

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

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

*Exempt from filing fee pursuant to
Gov't. Code Section 6103*

13
14
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))

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

21 **Included Actions:**

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;

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.

Judicial Council Coordination Proceeding
No. 4408

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

**ANTELOPE VALLEY-EAST KERN
WATER AGENCY'S OPPOSITION TO
MOTIONS *IN LIMINE* OF LOS
ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 AND QUARTZ HILL
WATER DISTRICT TO PRECLUDE
EVIDENCE RE: PERCENTAGE OF
SAFE YIELD ATTRIBUTABLE TO
IMPORTED WATER**

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

**ANTELOPE VALLEY-EAST KERN WATER AGENCY'S OPPOSITION TO MOTIONS *IN LIMINE* OF LOS ANGELES COUNTY
WATERWORKS DISTRICT 40 AND QUARTZ HILL WATER DISTRICT TO PRECLUDE EVIDENCE RE: PERCENTAGE OF
SAFE YIELD ATTRIBUTABLE TO IMPORTED WATER**

1 Cross-Complainant, the Antelope Valley-East Kern Water Agency (AVEK), submits this
2 Opposition to the motions *in limine* of cross-complainants, Los Angeles County Waterworks
3 District No. 40 ("District No. 40") and Quartz Hill Water District ("Quartz Hill") "To Preclude
4 Evidence Re Decided Issues Including Return Flow Contribution To Basin Safe Yield" or, more
5 aptly described as cross-complainants' motion to preclude evidence re percentage of safe yield
6 attributable to imported water.

7 I.

8 INTRODUCTION

9 In their motions, District No. 40 and Quartz Hill argue that, in the Phase III trial, the
10 Court "decided" the issue as to the percentage of safe yield attributable to imported water, and
11 no further evidence or litigation should be permitted on that issue. For the following reasons,
12 AVEK respectfully disagrees:

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

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

26 3. The Court's Ruling following the Phase III Trial succinctly notes that the percentages of
27 return flows mentioned therein were "estimates" only.

28 \\\

1 II.

2 DUE PROCESS

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

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

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

16 (Copies of both Orders are attached as Exhibits 1 and 2 hereto.)

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

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

1 Therefore , the parties who did not participate in the Phase III trial and have an interest
2 in litigating that issue were not given adequate notice of the Court’s intention, if it then had such
3 intention, to make a final determination in the Phase III trial of the percentage of the safe yield
4 which is specifically attributable to return flows attributable to imported water. If not now
5 afforded an opportunity to litigate that issue, the parties who did not participate in the Phase III
6 trial and have an interest in litigating that issue (including AVEK), would be denied due
7 process.¹

8 **III.**

9 **REQUEST FOR JUDICIAL NOTICE**

10 District No. 40’s concurrently filed “Request for Judicial Notice of Trial Testimonies,
11 Exhibits [etc.] in Phase Three Re Return Flows,” wherein it requests that the Court take judicial
12 notice of numerous exhibits and trial testimony regarding the issue of return flows (Exhibit 3
13 hereto), is itself a tacit admission that the issue as to what percentage of safe yield is attributable
14 to imported water return flows has not yet been finally determined by the Court.

15 **IV.**

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

17 The Court’s Statement of Decision re Phase III Trial, repeatedly notes that the
18 percentages noted therein as to imported water return flows are imprecise “estimates” only (St.
19 Dec., 6:26-28 [“The Court recognizes the imprecision of the various estimates and the fact that
20 an estimate by definition is imprecise”]; 8:4-5 [“the amount of hydro-conductivity between
21 Basin areas was beyond the scope of the Phase III trial”]; and, 8:14-17 [“The Court finds that
22

23
24 ¹ Among other things, AVEK’s consultant, Robert Wagner, has opined as to the M&I assumed
25 percentage of 39%, that the 11% component thereof for outdoor irrigation return flow is not supported
26 and is overstated, and the 17% component thereof for septic disposal is also overstated but by a smaller
27 amount. Accordingly, Mr. Wagner’s deposition has now be scheduled for purposes of the Phase IV trial.

28 Additionally, the claimed unavailability of Mr. Scalmanini for the Phase IV trial does not “trump”
the due process rights referenced above. This is so particularly where, as here, District 40 has many
other witnesses available to it who it has already designated as witness for the Phase IV trial and who
worked closely with Mr. Scalmanini both preceding and during the Phase III trial.

1 the supplemental safe yield of the Basin is 28,000 acre feet annually, based on estimated return
2 flow percentages of 28.1% for municipal and industrial use, and 25% for agricultural use.”]

3 Moreover, the data presented to the Court in 2011, may not be accurate with respect to
4 the imported water return flow amounts or percentages during the Phase IV trial (*inter alia*,
5 because the amount of imported water varies from year to year). In this connection, Quartz
6 Hill’s motion concedes that, “The return flows from importer water fluctuate every year, based
7 upon the amount of water imported the prior year” (Mot., 5:22-23), and “[T]he amount of
8 imported water will fluctuate annually” (Mot., 6:10).²

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

11 V.

12 **CONCLUSION**

13 For the foregoing reasons, AVEK respectfully submits that the Court should deny District
14 No. 40’s Motion *In Limine*, and Quartz Hill’s Motion *In Limine* One.

15 Dated: April 19, 2013

BRUNICK, McELHANEY & KENNEDY

16
17
18 By: 

19 WILLIAM J. BRUNICK
20 LELAND P. MCELHANEY
21 Attorneys for Cross-Complainant,
22 ANTELOPE VALLEY-EAST KERN
23 WATER AGENCY

24
25
26
27 ² As noted in *City of Santa Maria*, fn. 11, “Any portion of Return Flows that is not used in a given
28 Year shall not be carried over into the following year.”

EXHIBIT 1

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 MARCH 22, 2010**

Hearing Date(s): March 22, 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 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
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

JUN 01 2010

John A. Blaine, Clerk of Court
BY *[Signature]*
RAUL SANUZA

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 MAY 6, 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): May 6, 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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 **TRANSFeree/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

21 
22 _____
23 Honorable Jack Komar
24 Judge of the Superior Court
25
26
27
28

EXHIBIT 3

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

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

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
No. 40 v. Diamond Farming Co., Superior
23 Court of California, County of Kern, Case
No. S-1500-CV-254-348;
24 Wm. Bolthouse Farms, Inc. v. City of
25 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 "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".

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.
27
28

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

24
25
26
27 26345.00000\7890803.1

1 **PROOF OF SERVICE**

2 I, Kerry V. Keefe, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 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):

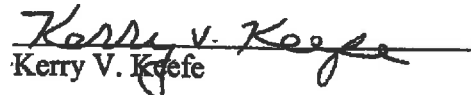
5 **REQUEST FOR JUDICIAL NOTICE OF TRIAL TESTIMONIES, EXHIBITS, AND**
6 **DECISION IN PHASE THREE RE RETURN FLOWS**

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

18 I am readily familiar with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
20 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.

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

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

24 
Kerry V. Keefe

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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

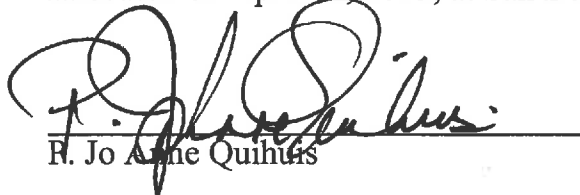
I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 1839 Commercenter West, San Bernardino, California 92408-3303.

On April 19, 2013, I served the foregoing document(s) described as: **ANTELOPE VALLEY-EAST KERN WATER AGENCY'S OPPOSITION TO MOTIONS IN LIMINE OF LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 AND QUARTZ HILL WATER DISTRICT TO PRECLUDE EVIDENCE RE: PERCENTAGE OF SAFE YIELD ATTRIBUTABLE TO IMPORTED WATER** 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.


R. Jo Anne Quihuis