterworks District
28 No. 40 vs. Diamond Farming Company, a
corporation., Superior Court of California,
County of Kern, Case No. S-1500-CV-254-
348;

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

1 Cross-Complainant, the Antelope Valley-East Kern Water Agency (AVEK), submits this
2 Opposition to the motion *in limine* of Rosamond Community Services District (District) for an
3 order: (1) excluding any evidence or argument that the District is not entitled to produce return
4 flows from [AVEK imported water which it purchases], and (2) excluding any evidence or
5 testimony contrary to or inconsistent with the return flow formula adopted by the court in the
6 Phase III trial.

7 **I.**

8 **INTRODUCTION**

9 In its motion, the District argues that it is entitled to the return flows which results from
10 the AVEK imported water purchased by the District. For the reasons indicated in Points II and
11 III below, the District is wrong.

12 The District also argues that, in the Phase III trial, the Court decided the issue as to the
13 percentage of safe yield attributable to imported water, and no further evidence or litigation
14 should be permitted on that issue. For the following reasons and as set forth in Points IV, V, and
15 VI below, AVEK respectfully disagrees:

16 • The Court's Orders preceding the Phase III trial did not inform the parties that a final
17 determination would be made therein specific to the percentage of safe yield which is
18 attributable to imported water. Accordingly, the parties who did not participate in the Phase III
19 trial and have an interest in litigating that issue, were not provided with adequate notice of the
20 Court's intention prior to commencement of the Phase III trial, if it then had such intention, to
21 make a final determination in the Phase III trial as to the percentage of safe yield which is
22 specifically attributable to return flows attributable to imported water. If not now afforded an
23 opportunity to litigate that issue, the parties who did not participate in the Phase III trial and
24 have an interest in litigating that issue (including AVEK), would be denied procedural due
25 process.

26 • District No. 40's concurrently filed "Request for Judicial Notice of Trial Testimonies,
27 Exhibits [etc.] in Phase Three Re Return Flows," is a tacit admission that the specific percentage
28 of safe yield attributable to imported water has not yet been finally determined by the Court.

1 • The Court’s Ruling following the Phase III Trial succinctly notes that the percentages of
2 return flows mentioned therein were “estimates” only.

3 II.

4 ROSAMOND MISINTERPRETS CITY OF SAN FERNANDO

5 The District claims that, under the reasoning in *City of Los Angeles v. City of San*
6 *Fernando*, the District is entitled to the return flows resulting from AVEK imported water which
7 the District purchases and sells to its customers.

8 As demonstrated in considerable detail in AVEK’s own motion *in limine*, that is clearly
9 **not** true. As shown therein, the relationship between MWD, Glendale and Burbank is markedly
10 different than AVEK’s relationship with the Public Water Suppliers in the case at bar; the cities
11 of Burbank, Glendale, San Fernando, and other similarly situated cities, for all practical
12 purposes were the MWD (See AVEK Mot. *In limine*, Point V, 12:1-16:6, incorporated herein
13 by this reference).

14 The District also overlooks the following salient points:

15 • In *City of San Fernando*, MWD was not named as a party, and there is no evidence that
16 MWD ever claimed return flows (undoubtedly because Glendale and Burbank were among
17 MWD’s founding “member agencies,” with representatives sitting on MWD’s Board).

18 • Analogously, regarding waters released and made available by the Los Angeles County
19 Flood Control District, the Supreme Court in *City of Los Angeles v. City of Glendale* (1943) 23
20 Cal.2d 68, noted that:

21 The fact that this water was made available by the Los Angeles Flood Control
22 District does not determine its ownership. **The district makes no claim to the water .**
23 **. . the water abandoned by the district was subject to the [City of Los Angeles’ pueblo]**
24 **right.**

25 (Id., at pp. 73-74; bold print added.)

26 Therefore, in *City of San Fernando*, the Metropolitan Water District was not a party to
27 the action and, so far as can be determined, made no claim to return flows; and, in *City of*
28

1 *Glendale*, the Los Angeles Flood Control District likewise was not a party to the action, and
2 made no claim to the water it released and abandoned.

3 In the case at bar, however, AVEK is both a party to the action and has consistently
4 asserted its right to the return flows resulting from AVEK imported water. Therefore, in the way
5 the District attempts to apply the *City of San Fernando* decision, it is completely distinguishable
6 from the case at bar.¹

7 **III.**

8 **CITY OF SANTA MARIA ALSO IS CLEARLY DISTINGUISHABLE**

9 As noted above, the District also cites the decision in *City of Santa Maria v. Adam* (2012)
10 211 Cal.App.4th 266 (“*City of Santa Maria*”) in support of its claim that the District is entitled
11 to the return flows from AVEK imported water which the District purchases and distributes to
12 its own customers.

13 The District misinterprets the holding in *City of Santa Maria*; like *City of San Fernando*,
14 the facts in *City of Santa Maria* are clearly distinguishable from the facts involved in the case
15 at bar. As demonstrated below, in *City of Santa Maria*, the SWP contractor (Santa Barbara
16 County Flood Control and Water Conservation District [“the District”]) had years earlier
17 “assigned” to Santa Maria a portion of the District’s SWP “entitlement” – thereby converting
18 Santa Maria into a SWP “entitlement” owner. As a SWP “entitlement” owner, Santa Maria was
19 able to effectively direct and order the importation of SWP water and, accordingly, could
20 appropriately be characterized as an “importer” of SWP water – which explains why the trial
21 court’s Judgment After Trial and the Court of Appeal’s Opinion in *City of Santa Maria* both
22 characterize Santa Maria as an “importer” entitled to the return flows from SWP water it caused
23 to be imported.

24
25
26 ¹ Of additional significance, the other two State Water Project Contractors in this action
27 (Palmdale Water District and Littlerock Creek Irrigation District, who are usually aligned with the
28 Public Water Suppliers), have noted in their “Joinder” that they also, “import water pursuant to their
own State Water Project Contracts. As such, they are clearly the parties that own the return flows
from the water they import.” (Palmdale Joinder, 2:1-2.)

1 A. “WATER SUPPLY RETENTION” AGREEMENT

2 On or about June 25, 1985, the Santa Barbara County Flood Control and Water
3 Conservation District (a SWP contractor; hereafter, “the District”) entered into a Water Supply
4 Retention Agreement with Santa Maria, giving Santa Maria the right to “retain” a portion of the
5 District’s SWP “entitlement.” In its Resolution No. 820509 (a copy of which is attached as
6 Exhibit 1 hereto), Santa Maria approved the First Amendment to the Water Retention
7 Agreement which provides:

8 [Santa Maria] agrees to pay the DISTRICT the amount required to be paid by the
9 DISTRICT under the State Water Contract to retain annual entitlement and capacity right
10 of 11,300 acre feet and all rights associated therewith under the State Water Contract
11 (“Retained Rights”) . . .

11 B. “SANTA BARBARA WATER PURVEYORS AGENCY”

12 Santa Maria’s Resolution No. 90-31 dated March 20, 1990 (a copy of which is attached
13 as Exhibit 2) provides:

14 . . . on June 25, 1985, the City of Santa Maria entered into an agreement with the
15 [District] designated “Water Supply Retention Agreement”, Model I, 12/11/84, as
16 amended by First, Second & Third Amendments, (“WSRA”) and is, pursuant to the
17 WSRA, one of the “Contractors” to which “Retained Rights” were assigned pursuant
18 to the WSRA; and

19 . . . this entity is a member of the Santa Barbara Water Purveyor’s Agency
20 (“SBWPA”), a joint powers agency formed on November 16, 1982 . . .

21 . . . Article 5(c) of the WSRA provides that **the Contractors under the WSRA**
22 **shall make all decisions** relating to the retained rights and shall transmit those decisions
23 to the District, who shall communicate them to the [DWR] . . .

24 1. The Santa Barbara Water Purveyors Agency [“SBWPA”] is hereby
25 acknowledge, ratified, and designated as the entity referred to in Article 5(c) of the
26 WSRA, as the organization through which the making and transmission of all decisions
27 relative to the WSRA shall be made. [Bold print added.]

28 C. DWR APPROVAL OF THE ASSIGNMENT

Attached as Exhibit 3 hereto, is Santa Maria’s January 15, 1991, Resolution No. 91-12,
ratifying the SBWPA’s Resolution No. 90-10, “regarding the approval by the State Department
of Water Resources of the **Assignment of Rights** Embodied in the Water Supply Retention
Agreements . . .” The SBWPA Resolution attached thereto notes:

. . . on July 1, 1989, Model I of the [WSRAs], which had previously been entered into
by various members and associate members of the [SBWPA] (“Contractors”) and [the

1 District], became effective **assigning the District's rights** under the 1963 State Water
2 Contract . . . between the District and [DWR] **to the contractors**; and

3 . . . Article 41 of the Water Supply Contract contemplates formal approval by DWR of
4 **the assignment of rights** under the contract; and

5 1. [T]he Contractors since entering into the WSRAs have exercised their rights under
6 the agreements and have **contracted with DWR** through the District . . .

7 3. The Contractors hereby agree, pursuant to Article 3 c) of the WSRAs, to reimburse
8 the District for all costs and expenses which the District becomes obligated to pay under
9 the Water Supply Contract regarding the Contractors' retained rights . . . [Bold print
10 added.]

11 DWR subsequently approved the aforesaid **assignments**. Accordingly, the public water
12 purveyors, including Santa Maria, became the assignees and owners of specific SWP
13 "entitlements;" and through the joint powers agency they established [SBWPA], they were able
14 to direct and order the importation of SWP water.

15 D. THIRD PARTY BENEFICIARY STATUS AND FIDUCIARY RESPONSIBILITIES

16 Attached as Exhibit 4 hereto is Santa Maria's September 3, 1991, Resolution No. 91-151,
17 adopting SBWPA's Resolution #91-14 which notes:

18 . . . in 1983 the District entered into Water Supply Retention Agreements
19 (WSRAs) with certain Water Purveyors (hereinafter the Water Purveyors which executed
20 the WSRAs are referred to as "Contractors") **transferring the District's rights under
21 the SWP Contract to the Water Purveyors**; and

22 . . . the status of the Water Purveyors as **third party beneficiaries** under the SWP
23 Contract, and the role of District **as a fiduciary** for the Water Purveyors under that
24 contract, was confirmed by the terms of the various WSRAs executed over the years by
25 the District and the Contractors . . . [Bold print added.]

26 E. WATER MANAGEMENT AGREEMENT

27 Attached as Exhibit A to **Stipulation** Exhibit F to the Judgment After Trial in *City of*
28 *Santa Maria*, is a June 15, 2004, Water Management Agreement, which on pages 1 and 2
thereof notes:

E. The City [Santa Maria] and SCWC [Southern California Water Company] also **each
hold contracts to receive water from the State Water Project** ("SWP Entitlement,"
collectively, and "City SWP Entitlement" or "SCWC SWP Entitlement," individually).
Collectively, their contract entitlements total 18,350 acre-feet per year.

1 F. Both the City and SCWC are legally **entitled to retain and recapture that portion**
2 **of their respective SWP Entitlement that recharges the Basin after the consumptive**
3 **use of the SWP Entitlement (“Return Flows”).**

4 H. It is to the mutual advantage of the City and Santa Maria to have several alternatives
5 for making use of **their SWP Entitlements**, Return Flows . . .²

[Bold print added.]

6 F. SANTA MARIA VALLEY PUBLIC WATER PURVEYOR WATER MANAGMENT
7 AGREEMENT

8 Exhibit F to the Stipulation (which is Exhibit 1 to the Judgment After Trial in *City of*
9 *Santa Maria*) is the June 30, 2005 Santa Maria Valley Public Water Purveyor Management
10 Agreement which, in pertinent part, provides:

11 F. The Parties also each **hold contracts to receive water from the State Water**
12 **Project** (“SWP Entitlement,” collectively, and “**Santa Maria SWP Entitlement,**”
13 **“Guadalupe SWP Entitlement,”** or “**SCWC SWP Entitlement,**” individually). Santa
14 Maria’s contract is for 17,800 acre feet, SCWC’s contract is for 550 acre feet and
15 Guadalupe’s contract is for 610 acre feet. Collectively, the SWP Entitlement totals 18,960
16 acre-feet per year. [Pages 1-2]

17 7.3 It is to the mutual advantage of Guadalupe and Santa Maria to have several
18 alternatives for making use of **their SWP Entitlements**, Return Flows and Twitchell
19 Yield . . .” [Page 5]

20 7.5 . . . Santa Maria shall have a right of first refusal to purchase any SWP Return
21 Flows that Guadalupe elect to sell from **its existing SWP Entitlement** . . . [Pages 5-6]

22 G. THE “STIPULATION

23 Exhibit 1 to the Judgment After Trial is the Stipulation which all stipulating parties
24 entered into in *City of Santa Maria*. The Stipulation was expressly approved by the Court and
25 incorporated into the judgment, and provides:

26 At the date of this Stipulation, **the Importers are** Santa Maria, SCWC, Guadalupe,
27 Pismo Beach and Oceano. [2:26-28]

28 **Santa Maria, SCWC and Guadalupe all have SWP Contracts.** [13:5-6]

29 2 Filed concurrently herewith is AVEK’s request that the Court take judicial notice of the
30 Judgment After Trial in *City of Santa Maria*. The Water Management Agreement, Exhibit A to
31 Stipulation Exhibit F, was approved and signed by the law firm of Best, Best & Krieger LLP.

1 Therefore, by their stipulation, the stipulating parties in *City of Santa Maria* all agreed
2 that the specified public water purveyors could be characterized as “importers” and receive the
3 benefits of that status.

4 H. JUDGMENT AFTER TRIAL IN CITY OF SANTA MARIA

5 Based upon aforesaid assignments of SWP “entitlement” rights and, also, the parties’
6 express Stipulation thereto, it is not surprising that the Court’s Judgment After Trial in *City of*
7 *Santa Maria* makes the following finding:

8 The City of Santa Maria and Golden State Water Company have a right to use the Basin
9 for temporary storage and subsequent **recapture of the Return Flows generated from**
their importation of State Water Project water. [4:13-15; bold print added.]

10 I. THE COURT OF APPEAL’S OPINION

11 Completing the circle and consistent with all of the foregoing, the Court of Appeal’s
12 Opinion in *City of Santa Maria* notes and finds:

13 . . . Most of the case was resolved by an agreement (Stipulation) among the Santa
14 Maria Valley Water Conservation District (District), local cities and water companies
(public water producers), and most of the owners of land overlying the Basin. The
15 Stipulation . . . allocates the various components of the groundwater (native groundwater,
return flows of imported water, and salvaged water) among the stipulating parties.

16 The trial court approved the Stipulation and made it part of the final judgment. .

17 ..

18 [211 Cal.App.4th 266, 276; bold print added.]

19 For the foregoing reasons, *City of Santa Maria* is readily distinguishable from the case
20 at bar, to wit: AVEK has not assigned or transferred to the Public Water Suppliers any portion
21 of AVEK’s SWP “entitlement.” Consequently, the Public Water Suppliers do not own, and have
22 not had assigned or transferred to them, any part of AVEK’s SWP entitlement; therefore, they
23 clearly are not SWP contractors or “importers” of SWP water.

24 Nor has AVEK contracted or “stipulated” to grant to the Public Water Suppliers the right
25 to return flows from AVEK imported water.

26 While *City of Santa Maria* may provide some comfort to the Public Water Suppliers
27 relating to their prescription claims (which will not be determined in the Phase IV trial), that
28 decision provides them with absolutely no comfort or support relating to their claims to

1 ownership of return flows from AVEK imported water. To the contrary, *City of Santa Maria*
2 expressly reaffirms the Supreme Court’s rulings in *City of San Fernando* and *City of Glendale*
3 that the party which actually “imports” foreign water into a basin is the party entitled to return
4 flows resulting therefrom. In the case at bar, that party is AVEK!

5 **IV.**

6 **DUE PROCESS**

7 The Court’s relevant Orders preceding the Phase III trial did not indicate that a final
8 determination would be made therein as to the percentage of safe yield specifically attributable
9 to imported water return flows. The Court’s orders titled, ORDER AFTER CASE
10 MANAGEMENT CONFERENCE ON MARCH 22, 2010, and ORDER AFTER CASE
11 MANAGEMENT CONFERENCE ON MAY 6, 2010, each state the following:

12 In this third phase of trial, the Court will hear evidence to determine whether the basin,
13 as previously defined by the Court in trial phases one and two, is in such overdraft and
14 to determine whether there is a basis for the Court to exercise its equitable jurisdiction,
15 including the implementation of a “physical solution,” as prayed for by the public water
16 provider parties. The public water providers have the burden of proof.

17 The Court . . . expects to hear evidence concerning total pumping and total recharge from
18 all sources, with a further breakdown showing the amount of imported water on an annual
19 basis.

20 (Copies of both Orders are attached as Exhibits 5 and 6 hereto.)

21 The foregoing demonstrates that the Court intended that the Phase III trial would
22 determine: (1) whether the basin was in overdraft and, if so, the basin’s safe yield; and (2)
23 whether the Court should exercise its equitable jurisdiction to implement a physical solution.
24 There was no clear indication that the Court intended to make a final determination in the Phase
25 III trial as to the amount of safe yield which is specifically attributable to imported water return
26 flows. Accordingly, the parties were not given adequate notice that the Court intended to make
27 a final determination in the Phase III trial as to the amount of safe yield specifically attributable
28 to imported water return flows.

1 An elementary and fundamental requirement of due process in any proceeding that is to
2 be accorded finality is notice appropriate to the nature of the case and reasonably calculated,
3 under all the circumstances, to apprise interested parties of the pendency of a matter to be
4 determined. (*Malek v. Koshad* (2011) 200 Cal.App.4th 1540, 1547.)

5 Therefore , the parties who did not participate in the Phase III trial and have an interest
6 in litigating that issue were not given adequate notice of the Court’s intention, if it then had such
7 intention, to make a final determination in the Phase III trial of the percentage of the safe yield
8 which is specifically attributable to return flows attributable to imported water. If not now
9 afforded an opportunity to litigate that issue, the parties who did not participate in the Phase III
10 trial and have an interest in litigating that issue (including AVEK), would be denied due
11 process.³

12 V.

13 **REQUEST FOR JUDICIAL NOTICE**

14 District No. 40’s concurrently filed “Request for Judicial Notice of Trial Testimonies,
15 Exhibits [etc.] in Phase Three Re Return Flows,” wherein it requests that the Court take judicial
16 notice of numerous exhibits and trial testimony regarding the issue of return flows (Exhibit 7
17 hereto), is itself a tacit admission that the issue as to what percentage of safe yield is attributable
18 to imported water return flows has not yet been finally determined by the Court.

19 VI.

20 **THE PHASE III RULING REFERENCED “ESTIMATES” ONLY**

21 The Court’s Statement of Decision re Phase III Trial, repeatedly notes that the
22 percentages noted therein as to imported water return flows are imprecise “estimates” only (St.
23 Dec., 6:26-28 [“The Court recognizes the imprecision of the various estimates and the fact that
24

25
26 ³ Among other things, AVEK’s consultant, Robert Wagner, has opined as to the M&I assumed
27 percentage of 39%, that the 11% component thereof for outdoor irrigation return flow is not supported
28 and is overstated, and the 17% component thereof for septic disposal is also overstated but by a smaller
amount. Accordingly, Mr. Wagner’s deposition has now be scheduled for purposes of the Phase IV trial.

1 an estimate by definition is imprecise”]; 8:4-5 [“the amount of hydro-conductivity between Basin
2 areas was beyond the scope of the Phase III trial”]; and, 8:14-17 [“The Court finds that the
3 supplemental safe yield of the Basin is 28,000 acre feet annually, based on estimated return flow
4 percentages of 28.1% for municipal and industrial use, and 25% for agricultural use.”]

5 Moreover, the data presented to the Court in 2011, may not be accurate with respect to
6 the imported water return flow amounts or percentages during the Phase IV trial (*inter alia*,
7 because the amount of imported water varies from year to year). In this connection, Quartz Hill’s
8 motion concedes that, “The return flows from importer water fluctuate every year, based upon
9 the amount of water imported the prior year” (Mot., 5:22-23), and “[T]he amount of imported
10 water will fluctuate annually” (Mot., 6:10).⁴

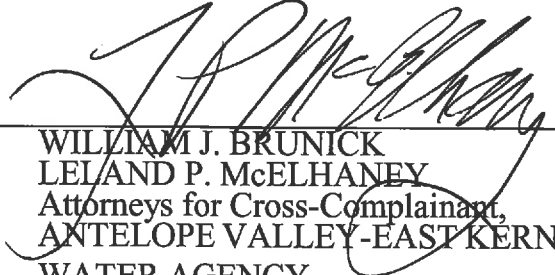
11 The Court should rely upon data and analyses which are most current to the date final
12 judgment is entered in this action, or at least as of the conclusion of the Phase IV trial.

13 **VII.**
14 **CONCLUSION**

15 For the foregoing reasons, AVEK respectfully submits that the Court should deny the
16 motion *in limine* of Rosamond Community Services District.

17 Dated: April 19, 2013

BRUNICK, McELHANEY & KENNEDY

18
19
20 By: 
21 WILLIAM J. BRUNICK
22 LELAND P. McELHANEY
23 Attorneys for Cross-Complainant,
24 ANTELOPE VALLEY-EAST KERN
25 WATER AGENCY

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27
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⁴ As noted in *City of Santa Maria*, fn. 11, “Any portion of Return Flows that is not used in a given
Year shall not be carried over into the following year.”

EXHIBIT 1

RESOLUTION NO. 82-509

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA APPROVING THE WATER SUPPLY RETENTION AGREEMENT/MODEL DRAFT II AND FIRST AMENDMENT THERETO AS APPROVED BY THE BOARD OF THE SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT FOR EXECUTION BY CERTAIN LOCAL WATER PURVEYORS

WHEREAS, on December 6, 1982 the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District approved "Water Supply Retention Agreement, Model Draft II", dated November 16, 1982 with the attached "Water Supply Retention Agreement, Model Draft I", dated November 16, 1982, with the insertion of Election Option Number 6, from Insert A, dated November 29, 1982, and

WHEREAS, on December 20, 1982 the Board of Directors of said District approved the First Amendment of Water Supply Retention Agreements, Model Drafts I and II, dated December 20, 1982, and

WHEREAS, the Board of Directors of said District has, by its aforementioned actions, offered and made available for execution by the City of Santa Maria said "Water Supply Retention Agreement, Model Draft II", with "Model Draft I" attached, each dated November 16, 1982, together with said First Amendment, dated December 20, 1982.

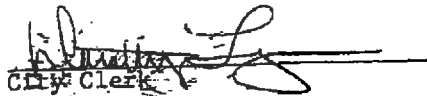
NOW THEREFORE, the City Council of the City of Santa Maria hereby resolves as follows:


1. That the execution of said Water Supply Retention Agreement, Model Draft II with Model Draft I attached, and said First Amendment thereto, will not directly or ultimately result in physical change in the environment and is therefore not a "project" under C.E.Q.A.
2. This Council approves said Water Supply Retention Agreement, Model Draft II with Model Draft I attached, and the First Amendment thereto, in the form on file with the City Clerk and hereby authorizes the Mayor and the City Clerk to execute said Agreements and Amendment.
3. Obligations arising out of the execution of Water Supply Retention Agreement, Model Draft II and the First Amendment thereto shall be funded by the City out of its "Municipal Waterworks Fund" as described at Santa Maria City Code Section 20-28.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria held December 21, 1982.


Mayor

ATTEST:



City Clerk



STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF SANTA MARIA)

I, DOROTHY LYMAN, City Clerk of the City of Santa Maria and ex officio Clerk of the City Council DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of Resolution No. 82-509 which was duly and regularly introduced and adopted by said City Council at a regular meeting held December 21, 1982.

AYES: Councilmen Jack Adam, Robert R. Cutler, Donald Shaw and Curtis J. Tunnell.
NOES: Mayor George S. Hobbs, Jr.
ABSENT: None.


City Clerk of the City of Santa Maria and ex officio Clerk of the City Council

File: A-190.1

APPROVED AS TO FORM



City Attorney

CONTENTS:

BY: 
DEPARTMENT HEAD

BY: 
CITY ADMINISTRATOR

FIRST AMENDMENT TO
WATER SUPPLY RETENTION
AGREEMENTS, MODEL DRAFTS I AND II

This Agreement is made between the SANTA BARBARA COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("DISTRICT") and the
CITY OF SANTA MARIA ("CONTRACTOR").

RECITALS:

A. On December 6, 1982, the Board of Directors of DISTRICT adopted Resolution No. 1266 approving "Water Supply Retention Agreement, Model Draft II", dated 11/16/82 with the attached "Water Supply Retention Agreement, Model Draft I", dated 11/16/82, with the insertion of election option number 6, from Insert A, dated 11/29/82.

B. DISTRICT and CONTRACTORS now wish to amend said Model Drafts I and II.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Article 2(a) of Water Supply Retention Agreement, Model Draft I, 11/16/82, is amended to read as follows:

(a) The CONTRACTOR agrees to pay the DISTRICT the amount required to be paid by the DISTRICT under the State Water Contract to retain annual entitlement and capacity right of 11,300 acre feet and all rights associated therewith under the State Water Contract ("Retained Rights") commencing with the July 1, 1983 payments. The amount required to be paid by the DISTRICT shall mean the amount that STATE bills the DISTRICT under the State Water Contract after STATE'S deduction of any credits or payments due to DISTRICT or CONTRACTORS' protest of payments, the transfer or termination of DISTRICT'S or CONTRACTOR'S entitlement and/or capacity, or other credits after execution of this Agreement. Conversely any payments or credits by STATE to DISTRICT under the

State Water Contract relating to such claims or transfers made prior to the execution of this Agreement shall not be credited against the amount required to be paid by the DISTRICT and shall not be deducted from CONTRACTOR's obligation.

2. Article 5(a)(1) and (2) of Water Supply Retention Agreement, Model Draft I, 11/16/82 are amended to read as follows:

(1) Any one or more of the PUBLIC CORPORATIONS may at any time give Written Notice ("Notice") to all other CONTRACTORS, the DISTRICT, and the San Luis Obispo County Flood Control and Water Conservation District ("SLO") of an Intention to Request Construction of Described Project Facilities under the State Water Contract. The described project facilities may involve the construction of the Coastal Aqueduct or the construction of local in-lieu projects, or both. The Notice shall establish a time for determination of participation in and sizing of the particular project described, which time shall not be less than three nor more than five years from the date of the Notice.

(2) Prior to the determination date, all CONTRACTORS shall decide whether or not to participate in the described project. If a CONTRACTOR decides to participate, it shall take the necessary action to enable itself to make such a determination on or before the determination date. CONTRACTOR agrees that the submittal of the described project or the financing of the described project to a vote of the people shall not exempt any CONTRACTOR from compliance with CEQA or NEPA to the extent such CONTRACTOR would have been required to comply with CEQA or NEPA in the absence of such vote. Potential participants shall identify themselves within six (6) months of the Notice to allow preparation of data essential to such determination. Potential participants who have identified themselves within the six (6) months, including, the PUBLIC CORPORATION giving the Notice, may unanimously agree to amend the Notice as to the time for determination of participation and sizing without the limitation of from three to five years in Article 5(a)(1). To be eligible to participate, a CONTRACTOR must pay its pro rata share of all costs determined to be necessary and jointly beneficial by a majority of the potential participants, including the costs of compliance with CEQA or NEPA, if any, subject to reimbursement by the actual participants. If a CONTRACTOR ultimately elects not to participate ("Non-Participant") and other CONTRACTORS elect to proceed ("Participant"), the Participants shall reimburse the Non-Participants for such joint costs. No reimbursement will be required if no CONTRACTOR decides to proceed.

3. Article I of said Water Supply Retention Agreement, Model Draft II, is amended by the addition of a new paragraph (d) to read as follows:

(d) The term "Delta Water Charge," as used in this Agreement shall not include any credits or payments due to DISTRICT, from STATE due to DISTRICT's protest of payments, transfer or termination of DISTRICT's entitlement and/or capacity, or litigation initiated prior to the execution of this Agreement.

4. This First Amendment shall not be effective until all the CONTRACTORS, who have executed Water Supply Retention Agreement, Model Draft II, before the adoption of DISTRICT's Resolution approving this First Amendment, have executed this First Amendment.

5. Except as amended by this First Amendment, all other provisions of Water Supply Retention Agreement, Model Drafts I and II, shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto has executed this Agreement, effective this _____ day of _____ 19 .

DISTRICT:

SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

ATTEST:
HOWARD C. MENZEL
COUNTY CLERK-RECORDER &
EX OFFICIO CLERK OF THE DISTRICT

By _____

By _____
Deputy Clerk-Recorder

CONTENTS:

BY: [Signature]
DEPARTMENT HEAD

APPROVED AS TO FORM:

BY: _____
CITY ATTORNEY

CONTRACTOR:

CITY OF SANTA MARIA

BY: _____
CITY ADMINISTRATOR

ATTEST: _____

By _____

APPROVED AS TO FORM:
KENNETH L. NELSON
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
KRISTI M. JOHNSON
AUDITOR-CONTROLLER

By _____

By _____

EXHIBIT 2

2/18/86
3/20/90

RESOLUTION NO. 90-31

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SANTA MARIA ESTABLISHING THE SANTA BARBARA
WATER PURVEYORS AGENCY AS THE ENTITY THROUGH WHICH
DECISIONS ARE TO BE MADE AND TRANSMITTED PURSUANT
TO THE WATER SUPPLY RETENTION AGREEMENTS**

WHEREAS, on June 25, 1985, the City of Santa Maria entered into an agreement with the Santa Barbara County Flood Control and Water Conservation District ("District") designated "Water Supply Retention Agreement", Model I, 12/11/84, as amended by First, Second & Third Amendments, ("WSRA") and is, pursuant to the WSRA, one of the "Contractors" to which "Retained Rights" were assigned pursuant to the WSRA; and

WHEREAS, this entity is a member of the Santa Barbara Water Purveyor's Agency ("SBWPA"), a joint powers agency formed on November 16, 1982 to, among other things, develop water and water supplies and to coordinate water planning and operations and relations with other agencies; and

WHEREAS, Article 5(c) of the WSRA provides that the Contractors under the WSRA shall make all decisions relating to the retained rights and shall transmit those decisions to the District, who shall communicate them to the State of California, Department of Water Resources ("DWR") or shall transmit those decisions to a "designated representative of the Contractors" for communication to DWR and "...shall organize themselves to enable the making and transmission of such decisions"; and

WHEREAS, to facilitate the joint decision-making contemplated and required by the WSRA, it is the desire and intention of the parties to the WSRA to use the SBWPA as the forum for the making and transmission of such decisions and to designate the Engineer Manager of the SBWPA as their representative to communicate such decisions to either the District or the DWR.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Santa Barbara Water Purveyors Agency is hereby acknowledged, ratified, and designated as the entity referred to in Article 5(c) of the WSRA, as the organization through which the making and transmission of all decisions relative to the WSRA shall be made.
2. Any decision of the SBWPA relating to the WSRA shall be subject to ratification by contractors holding a majority of the Retained Rights existing at the time of the decision in compliance with the provisions of Article 5(c) of the WSRA.
3. Ratification of any decision by this entity shall be in writing, communicated to the Engineer Manager of the SBWPA.
4. The Engineer Manager of the SBWPA is hereby designated as this entity's representative to transmit and communicate any decisions of the SBWPA ratified by Contractors holding a majority of the Retained Rights under the WSRA.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria held on the 20th day of March 1990.

George S. Hobbs Jr
Mayor

ATTEST:
Janet Kalland
City Clerk

APPROVED:
[Signature]
CITY CLERK

CONTENTS:
[Signature]
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF SANTA MARIA)

I, JANET KALLAND, City Clerk of the City of Santa Maria and ex officio Clerk of the City Council DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of Resolution No. 90-31 which was duly and regularly introduced and adopted by said City Council at a regular meeting held March 20, 1990 by the following vote:

- AYES: Councilmembers Dan A. Firth, Bob Orach, Curtis J. Tunnell, Thomas B. Urbanske and Mayor George S. Hobbs, Jr.
- NOES: None.
- ABSENT: None.

File: A-292.8

Janet Kalland
City Clerk of the City of Santa Maria and ex officio Clerk of the City Council

EXHIBIT 3

RESOLUTION NO. 91-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SANTA MARIA AUTHORIZING THE RATIFICATION OF
SANTA BARBARA WATER PURVEYORS AGENCY (SBWPA)
RESOLUTION REGARDING THE APPROVAL BY THE STATE
DEPARTMENT OF WATER RESOURCES OF THE ASSIGNMENT OF
RIGHTS EMBODIED IN THE WATER SUPPLY RETENTION AGREEMENTS

The City Council of the City of Santa Maria, California,
hereby resolve as follows:

1. The SBWPA Resolution No. 90-10 regarding the approval by the State Department of Water Resources of the Assignment of Rights Embodied in the Water Supply Retention Agreements is hereby ratified.

2. The Mayor or, in the Mayor's absence, the City Administrator is hereby authorized to execute the necessary documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria held on the 15th day of January 1991.

Mayor

ATTEST

city clerk

APPROVED AS TO FORM:

BY:

CITY ATTORNEY

CONTENTS:

BY:

DEPARTMENT HEAD

BY:

CITY ADMINISTRATOR

DWR WSRA ASSIGNMENT APPROVAL
RESOLUTION NO. 90-10

**A RESOLUTION OF
THE SANTA BARBARA WATER PURVEYORS AGENCY
REGARDING THE APPROVAL BY
THE STATE DEPARTMENT OF WATER RESOURCES
OF THE ASSIGNMENT OF RIGHTS EMBODIED IN
THE WATER SUPPLY RETENTION AGREEMENTS**

WHEREAS, on July 1, 1989, Model I of the Water Supply Retention Agreements (WSRAs), which had previously been entered into by various members and associate members of the Santa Barbara Water Purveyors Agency (the Contractors) and the Santa Barbara County Flood Control and Water Conservation District (the District), became effective assigning the District's rights under the 1963 State Water Contract (the Water Supply Contract) between the District and the Department of Water Resources (DWR) to the Contractors; and

WHEREAS, Article 41 of the Water Supply Contract contemplates formal approval by DWR of assignments of rights under that contract; and

WHEREAS, a search of the District's records indicates that the District has not yet sought and obtained the required approval of DWR of the WSRA assignments; and

WHEREAS, the Contractors have, in good faith reliance on the WSRAs, invested over \$4,881,500 in payments to the District for transmittal to DWR to pay the obligations assigned by the District to the Contractors, and are currently paying in excess of \$2,350,000 per year to maintain those assigned rights; and

WHEREAS, the Contractors since entering into the WSRAs have exercised their rights under the agreements and have contracted with the DWR through the District to have DWR complete preliminary design, feasibility and environmental analysis of two major water projects, and have taken action to import a portion of their Water Supply Contract entitlement water to Santa Barbara County through temporary pipeline facilities as part of ongoing emergency drought measures being implemented and have taken action to extend the time to exercise the option to reacquire relinquished entitlement under the Water Supply Contract and to relocate the Santa Maria terminus of the Coastal Branch Aqueduct Project; and

WHEREAS, the Contractors have made decisions, communicated their decisions to the District and the District has transmitted their decisions to DWR pursuant to and in compliance with the provisions of the WSRA, and all parties, the Contractors, the District and DWR have acted since 1989 in compliance with the terms and provisions of the WSRAs; and

**SBWPA Resolution
DWR WSRA Assignment Approval**

WHEREAS, given the significant investment and future financial obligations, it is the desire of the Contractors to maintain full technical compliance with the terms of the WSRA and the Water Supply Agreement.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Contractors hereby direct the Consultant Manager of the SBWPA, James Stubchaer, to submit the WSRA's to the DWR for its formal approval and to coordinate the submittal with the District and its staff.
2. The Contractors hereby request the District, pursuant to Article 5 (c) of the WSRA's, in coordination with the Consultant Manager, dated to provide certified copies of (a) District Resolution No. 1266, dated December 6, 1982, and (b) executed copies of Model I of the WSRA, dated 12/11/84 (as amended by the First, Second and Third Amendments) for transmittal to DWR at the earliest possible date and in no event later than January 10, 1991.
3. The Contractors hereby agree, pursuant to Article 3 (c) of the WSRA's, to reimburse the District for all costs and expenses which the District becomes obligated to pay under the Water Supply Contract regarding the Contractors' retained rights as a result of any action which District may take pursuant to this request.
4. The Secretary of this Agency is hereby directed to submit this Resolution to each contractor holding retained rights for ratification.
5. The Consultant Manager is hereby authorized to communicate this action to the District and to DWR as soon as (a) contractors holding a majority of the retained rights under the WSRA's have ratified this Resolution. The Consultant Manager is further authorized to take whatever action is required, in cooperation with the District, on behalf of the Contractors, to carry out the purpose and intent of this resolution.

Adopted this 13th day of December 1990 at a duly noticed meeting of the Santa Barbara Water Purveyors Agency by the following vote:

AYES, in favor thereof:

Buellton CSD
Carpinteria CWD
Goleta WD
City of Lompoc
Mission Hills CSD

**SBWPA Resolution
DWR WSRA Assignment Approval**

Montecito WD
City of Santa Barbara
City of Santa Maria
Santa Ynez RWCD
Santa Ynez RWCD ID #1
Vandenberg Village CSD

NOS, opposed:

None

ABSENT, and not voting:

Casmalia CSD
City of Guadalupe
Summerland CWD

ABSTENTIONS:

None



Reese Riddiough, Secretary



Curtis Tunnell, Chair

RATIFIED BY:

CITY OF SANTA MARIA

[Contractor]

CONTENTS:

11,300

AF

BY: 

DEPARTMENT HEAD

[Amount of Retained Rights]

BY: 

CITY ADMINISTRATOR

[Date]

APPROVED AS TO FORM:

By: 

[President or Mayor] [Title] City Administrator

BY: 

CITY ATTORNEY

By: 

[Secretary or Clerk] [Title] City Clerk

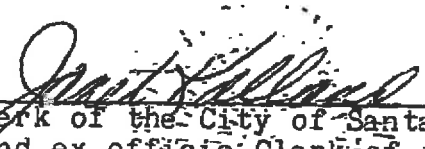
STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF SANTA MARIA)

I, JANET KALLAND, City Clerk of the City of Santa Maria and ex officio Clerk of the City Council DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of Resolution No. 91-12 which was duly and regularly introduced and adopted by said City Council at a regular meeting held January 15, 1991 by the following vote:

AYES: Councilmembers Dan A. Firth, Bob Orach,
Curtis J. Tunnell, Thomas B. Urbanske and
Mayor George S. Hobbs, Jr.

NOES: None.

ABSENT: None.



City Clerk of the City of Santa
Maria and ex officio Clerk of the
City Council

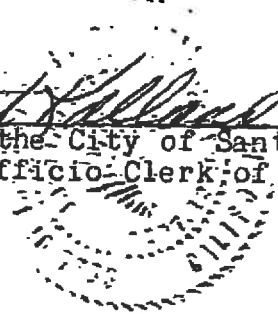


EXHIBIT 4


RESOLUTION NO. 91- 151

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SANTA MARIA AUTHORIZING THE RATIFICATION OF
SANTA BARBARA WATER PURVEYORS AGENCY (SBWPA)
RESOLUTION NO. 91-14 REGARDING REACQUISITION OF
ENTITLEMENT IN THE STATE WATER PROJECT (SWP) FROM
THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES (DWR)

The City Council of the City of Santa Maria, California,
hereby resolve as follows:

1. The SBWPA Resolution #91-14 regarding reacquisition of entitlement in the State Water Project is hereby ratified.
2. The Mayor or, in the Mayor's absence, the City Administrator is hereby authorized to execute the necessary documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria on the 3rd day of September 1991.



Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:

BY: 

CITY ATTORNEY

CONTENTS:

BY: 

DEPARTMENT HEAD

BY: 

CITY ADMINISTRATOR

EXHIBIT "D"

**SBWPA Resolution 91-14
Reacquisition of Water
Entitlement from DWR**

**RESOLUTION NO. 91-14 OF THE
SANTA BARBARA WATER PURVEYORS AGENCY
REGARDING REACQUISITION OF ENTITLEMENT IN THE
STATE WATER PROJECT**

WHEREAS, pursuant to the 1963 State Water Supply Contract (SWP Contract) between the State of California, Department of Water Resources (DWR) and the Santa Barbara County Flood Control and Water Conservation District (District), the District acquired entitlement to 57,700 acre feet per year (AFY) from the State Water Project (SWP) for the benefit of local water purveyors. In 1981, the District polled public and private water purveyors and other interested parties in Santa Barbara (Water Purveyors) to determine how much, if any, SWP entitlement they wished to reserve. After considering the responses, the District determined that 12,214 AFY was surplus to the needs of the Water Purveyors and requested DWR to reduce the District's entitlement (the 12,214 AFY is hereinafter referred to as the "Relinquished Entitlement"); and

WHEREAS, Amendment #9 to the SWP Contract was signed in September 1981, and reduced the District's entitlement to 45,486 AFY, without the approval of the Water Purveyors; and

WHEREAS, in 1983 the District entered into Water Supply Retention Agreements (WSRAs) with certain Water Purveyors (hereinafter the Water Purveyors which executed the WSRA's are referred to as "Contractors") transferring the District's rights under the SWP Contract to the Water Purveyors; and

WHEREAS, over the past several years, a number of Water Purveyors have indicated that they wish to increase their allocated share of SWP water under the SWP Contract or to acquire SWP rights for the first time; and

WHEREAS, the reacquisition of Relinquished Entitlement is the most expedient, logical and only means of securing additional water supplies and entitlement in the SWP; and

WHEREAS, pursuant to the terms of a 1987 settlement of the lawsuit by the San Luis Obispo Flood Control and Water Conservation District against DWR alleging improper administration of the SWP Contract regarding Aqueduct Reach 31A, the District has the right to reacquire part or all of the Relinquished Entitlement; and

WHEREAS, the reacquisition right was originally granted to March 12, 1989, and was extended twice by DWR, at the request and direction of the Contractors through the Santa Barbara Water Purveyors Agency, first to December 31, 1990, and then to December 31, 1991, in order to permit completion of the environmental impact reports being prepared for the Coastal Aqueduct, the Cachuma Enlargement Project, and related projects, which reports would assist the Contractors in ascertaining their needs to acquire Relinquished Entitlement; and

**SBWPA Resolution 91-14
Reacquisition of Water
Entitlement from DWR**

WHEREAS, rights to SWP water have great value, inasmuch as SWP facilities were constructed at 1960's prices and most of the bonds were sold to construct those facilities at very low interest rates. Construction of those same facilities today would cost many times as much and the bond rates would be approximately twice as high; and

WHEREAS, as a party to the SWP Contract, the District was acting on behalf of the Contractors, inasmuch as the District does not supply water to consumers but instead has historically acted as a conduit for water policy decisions made by the Water Purveyors; and

WHEREAS, the status of the Water Purveyors as third party beneficiaries under the SWP Contract, and the role of District as a fiduciary for the Water Purveyors under that contract, was confirmed by the terms of the various WSRAs executed over the years by the District and the Contractors; and

WHEREAS, the right to acquire all or part of the Relinquished Entitlement is an integral part of the Retained Rights (as that term is defined in the WSRAs) acquired by the Contractors in the WSRAs.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED AS FOLLOWS:

1. The Contractors holding a majority of the Retained Rights under the WSRAs, through the Santa Barbara Water Purveyors Agency, hereby direct the Board of Directors of the Santa Barbara County Flood Control and Water Conservation District, pursuant to Article 5(c) of the WSRAs, to request the State of California, Department of Water Resources, to amend the SWP Contract so that the District may reacquire, on behalf of and for the benefit of each Water Purveyor submitting a request therefor in the form of the attached Exhibit A, the amount of Relinquished Entitlement that Water Purveyor has requested thereon.

2. The Secretary of this Agency is hereby directed to submit this Resolution for ratification to each Contractor. Each Contractor shall be asked to ratify this resolution, whether or not that Contractor intends to submit a Request for Reacquisition of Relinquished Entitlement. The Secretary of this Agency, in consultation with the Consultant-Manager is hereby directed to disseminate this Resolution to such non-Contractor Water Purveyors in Santa Barbara County as may be known to either individual.

3. The Consultant-Manager is hereby authorized to communicate this action to the District and to the DWR as soon as Water Purveyors who have expressed an interest in reacquisition of entitlement have been provided an opportunity to consider and act upon this Resolution.

4. The Consultant-Manager is further authorized to take whatever action is required, in cooperation with the District, on behalf of the Water Purveyors, to carry out the purposes and intent of this Resolution.

**SBWPA Resolution 91-14
Reacquisition of Water
Entitlement from DWR**

5. The Contractors who request Reacquisition of Relinquished Entitlement will be required to agree, pursuant to Article 3(c) of the WSRA, to reimburse the District for all costs and expenses which the District becomes obligated to pay under the State Water Contract regarding the participant Contractors' Retained Rights as a result of any action which District may take pursuant to this request.

Adopted this 27th day of June, 1991, at a duly noticed meeting of the Santa Barbara Water Purveyors Agency by the following vote:


AYES, in favor thereof: Carpinteria CWD
Goleta WD
City of Guadalupe
City of Lompoc
Montecito WD
City of Santa Barbara
City of Santa Maria
Santa Ynez RWCD, ID#1
Summerland CWD
La Cumbre MWC
Southern Calif. Water Co.
Vandenberg AFB

NOES, opposed: None

ABSENT, and not voting: Buellton CSD
Casmalia CSD
Morehart Land Co.
Santa Barbara Research Center

ABSTENTIONS: Mission Hills CSD
Vandenberg Village CSD


Curtis Tunnell, Chair


Reese Riddiough, Secretary

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**SBWPA Resolution 91-14
Reacquisition of Water
Entitlement from DWR**

RATIFIED BY:

CITY OF SANTA MARIA
[Contractor]

11,300 Acre Feet
[Amount of Current Retained Rights]

September 3, 1991
[Date]

By: *Wanda Schumann*
[Signature]

City Administrator
[Title: ~~Mayor or President~~]

By: *Janet Hillard*
[Signature]

City Clerk
[Title: Clerk or Secretary]

EXHIBIT A

REQUEST TO REACQUIRE PORTION OF RELINQUISHED ENTITLEMENT

TO: The Santa Barbara County Flood Control and Water Conservation District
through
The Santa Barbara Water Purveyors Agency

FROM: CITY OF SANTA MARIA
[Type full name of requesting entity]

110 EAST COOK STREET, SANTA MARIA, CA 93454-5190
[Type address and telephone] (805) 925-0951

ENTITLEMENT PRESENTLY HELD: 11,300 AFY

ADDITIONAL ENTITLEMENT REQUESTED: 4,900 AFY

The above entity requests the additional entitlement specified herein subject to the following conditions:

In consideration for the Santa Barbara Water Purveyors Agency (SBWPA) submitting this request to the Santa Barbara County Flood Control and Water Conservation District (District) pursuant to SBWPA Resolution 91-14 adopted June 27, 1991, it is agreed as follows:

1. If the entity submitting this form has already executed a Water Supply Retention Agreement (WSRA) with the District, it shall be referred to herein as a Contractor and agrees to:

(a) Amend its WSRA to reflect the total amount of SWP entitlement the Contractor will hold after the District has acquired, on behalf of that Contractor, that amount of Relinquished Entitlement requested herein.

(b) Reimburse the District for all costs and expenses regarding the Contractor's Retained Rights (as defined in the WSRA), including the additional entitlement requested herein, which the District becomes obligated to pay under the State Water Contract as a result of any action which District may take pursuant to this request.

(c) Take action, if required, to become a Late Participant by filing a Late Request and agree to pay its pro rata share of all costs previously incurred by the original participants and all amounts required to be paid under the 1986 Contract for Preliminary Studies of Financial Feasibility, Preliminary Design and Environmental Review Under State Water Supply Contract and all amounts paid by or through the Santa Barbara Water Purveyors Agency.

(d) The Contractor executing this request agrees that, in the event that the aggregate of the requests for reacquisition of Relinquished Entitlement exceeds 12,214 AFY, then each requesting Contractor shall be entitled to receive a pro rata share equal to the fraction produced by dividing that Contractor's request by the total of the requests by all Contractors.

2. If the entity submitting this request is not a Contractor, it shall be referred to herein as a non-Contractor Water Purveyor and agrees as follows:

(a) The requests of Contractors for Relinquished Entitlement shall be satisfied before any portion of the Relinquished Entitlement is made available to non-Contractor Water Purveyors.

(b) In the event the aggregate of the requests for reacquisition of Relinquished Entitlement exceeds the amount available after satisfying the requests of the Contractors, then each requesting non-Contractor Water Purveyor shall be entitled to receive a pro rata share of the excess amount equal to the fraction produced by dividing that entity's request by the total of the requests by all such non-Contractor Water Purveyors.

(c) In the event a non-Contractor Water Purveyor is allowed to acquire Relinquished Entitlement pursuant to this request, that entity agrees to execute a WSRA in substantially the same form as the existing WSRA's (Model 1, dated 12/11/84, as amended by First, Second & Third Amendments) and to file a Late Request and make payments as provided for in paragraphs 1(b) and 1(c) above.

SO AGREED.

September 3, 1991
[Date]

By: Wayne Johnson
[Signature]

City Administrator

[Title: City Administrator]

By: Janet Holland
[Signature]

City Clerk

[Title: Clerk or Secretary]

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF SANTA MARIA)

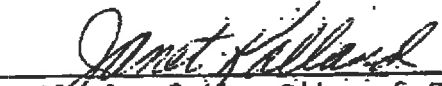
I, JANET KALLAND, city Clerk of the City of Santa Maria and ex officio Clerk of the City Council DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of Resolution No. 91-151 which was duly and regularly introduced and adopted by said City Council at a regular meeting held September 3, 1991 by the following vote:

AYES: Councilmembers Dan A. Firth, Curtis J. Tunnell and Thomas B. Urbanske.

NOES: None.

ABSENT: Councilmember Bob Orach.

ABSTAINED: Mayor George S. Hobbs, Jr.



City Clerk of the City of Santa Maria and ex officio Clerk of the City Council

EXHIBIT 5

ORIGINAL FILED
APR 23 2010
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MARCH 22, 2010**

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

Hearing Date(s): March 22, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

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

Judge: Honorable Jack Komar

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

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**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MARCH 22, 2010**

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Superior Court of California, County of Kern,
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Hearing Date(s): March 22, 2010
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Location: Department 1, LASC

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

Judge: Honorable Jack Komar

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on March 22, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk of
6 Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 The Third Phase of Trial is scheduled for September 27, 2010 at 9:00 a.m. in
10 Department One of this Court. The time of trial is estimated at 10 court days. The Court will be
11 in session for trial Monday through Thursday of each week. If additional days of trial are
12 required, the Court will schedule such after conferring with the parties.

13 The parties shall comply with the provisions of Code of Civil Procedure Section
14 2034.210 and engage in a simultaneous disclosure and exchange of expert information,
15 including any reports prepared by such experts, on July 1, 2010. Any supplemental disclosures
16 and exchange of information shall occur on July 15, 2010. Expert depositions shall be taken
17 between July 15 and August 30, 2010.

18 On July 1, 2010, any party who intends to call non-expert witnesses to provide
19 percipient testimony shall file a statement listing such witness, the subject matter of their
20 testimony, and an estimate of the amount of time required for their testimony on direct.

21 All discovery shall be completed in compliance with the Code of Civil Procedure 30
22 days before trial and all motions shall be heard no later than 15 days before trial.

23 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
24 any responses or opposition shall be filed no later than September 24, 2010.

25 The public water provider parties have essentially alleged that the basin is in overdraft,
26 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
27 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this
28 third phase of trial, the Court will hear evidence to determine whether the basin, as previously

1 defined by the Court in trial phases one and two, is in such overdraft and to determine whether
2 there is a basis for the Court to exercise its equitable jurisdiction, including the implementation
3 of a “physical solution,” as prayed for by the public water provider parties. The public water
4 providers have the burden of proof.

5 The Court will not hear any evidence concerning prescription claims nor does it expect
6 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
7 to hear evidence concerning total pumping and total recharge from all sources, with a further
8 breakdown showing the amount of imported water on an annual basis.

9 Any party requiring further clarification of the issues in this third phase of trial is
10 invited to request such clarification and the Court will consider a further case management
11 conference to provide such clarification unless it is a simple matter permitting the Court to
12 issue a clarifying order.

13
14 Dated: March 22, 2010

15 /s/ Jack Komar
16 Honorable Jack Komar
17 Judge of the Superior Court
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EXHIBIT 6

JUN 01 2010

John A. Glas, Clerk of the Court
BY *[Signature]*
RAUL SANJUAN

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

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

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

Judge: Honorable Jack Komar

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
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County of Los Angeles, Case No. BC 325 201

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Angeles, Case No. BC 364 553

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Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

Judge: Honorable Jack Komar

3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on May 6, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk
6 of Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 **ORDERS AMENDING THE MARCH 22, 2010 ORDER AFTER CASE**
10 **MANAGEMENT CONFERENCE**

11 The Third Phase of Trial remains scheduled for September 27, 2010 at 9:00 a.m. in
12 Department One of this Court. The time of trial remains estimated at 10 court days. The Court
13 will be in session for trial Monday through Thursday of each week. If additional days of trial are
14 required, the Court will schedule such after conferring with the parties.

15 The Request of Grimmway Enterprises, Inc., Lapis Land Company, LLC, Crystal
16 Organics, LLC and Diamond Farming Company to Modify the March 22, 2010 Case
17 Management Order, posted on April 30, 2010, is granted as follows: the time for parties to
18 comply with the provisions of Code of Civil Procedure Section 2034.210 and engage in a
19 simultaneous disclosure and exchange of expert information, including any reports prepared by
20 such experts, is extended from July 1, 2010 to **July 15, 2010**. The time for any supplemental
21 disclosures and exchange of information is extended from July 15, 2010 to **July 29, 2010**. The
22 time for expert depositions to be conducted is amended to **between July 29, 2010 and**
23 **September 13, 2010**.

24 On July 15, 2010, any party who intends to call non-expert witnesses to provide
25 percipient testimony shall file a statement listing such witness, the subject matter of their
26 testimony, and an estimate of the amount of time required for their testimony on direct.

27 All discovery shall be completed in compliance with the Code of Civil Procedure 30
28 days before trial and all motions shall be heard no later than 15 days before trial.

1 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
2 any responses or opposition shall be filed no later than September 24, 2010.

3 The public water provider parties have essentially alleged that the basin is in overdraft,
4 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
5 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this third
6 phase of trial, the Court will hear evidence to determine whether the basin, as previously defined
7 by the Court in trial phases one and two, is in such overdraft and to determine whether there is
8 a basis for the Court to exercise its equitable jurisdiction, including the implementation of a
9 “physical solution,” as prayed for by the public water provider parties. The public water
10 providers have the burden of proof.

11 The Court will not hear any evidence concerning prescription claims nor does it expect
12 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
13 to hear evidence concerning total pumping and total recharge from all sources, with a further
14 breakdown showing the amount of imported water on an annual basis.

15 **WOOD PLAINTIFFS’ MOTION TO DISQUALIFY**

16 The Motion by the Wood Plaintiffs to Disqualify the Law Firm of Lemieux & O’Neill is
17 denied based upon the information provided to the Court.

18 **WOOD PLAINTIFFS’ MOTION FOR ALLOCATION OF EXPERT WITNESS**

19 **FEES**

20 On March 25, 2010, the Wood Plaintiffs submitted a Proposed Order re Motion for
21 Allocation of Expert Witness Fees, providing that the twelve named “Public Water Suppliers”
22 equally share the costs of Entrix in the amount of \$4,784.68. Objections thereto were filed by
23 the Cities of Lancaster and Palmdale. After considering the pleadings filed by all parties, the
24 Court finds the fees incurred to date by Entrix, in the amount of \$4,784.68 are reasonable, but
25 modifies the order to exclude the Cities of Lancaster and Palmdale from obligation as neither of
26 those parties are making claims against the these landowners.

27 The Court hereby orders the following public water suppliers to pay this bill directly to
28 Entrix within fourteen days (14) of this order. The following ten public water suppliers are

1 ordered to pay this bill, in equal shares: Rosamond Community Services District, Los Angeles
2 County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation
3 District, North Edwards Water District, Desert Lake Community Services District, California
4 Water Service Company, Quartz Hill Water District, Palmdale Water District and Phelan Pinon
5 Hills Community Services District.

6 Further, the request of Richard Wood to authorize the court-appointed expert to
7 commence the work outlined in the proposal from Entrix, which was attached to the moving
8 papers, is denied without prejudice based on the decision that no evidence of individual
9 pumping will be heard at the Phase III trial, as set forth in the Court's March 22, 2010 Order.

10 **TRANSFEEE/TRANSFEROR OBLIGATION**

11 Regarding the Proposed Order submitted by Tejon Ranchcorp on January 4, 2008 re
12 Jurisdiction over Transferees of Property, previously granted by the Court in open hearings, the
13 Court hereby confirms that it will defer signing said Order until further briefing and hearing of
14 the issues by the parties. The Court requests that the proponent of this transfer document file by
15 May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines shall
16 be per Code of Civil Procedure; the hearing date is set for **June 14, 2010 at 9:00 a.m. in**
17 **Department 1, Los Angeles County Superior Court.**

18 SO ORDERED.

19
20 Dated: May 25, 2010

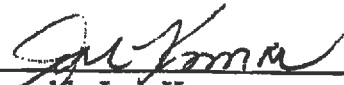
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22 _____
23 Honorable Jack Komar
24 Judge of the Superior Court
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EXHIBIT 7

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

1 **BEST BEST & KRIEGER LLP**
ERIC L. GARNER, Bar No. 130665
2 JEFFREY V. DUNN, Bar No. 131926
STEFANIE HEDLUND MORRIS, Bar No. 239787
3 18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612
4 TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
5 **Attorneys for Cross-Complainant**
LOS ANGELES COUNTY WATERWORKS
6 **DISTRICT NO. 40**

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

7 **OFFICE OF COUNTY COUNSEL**
COUNTY OF LOS ANGELES
8 JOHN F. KRATTLI, Bar No. 82149
COUNTY COUNSEL
9 WARREN WELLEN, Bar No. 139152
PRINCIPAL DEPUTY COUNTY COUNSEL
10 500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
11 TELEPHONE: (213) 974-8407
TELECOPIER: (213) 687-7337

12 **Attorneys for Cross-Complainant LOS ANGELES**
13 **COUNTY WATERWORKS DISTRICT NO. 40**

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

17 **ANTELOPE VALLEY**
18 **GROUNDWATER CASES**
19 **Included Actions:**
20 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
21 Court of California, County of Los
Angeles, Case No. BC 325201;
22 Los Angeles County Waterworks District
23 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
24 No. S-1500-CV-254-348;
25 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
27 California, County of 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

**REQUEST FOR JUDICIAL NOTICE OF
TRIAL TESTIMONIES, EXHIBITS, AND
DECISION IN PHASE THREE RE
RETURN FLOWS**

1 **REQUEST FOR JUDICIAL NOTICE**

2 **I. INTRODUCTION**

3 Pursuant to Evidence Code Sections 452 and 453, Los Angeles County Waterworks
4 District No. 40 ("District No. 40") requests that the Court take judicial notice of the following
5 documents for use during Phase Four of the trial:

6 **Transcripts of Joseph Scalmanini's Trial Testimony and Related Exhibits**

- 7 1. Pages 283-284 and 320-398 of the transcript of Joseph Scalmanini's trial
8 testimony on January 12, 2011, true and correct copies of which are attached hereto as Exhibit
9 "A".
- 10 2. Exhibit 62 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
11 "Historical M&I Water Requirements Antelope Valley Area of Adjudication," a true and correct
12 copy of which is attached hereto as Exhibit "B".
- 13 3. Exhibit 63 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
14 "Tabulated Historical M&I Water Requirements Antelope Valley Area of Adjudication," a true
15 and correct copy of which is attached hereto as Exhibit "C".
- 16 4. Exhibit 65 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
17 "Historical Total Water Requirements Antelope Valley of Adjudication," a true and correct copy
18 of which is attached hereto as Exhibit "D".
- 19 5. Exhibit 66 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
20 "Tabulated Historical Total Water Requirements Antelope Valley Area of Adjudication," a true
21 and correct copy of which is attached hereto as Exhibit "E".
- 22 6. Exhibit 67 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
23 "Historical Groundwater Pumping Antelope Valley Area of Adjudication," a true and correct
24 copy of which is attached hereto as Exhibit "F".
- 25 7. Exhibit 68 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
26 "Calculation of Agricultural Groundwater Pumpage Antelope Valley Area of Adjudication," a
27 true and correct copy of which is attached hereto as Exhibit "G".
- 28 8. Exhibit 70 of Joseph Scalmanini's trial testimony on January 12, 2011, titled

1 "Boundaries of SWP Contractors with Table A Amounts Antelope Valley Area of Adjudication,"
2 a true and correct copy of which is attached hereto as Exhibit "H".

3 9. Exhibit 71 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
4 "Historical Supplemental (SWP) Water Use Antelope Valley Area of Adjudication," a true and
5 correct copy of which is attached hereto as Exhibit "I".

6 10. Exhibit 72 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
7 "Historical Local and Supplemental (SWP) Water Use Antelope Valley Area of Adjudication," a
8 true and correct copy of which is attached hereto as Exhibit "J".

9 11. Exhibit 73 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
10 "Tabulated Historical Local & Supplemental (SWP) Antelope Valley Area of Adjudication," a
11 true and correct copy of which is attached hereto as Exhibit "K".

12 12. Exhibit 75 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
13 "Tabulation of Historical Recycled Water Disposition Antelope Valley Area of Adjudication," a
14 true and correct copy of which is attached hereto as Exhibit "L".

15 13. Exhibit 76 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
16 "Historical Total Water Use Antelope Valley Area of Adjudication," a true and correct copy of
17 which is attached hereto as Exhibit "M".

18 14. Exhibit 77 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
19 "Tabulation of Historical Total Water Use Antelope Valley Area of Adjudication," a true and
20 correct copy of which is attached hereto as Exhibit "N".

21 15. Exhibit 78 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
22 "Native Sustainable Yield," a true and correct copy of which is attached hereto as Exhibit "O".

23 16. Exhibit 79 of Joseph Scalmanini's trial testimony on January 12, 2011, titled
24 "Native and Supplemental Sustainable Yield," a true and correct copy of which is attached hereto
25 as Exhibit "P".

26 17. Pages 418-419 and 500-514 of the transcript of Joseph Scalmanini's trial
27 testimony on January 13, 2011, true and correct copies of which are attached hereto as Exhibit
28 "Q".

1 18. Exhibit 93 of Joseph Scalmanini's trial testimony on January 13, 2011, titled
2 "Native Safe Yield," a true and correct copy of which is attached hereto as Exhibit "R".

3 19. Exhibit 95 of Joseph Scalmanini's trial testimony on January 13, 2011, titled
4 "Supplemental Safe Yield," a true and correct copy of which is attached hereto as Exhibit "S".

5 Transcripts of Mark J. Wildermuth's Trial Testimony

6 20. Pages 79-85 and 154-156 of the transcript of Mark J. Wildermuth's trial
7 testimony on January 4, 2011, true and correct copies of which are attached hereto as Exhibit "T".

8 21. Pages 24-46 and 116-119 of the transcript of Mark J. Wildermuth's trial
9 testimony on January 5, 2011, true and correct copies of which are attached hereto as Exhibit
10 "U".

11 22. Pages 39-42 and 64-67 of the transcript of Mark J. Wildermuth's trial
12 testimony on January 31, 2011, true and correct copies of which are attached hereto as Exhibit
13 "V".

14 23. Pages 16-18, 25-27, 56-69, 125-129 and 166-169 of the transcript of Mark J.
15 Wildermuth's trial testimony on February 1, 2011, true and correct copies of which are attached
16 hereto as Exhibit "W".

17 24. Pages 90-94 of the transcript of Mark J. Wildermuth's trial testimony on
18 March 25, 2011, true and correct copies of which are attached hereto as Exhibit "X".

19 Transcript of Joel E. Kimmelshue's Trial Testimony and Related Exhibits

20 25. Pages 121-168 of the transcript of Joel E. Kimmelshue's trial testimony on
21 March 15, 2011, true and correct copies of which are attached hereto as Exhibit "Y".

22 26. Exhibit A-94 of Joel E. Kimmelshue's trial testimony on March 15, 2011,
23 titled "Annual Return Flow," a true and correct copy of which is attached hereto as Exhibit "Z".

24 27. Exhibit A-95 of Joel E. Kimmelshue's trial testimony on March 15, 2011,
25 titled "Annual Urban Applied Water and Return Flow," a true and correct copy of which is
26 attached hereto as Exhibit "AA".

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1 Transcript of Steven Bachman's Trial Testimony and Related Exhibit

2 28. Pages 132-140 and 149-153, 162-165, 177-179 and 194-195 of the transcript of
3 Steven Bachman's trial testimony on March 16, 2011, true and correct copies of which are
4 attached hereto as Exhibit "BB".

5 29. Exhibit B-73 of Steven Bachman's trial testimony on March 16, 2011, titled
6 "Lag Time for Return Flows," a true and correct copy of which is attached hereto as Exhibit
7 "CC".

8 Transcripts of N. Thomas Sheahan's Trial Testimony

9 30. Pages 26-28, 95-97, 140-146, 165-168, 187-189 and 195-196 of the transcript
10 of N. Thomas Sheahan's trial testimony on March 22, 2011, true and correct copies of which are
11 attached hereto as Exhibit "DD".

12 31. Pages 2-9, 138-148 and 156-160 of the transcript of N. Thomas Sheahan's trial
13 testimony on March 23, 2011, true and correct copies of which are attached hereto as Exhibit
14 "EE".

15 Transcripts of Ericson John List's Trial Testimony

16 32. Pages 193-199, 215-219 of the transcript of Ericson John List's trial testimony
17 on March 23, 2011, true and correct copies of which are attached hereto as Exhibit "FF".

18 33. Pages 1-9 of the transcript of Ericson John List's trial testimony on March 24,
19 2011, true and correct copies of which are attached hereto as Exhibit "GG".

20 Statement of Decision

21 34. Phase Three Statement of Decision, dated July 13, 2011, a true and correct
22 copy of which is attached hereto as Exhibit "HH".

23 Exhibits "A" through "HH" relate to return flows in the Antelope Valley Water Basin.
24 Exhibits "A" through "GG" are either trial testimonies excerpts or exhibits presented during
25 Phase Three. Exhibit "HH" is this Court's Phase Three Statement of Decision, which contains
26 return flows findings. The items contained in this Request are part of the Court's records.
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LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE, SUITE 400
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 **II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF RECORDS OF THIS**
2 **ACTION**

3 Courts may take judicial notice of “[r]ecords of [] any court of this state.” (Evid. Code
4 §452, subd. (d); see, *People v. Buckley* (1986) 185 Cal. App. 3d 512, 525 [judicial notice taken of
5 preliminary hearing transcript]; *Knoff v. San Francisco* (1969) 1 Cal. App. 3d 184, 200 [grand
6 jury testimony transcripts “were subjects of which the trial court could properly take judicial
7 notice.”].) Moreover, California courts have long established that “[a] court may judicially notice
8 its own records and proceedings in the same case.” (*San Francisco v. Carraro* (1963) 220 Cal.
9 App. 2d 509, 527; see also, *Nulaid Farmers Assn. v. La Torre* (1967) 252 Cal. App. 2d 788, 791
10 [“It is settled that a court may take judicial notice of its own records”].)


11 The exhibits attached hereto include: (1) Phase Three trial testimony; (2) Phase Three trial
12 exhibits; and (3) the Phase Three Statement of Decision. These documents are court records, for
13 which judicial notice may be taken. (Evid. Code §452, subd. (d).)

14 Under Section 453 of the Evidence Code, this request for judicial notice is conditionally
15 mandatory and must be granted if sufficient notice is given to the adverse party and if the court is
16 furnished with sufficient information to enable it to take notice of the matter. (*People v. Maxwell*
17 (1978) 78 Cal. App. 3d 124, 130-31.) By this request, District No. 40 gives the Court and adverse
18 parties sufficient notice and information to enable it to take judicial notice of those records
19 attached hereto as Exhibits “A” through “HH.”

20 Dated: March 29, 2013

BEST BEST & KRIEGER LLP

21
22
23 By


ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE HEDLUND MORRIS
Attorneys for Cross-Complainant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On March 29, 2013, I served the within document(s):


REQUEST FOR JUDICIAL NOTICE OF TRIAL TESTIMONIES, EXHIBITS, AND DECISION IN PHASE THREE RE RETURN FLOWS

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on March 29, 2013, at Irvine, California.


Kerry V. Keefe

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PROOF OF SERVICE

**STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO }**

I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 1839 Commercenter West, San Bernardino, California 92408-3303.

On April 19, 2013, I served the foregoing document(s) described as: **ANTELOPE VALLEY-EAST KERN WATER AGENCY'S OPPOSITION TO MOTION IN LIMINE OF ROSAMOND COMMUNITY SERVICES DISTRICT** on the interested parties in this action served in the following manner:

■ **BY ELECTRONIC SERVICE AS FOLLOWS** by posting the document(s) listed above to the Santa Clara website in the action of the *Antelope Valley Groundwater Litigation*, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No. 1-05-CV-049053.

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

Executed on April 19, 2013, at San Bernardino, California.


P. Jo Anne Quihuis