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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
12

13 Coordination Proceeding  
14 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding  
No. 4408

15 **ANTELOPE VALLEY**  
16 **GROUNDWATER CASES**

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

17 **Included Actions:**

**ANTELOPE VALLEY-EAST KERN  
WATER AGENCY'S OPPOSITION TO  
METROPOLITAN WATER  
DISTRICT'S MOTION TO QUASH  
TRIAL SUBPOENA**

18 Los Angeles County Waterworks District  
19 No. 40 vs. Diamond Farming Company, a  
20 corporation, Superior Court of California,  
County of Los Angeles, Case No.  
BC325201;

Trial Date: February 10, 2014  
Time: 9:00 a.m.  
Room: 1 (Los Angeles Superior Court)  
Hon. Jack Komar, Judge Presiding

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

24 Wm. Bolthouse Farms, Inc. vs. City of  
25 Lancaster, Diamond Farming Company, a  
26 corporation, vs. City of Lancaster, Diamond  
27 Farming Company, a corporation vs.  
Palmdale Water District, Superior Court of  
California, County of Riverside, Case Nos.  
RIC 353840, RIC 344436, RIC 344668.  
28

1           The Antelope Valley-East Kern Water Agency (AVEK) submits this response to the  
2 motion of the Metropolitan Water District of Southern California (Metropolitan) for an order  
3 either quashing AVEK’s trial subpoena which was duly served upon it, or, in the alternative, for  
4 a protective order limiting the examination of Metropolitan’s witness to a review of records  
5 responsive to the subpoena. AVEK does not object to that part of the motion which seeks a  
6 protective order limiting the examination to the business record review performed of  
7 Metropolitan which is responsive to the subpoena, and to the specific matters disclosed through  
8 that search which is stated in the declaration of Metropolitan’s witness, Kathleen Kunysz. A  
9 copy of Ms. Kunysz’ declaration is attached as Exhibit 1 hereto and, also, as Exhibit B to  
10 Catherine M. Stites declaration in support of the motion.

11           As set forth below, however, AVEK objects to that part of the motion which seeks an  
12 Order quashing the trial subpoena itself.

13           In support of its motion to quash, MWD makes the following arguments: (1) the  
14 information requested in the subpoena is irrelevant because “Metropolitan cannot provide any  
15 documents or any witnesses with personal knowledge of the facts from 64 years ago . . . [and]  
16 AVEK seeks to introduce this evidence to improperly support a legal conclusion;” and (2) it  
17 would be “unreasonably burdensome” to require Metropolitan “to produce a witness under these  
18 circumstances.” As demonstrated below, each of these arguments is without merit, and the  
19 motion to quash the trial subpoena should be denied.

20 1.     Evidence Code section 1272 allows reference to business records to demonstrate the  
21 nonexistence of a fact or event.

22           In pertinent part, Ev. Code § provides:

23                   Evidence of the absence from the records of a business of a record of an asserted  
24 act, condition, or event is not made inadmissible by the hearsay rule when offered to  
25 prove the nonoccurrence of the act or event, or the nonexistence of the condition, if:

26                   (a) It was the regular course of that business to make records of all such acts,  
27 conditions, or events at or near the time of the act, condition, or event and to preserve  
28 them; and

1 (b) The source of information and method and time of preparation of the records  
2 of that business were such that the absence of a record of an act, condition, or event is  
3 a trustworthy indication that the act or event did not occur or the condition did not exist.  
4 To the same effect, the Court in *People v. Torres* (1962) 201 Cal.App.2d 290, 291,  
5 explained: “that the absence of an entry in a regularly kept business record, is an indication that  
6 the fact did not occur, had been adopted in many other jurisdictions, before the Uniform Act.  
7 [Citations omitted.]”

8 Therefore, Metropolitan’s unsupported allegation that, “Metropolitan cannot provide any  
9 documents or any witnesses with personal knowledge of the facts from 64 years ago,” it itself  
10 irrelevant because, as noted, it is permissible to demonstrate the non-existence of facts through  
11 the absence of any entry of such facts in regularly kept business records.

12 2. The evidence is offered to establish “facts.”

13 Through the trial subpoena, AVEK seeks to establish the following specific “facts,” all  
14 of which are included in Ms. Kunysz’ prior declaration:

15 3. . . . In the regular course of its business, MWD maintains records of its property  
16 holdings and operations.

17 4. Based on a diligent search of MWD’s records, MWD did not find any records  
18 evidencing that MWD owned or operated any groundwater wells within its service  
19 boundaries for the purpose of recovering the return flows from its imported water in the  
20 Upper Los Angeles River Area groundwater basins between 1950 and 1968. . . .

21 5. Based on a diligent search of MWD’s records, MWD did not find any records  
22 evidencing that MWD spread or banked its imported water within the ULARA during  
23 the period from 1950 through 1968.

24 6. Based on a diligent search of MWD’s records, MWD did not find any records  
25 evidencing that MWD adopted or held a position on whether it had rights to recapture  
26 or use return flows resulting from water it delivered to its member agencies in the  
27 ULARA from 1950 through 1968.

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1           These are specific “facts,” not legal conclusions. Moreover, a party is permitted to  
2 identify and present evidence of facts which distinguish the case at bar from a case decision  
3 cited and relied upon by an opposing party. The foregoing facts, that Metropolitan did not own  
4 or operate any wells in the Basin, did not bank or spread any water in the Basin, and did not  
5 adopt or hold a position on whether it had the right to return flows, all give rise to a reasonable  
6 inference that Metropolitan did not then have the requisite “intent” to recapture or otherwise use  
7 the return flows from the imported water it delivered to its member agencies. This is an  
8 important distinction from the facts and circumstances involved in the case at bar.

9           All of this is consistent with the additional fact disclosed in the trial court’s Judgment  
10 and, also, in the Supreme Court’s Opinion in *City of Los Angeles v. City of San Fernando*, 14  
11 Cal.3d 199, that the Court therein *did not consider, much less determine*, whether Metropolitan  
12 had a right to the return flows from the imported water it delivered to its member agencies.

13           Metropolitan has not cited any authority which indicates that a party may not establish  
14 additional, consistent distinguishing facts, simply because such do not appear in the trial court’s  
15 judgment or appellate court’s opinion.

16           **Moreover, in the Phase 3 phase of trial in this case, through their expert witness,**  
17 **Joseph Scalmanini, the PWS were permitted to offer into evidence facts and circumstances**  
18 **involved in the *San Fernando* case which are not included in the Supreme Court’s**  
19 **Opinion**, to wit: Mr. Scalminini was permitted to testify regarding certain hydrologic conditions  
20 present in the *San Fernando* case, a referee’s report prepared in that case, and the referee’s  
21 hydrograph prepared in connection with that case (see Exhibit 2 attached hereto; see, also, Phase  
22 3 trial exhibit #16 [San Fernando groundwater levels taken from the Report of Referee in *San*  
23 *Fernando*] and Exhibit 97 [summary of Basin yields including the ULARA (San Fernando)]).

24           Fairness dictates that if one side is allowed to present evidence of underlying facts and  
25 circumstances present in *San Fernando* which are not included in the appellate court’s Opinion  
26 in that case, then the other side should be permitted to do the same. This is so, particularly  
27 where, as here, the evidence now offered is solely for the purpose of distinguishing the facts and  
28 circumstances present in *San Fernando* from the facts and circumstances present in the case at

1 bar. This is important because the PWS continue to argue erroneously that AVEK is in the same  
2 position as was Metropolitan in *San Fernando*.

3 3. Metropolitan has failed to demonstrate that it would be “unreasonably burdened” by  
4 being required to comply with AVEK’s trial subpoena.

5 Metropolitan’s moving papers concede that Metropolitan has already performed the  
6 business records search required by the subpoena and, in fact, in Ms. Kunysz’ declaration has  
7 already provided the results of that search. Accordingly, Metropolitan’s claim that it would be  
8 unduly burdened by being required to provide 10-15 minutes of testimony at trial regarding the  
9 same search results, is clearly without merit.

10 4. Conclusion

11 For the foregoing reasons, the Court should deny Metropolitan’s motion to quash  
12 AVEK’s trial subpoena.

13 Dated: February 4, 2014

**BRUNICK, McELHANEY & KENNEDY**

14  
15 By: \_\_\_\_\_

16 WILLIAM J. BRUNICK  
17 LELAND P. McELHANEY  
18 Attorneys for Cross-Complainant,  
19 ANTELOPE VALLEY-EAST KERN  
20 WATER AGENCY  
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# **EXHIBIT 1**

## DECLARATION OF KATHLEEN KUNYSZ

I, Kathleen Kunysz, declare and state:

1. I have been employed by The Metropolitan Water District of Southern California ("MWD") since March 1987. I am currently a program manager and have held this position since January 2002. For the last eleven years, I have been responsible for managing matters related to groundwater resources. I have personal knowledge of all of the matters set forth herein and, if called as a witness, I could and would testify competently thereto.

2. MWD was organized for the purpose of providing imported water supplies to its member agencies located in the counties of San Diego, Orange, Los Angeles, Riverside, San Bernardino, and Ventura, in southern California. MWD imports water to its service area from the Colorado River and from the State Water Project.

3. In response to a Public Record Act request and a deposition notice, both attached as Exhibit A, MWD staff, including myself, diligently searched MWD's records for any responsive public records. In the regular course of its business, MWD maintains records of its property holdings and operations.

4. Based on a diligent search of MWD's records, MWD did not find any records evidencing that MWD owned or operated any groundwater wells within its service boundaries for the purpose of recovering the return flows from its imported water in the Upper Los Angeles River Area groundwater basins between 1950 and 1968. I am informed and believe that the groundwater rights in the Upper Los Angeles River Area groundwater basins ("ULARA") were adjudicated in the case of *City of Los Angeles v. City of San Fernando, et al.*, originally filed in 1955 and finally decided on appeal in 1975 (opinion published at 14 Cal. 3d 199 (1975)).

5. Based on a diligent search of MWD's records, MWD did not find any records evidencing that MWD spread or banked its imported water within the ULARA during the period from 1950 through 1968.

6. Based on a diligent search of MWD's records, MWD did not find any records evidencing that MWD adopted or held a position on whether it had rights to recapture or use return flows resulting from water it delivered to its member agencies in the ULARA from 1950 through 1968.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California, on December 4, 2013.

A handwritten signature in black ink, appearing to read "Kathleen Kung", written over a horizontal line.



# **EXHIBIT 2**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

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TRIAL TESTIMONY OF JOSEPH SCALMANINI  
MONDAY, JANUARY 10, 2011  
VOLUME I (Pages 1 - 138)

REPORTED BY:  
JANIS JENNINGS, CSR 3942, CLR, CRP

1 support your opinions?

2 A. Yes.

3 Q. Okay. And is it the type of data  
4 and information that experts in your field would  
5 normally rely on to do an analysis of water resource 11:18:42  
6 management, including the safe yield and whether or  
7 not a basin is in overdraft?

8 A. Absolutely. I mean, I compare this  
9 basin to numerous of the others that have been  
10 adjudicated in California, going all the way back to 11:18:59  
11 what I've mentioned earlier what was done in  
12 Pasadena versus Alhambra in the 1940s, coming  
13 forward to, you know, I don't know, some of the,  
14 you know, well known adjudicated basins; you know,  
15 arguably the upper Los Angeles River area, or the 11:19:18  
16 so-called San Fernando area being the highest  
17 profile one.

18 And they all had, I'll call it, similar  
19 sets of water level, well log, I don't know, aquifer  
20 characteristic information, things of that type. 11:19:37  
21 Precipitation data, knowledge or enough on which to  
22 base estimates of pumping, consumptive use of water  
23 by plant material. All those kinds of things would  
24 be, I'd say, as sufficient in this basin as they  
25 have been in others. 11:19:56

1 A. I do.

2 Q. And was Exhibit No. 9 prepared by you or  
3 under your direction?

4 A. Yes.

5 Q. It's entitled "Safe Yield State Water 11:58:55  
6 Rights Board (1962)." Why did you prepare this  
7 exhibit for purposes of your testimony in your  
8 analysis of the safe yield of the basin?

9 A. Well, going back to your last question,  
10 such as there's been a -- I mean, you know, a 11:59:14  
11 demarcation in whether safe yield is a technical  
12 or a legal term, you know. You know, the so-called,  
13 you know, San Fernando case or Los Angeles versus  
14 San Fernando, the upper Los Angeles River area, you  
15 know, would arguably be that place. And, you know, 11:59:36  
16 today there's lots of reference to the fact that,  
17 you know, "safe yield" is as defined in San Fernando  
18 and San Fernando expanded the definition, you know,  
19 to include what water could be extracted without  
20 causing overdraft and things of that type. 11:59:51

21 So I think that the definition, while  
22 it might be attributed to the court, is properly  
23 attributable to the referee to whom the court  
24 turned in that case, which was the State Water  
25 Rights Board, to analyze what I'll call the 12:00:12

1 San Fernando Basin, or the technical or the --  
2 excuse me -- the confines of what was being  
3 adjudicated in that case.

4 And so the State Water Rights Board  
5 included this definition in its report of the 12:00:31  
6 referee back to the court, to the best of my  
7 knowledge, then the court agreed with and adapted  
8 that and went forward.

9 Q. Are you familiar with the report of  
10 the referee in the City of Los Angeles versus 12:00:42  
11 the City of San Fernando case?

12 A. I am.

13 Q. You've read that report?

14 A. I have. It's a lengthy read; but I have,  
15 yes. 12:00:54

16 MR. DUNN: All right. We'll take a break  
17 at this time.

18 THE VIDEOGRAPHER: This marks the end  
19 of tape No. 1 in today's deposition of Joseph  
20 Scalmanini. 12:01:04

21 The time is 12:00 p.m. and we are off the  
22 record.

23 (Off the record.)

24 (Whereupon, lunch taken from 12:00 p.m.  
25 until 1:29 p.m.) 12:01:46

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1 results that would result from exceeding safe yield  
2 and were important in the analysis that we're  
3 discussing today because I considered whether or not  
4 those were present in the Antelope Valley to reach a  
5 conclusion as to whether or not I thought the basin 13:39:29  
6 was in overdraft.

7 Q. Mr. Scalmanini, I'd like to turn your  
8 attention now to Exhibit No. -- excuse me --  
9 Exhibit 16 which is premarked. It is entitled  
10 "Overdraft-Related Undesirable Effect: Chronic 13:39:47  
11 Decline in Groundwater Levels (San Fernando  
12 Valley)."

13 (Whereupon, Scalmanini Exhibit 16 was  
14 introduced for identification.)

15 BY MR. DUNN: 13:39:57

16 Q. Mr. Scalmanini, do you have Exhibit No. 16  
17 before you?

18 A. I do.

19 Q. It appears to be a hydrograph; is that  
20 correct? 13:40:04

21 A. Yes. A hydrograph of groundwater levels,  
22 yes.

23 Q. Did you prepare this hydrograph or was it  
24 prepared under your direction?

25 A. Well, I prepared the exhibit. The 13:40:13

1 hydrograph was prepared, I don't know, the better  
2 part of 50 years ago.

3 Q. Where does the hydrograph come from?

4 A. It was extracted from the report of the  
5 referee in the -- called the San Fernando matter or 13:40:27  
6 the Los Angeles versus San Fernando adjudication.

7 Q. And for purposes of your analysis in this  
8 case, what does Exhibit No. 16 indicate?

9 A. Well, it's -- I'll call it an illustration  
10 of what overdraft might look like. That if there 13:40:42  
11 is, you know, an undesirable result, such as ongoing  
12 lowering of groundwater levels and associated  
13 depletion of groundwater storage, then this would  
14 be a classic illustration of a basin's response  
15 illustrative to exactly that: Overdrafted 13:41:05  
16 conditions.

17 Q. And how is that depicted on this  
18 Exhibit No. 16?

19 A. Well, the elevation of the groundwater  
20 surface as measured at this particular well is on 13:41:15  
21 the scale, whether left or right-hand side, in feet  
22 above mean sea level. And so looking at dates,  
23 there was some early data around, I don't know, 1929  
24 that would suggest that groundwater levels were as  
25 high as about 425 feet and as low as about 400 feet. 13:41:44

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1           It appears to have been missing data for  
2 a period of time and then quite complete records  
3 that showed that groundwater levels fluctuated but  
4 return to what one might call "full conditions" in  
5 year after year from 1934 through about 1941, or 13:42:01  
6 something like that. After which then they --  
7 well, they fluctuated but they returned to full  
8 conditions.

9           After which then there was an ongoing  
10 called "chronic decline" in groundwater levels 13:42:20  
11 despite some, say, average and some more extreme  
12 fluctuations in any given year, but that overall  
13 for a period of time from around 1941 through the  
14 end of this period of record, which would have been  
15 about 1957-'58, the groundwater levels chronically 13:42:39  
16 declined from a high of around 430 feet elevation  
17 down to, say, as low as around 320-foot elevation.  
18 At the very end of the record prior to that they  
19 declined to around 300 and say 55 feet at a high  
20 point in a particular year which would have been 13:43:02  
21 1956-'57.

22           Q. And, again, you obtained a copy of  
23 Exhibit No. 16 that comes from the referee's report  
24 from the San Fernando adjudication; is that correct?

25           A. Yes. There are several like this in that 13:43:14



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E X H I B I T S (Continued)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

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)  
) Santa Clara  
ANTELOPE VALLEY GROUNDWATER CASES, ) Case No.  
) 1-05-CV-049053  
) VOLUME IV

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TRIAL TESTIMONY OF JOSEPH SCALMANINI  
THURSDAY, JANUARY 13, 2011  
WALNUT CREEK, CALIFORNIA

PAGES 418 - 556

1           But the latter three, a five-year period  
2 of mixed agricultural and municipal land use  
3 conditions, as was present in the basin immediately  
4 prior to the filing of the adjudication, you know, I  
5 understand from study of other adjudications that       11:59:41  
6 courts have been interested in average conditions  
7 over a five-year period filing -- prior to the  
8 filing of an adjudication. So we estimated native  
9 recharge -- excuse me -- native yield, you know,  
10 over that time period which was 1995 to 1999.       11:59:59

11           Longer term, you know, relative to  
12 the end of the overall period of analysis, we  
13 arbitrarily said, you know, for average conditions  
14 over a decade what would be the yield leading up  
15 to the end of the study or base period, which was       12:00:19  
16 at that time 2005. So for the ten-year period, 1996  
17 to 2005, we made the calculation.

18           And then also from a study of other  
19 analyses. But, you know, the one that sticks out in  
20 my mind is the referee's work in the San Fernando       12:00:35  
21 case. They ultimately picked a representative base  
22 year after analyzing, you know, long periods of time  
23 for hydrologic conditions. And so we selected a  
24 one-year quote-unquote "period" as illustrative of  
25 near present conditions and computed native safe       12:00:55

1 It's illustrative of -- what were the words you  
2 just used about the ones leading up to that?

3 BY MR. ZIMMER:

4 Q. Whether it was demonstrative?

5 A. Demonstrative, yes. 14:53:51

6 Q. So you're saying it's demonstrative of  
7 your testimony. Did this Exhibit 16 exist at the  
8 time of your deposition?

9 A. As an exhibit?

10 Q. In this format did it exist? 14:54:01

11 A. In this format, no. I mean, the basic  
12 figure that, you know, is, I don't know, pasted into  
13 here has existed since 1962, but it didn't exist in  
14 this format at the time of deposition, no.

15 Q. So this Exhibit 16 was taken from some 14:54:20  
16 source?

17 A. Right what it says at the bottom.

18 Q. It was taken from the referee in  
19 San Fernando?

20 A. Yes. 14:54:31

21 Q. So this -- this was available to you  
22 if you had wanted to use it at the time of your  
23 deposition, but it was not produced by you at  
24 the time of your deposition; is that correct?

25 MR. DUNN: Objection. That 14:54:43

1 mischaracterizes the witness' testimony. His  
2 testimony was Exhibit No. 16 was not in existence  
3 at the time of his deposition.

4 BY MR. ZIMMER:

5 Q. Was there -- was there something similar 14:54:51  
6 to Exhibit 16 that existed at the time of your  
7 deposition that was in the report of the referee  
8 in San Fernando?

9 MR. DUNN: Objection. Vague as to the  
10 term "similar." 14:55:02

11 MR. ZIMMER: He was the one that raised  
12 the issue.

13 MR. DUNN: Objection. Vague as to the  
14 term "issue."

15 BY MR. ZIMMER: 14:55:11

16 Q. Go ahead, sir.

17 A. I don't understand your question.

18 Q. Okay. Where did this Exhibit 16 come  
19 from?

20 MR. DUNN: Objection. Asked and answered. 14:55:17

21 THE WITNESS: Where did it come from?

22 BY MR. ZIMMER:

23 Q. Right. I mean, you know, how --

24 A. We put it together as an illustration of  
25 just what it says, "Overdraft-Related Undesirable 14:55:27

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1 Effect: Chronic Decline in Groundwater Levels";  
2 in this case in the San Fernando Valley, and the  
3 hydrograph is extracted from the referee's report;  
4 the referee being the State Water Rights Board  
5 in the San Fernando -- the Los Angeles versus  
6 San Fernando case in 1962.

14:55:41

7 Q. Okay. So the hydrograph was available  
8 to you at the time of your deposition but was not  
9 produced by you at the time of your deposition in  
10 support of your opinions; is that correct?

14:55:54

11 MR. DUNN: Objection. That  
12 mischaracterizes his testimony.

13 You can answer.

14 THE WITNESS: Yeah, I don't know that  
15 I used this in "support of my opinions." It's  
16 illustrative of what an overdraft-related  
17 undesirable effect: Chronic decline in groundwater  
18 levels looks like.

14:56:03

19 BY MR. ZIMMER:

20 Q. Okay. Let's go to Exhibit 17. That was  
21 not produced by you at the time of your deposition;  
22 is that correct?

14:56:16

23 A. That's correct. Same thing.

24 Q. Obviously the picture existed. Same  
25 thing. You're saying it's simply illustrative

14:56:32

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

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	)
	) Santa Clara
ANTELOPE VALLEY GROUNDWATER CASES,	) Case No.
	) 1-05-CV-049053
	) VOLUME V

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TRIAL TESTIMONY OF JOSEPH SCALMANINI

MONDAY, JANUARY 17, 2011

REPORTED BY:  
TOM FRASIK, RPR, CSR 6961

PAGES 557 - 692

1     been taken from Pasadena versus Alhambra, okay? But I  
2     didn't go to legal research to look for the definition.  
3     I took it from the technical report of the referee to  
4     the Court in San Fernando.

5           Q. You agree that the language that I read from           14:16:40  
6     San Fernando is accurately read?

7           MR. WEEKS: Objection; the document --

8           MR. DUNN: Objection.

9           MR. WEEKS: -- speaks for itself.

10          MR. DUNN: Objection; the document speaks for           14:16:53  
11     itself.

12     BY MR. ZIMMER:

13          Q. Let's try best evidence. I agree with you that  
14     the document is the best evidence of what it purports to  
15     say.   14:17:03

16           Okay. So in terms of Exhibit 10 --

17          A. Excuse me just one second.

18           Could everybody stop laughing? I'm just having  
19     fun. I mean, I'm happy to have you laugh. It's kind of  
20     funny.   14:17:16

21           But go ahead. It's just a little distracting.  
22     I'd like to join in, but I'm trying to deal with --

23     BY MR. ZIMMER:

24          Q. We've got to try and keep it light here a  
25     little bit because some of this stuff gets a little           14:17:23



1 was an intentional desire to, and if that's the case so  
2 be it.

3 MR. LEMIEUX: This is taking up the witness's  
4 time. But I would suggest we're going to have to deal  
5 with handing Judge Komar a book that doesn't contain two 14:27:46  
6 numbers or we can hand him a book that contains all the  
7 numbers and tell him 14 and 15 are not part of the  
8 record.

9 MR. ZIMMER: We can work it out later.

10 MR. JOYCE: I agree. I want to make sure at 14:27:58  
11 this point we don't forget and we need to address the  
12 issue.

13 MR. LEMIEUX: Yes.

14 BY MR. ZIMMER:

15 Q. Thank you, counsel. 14:28:06

16 Mr. Scalmanini, let's move on to Exhibit 16.

17 This was created after your deposition?

18 A. Same answer as all the others. Yes.

19 Q. Let's talk about this for a minute. Is this an  
20 actual graph of the declining groundwater levels in the 14:28:22  
21 San Fernando case?

22 A. It's taken from the referee's report and I  
23 think the answer is yes. A specific well number is  
24 listed on it.

25 Q. And when you were defining chronic decline in 14:28:41

Page 663

1 groundwater levels and you're talking about it going  
2 down and down and not improving, is that kind of what  
3 you're looking at?

4 A. Not necessarily not improving but not  
5 stabilizing. So the -- I'll say the right half or a 14:28:55  
6 little more of that is illustrative of chronically  
7 declining groundwater levels --

8 Q. In San Fernando.

9 A. -- in about 1940. Yeah. It's illustrative  
10 only. It's one of a series of hydrographs that were 14:29:12  
11 included in the referee's report in San Fernando.

12 Q. And it shows declining, chronically declining  
13 groundwater levels from about 1940 to 1957, '8,  
14 somewhere in there?

15 A. That is correct. 14:29:30

16 Q. In regard to Exhibit 17, that was first  
17 produced here at your trial deposition or trial  
18 testimony?

19 A. That was produced in the documents that were  
20 produced at the time of deposition notification and in 14:29:53  
21 exhibit form for trial purposes.

22 Q. It's not in the Summary Expert Report?

23 A. It's not in the Summary Expert Report, that's  
24 correct.

25 Q. You weren't there when the photo was taken? 14:30:08

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

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)  
) Santa Clara  
ANTELOPE VALLEY GROUNDWATER CASES, ) Case No.  
) 1-05-CV-049053  
) VOLUME VI  
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TRIAL TESTIMONY OF JOSEPH SCALMANINI  
TUESDAY, JANUARY 18, 2011

REPORTED BY:  
TOM FRASIK, RPR, CSR 6961

PAGES 693 - 811

1 Q. As you understand the concept of safe yield,  
2 are there any public policy considerations involved in a  
3 determination of safe yield?

4 A. There may be, but I'm not aware of any.

5 Q. But you didn't take into account any public 10:57:57  
6 policy considerations in arriving at your conclusion of  
7 safe yield; is that accurate?

8 A. That is correct.

9 Q. Would you consider yourself to be an expert on  
10 this type of policy questions that might deal with a 10:58:17  
11 determination of safe yield?

12 A. In all of the safe yield work, technical work  
13 that I've ever reviewed, I've never seen any call it  
14 factoring in or consideration of public policy  
15 considerations. So I'm not familiar with what those 10:58:39  
16 might be and wouldn't classify myself as an expert in  
17 considering their input to a safe yield determination.

18 Q. I wanted to take you back to Exhibit 97 that  
19 Mr. Fife had some questions on. In particular, I want  
20 to ask you some questions about the Upper Los Angeles 10:59:02  
21 River Area and your statements regarding the yield in  
22 that basin.

23 It's my understanding, based on your prior  
24 testimony in this case, that you have some understanding  
25 of the physical setting in the San Fernando case, 10:59:27

1 correct?

2 A. Yes.

3 Q. And there were four basins involved in the  
4 San Fernando case, correct?

5 A. Yes.

10:59:38

6 Q. And that was the San Fernando Basin, the Sylmar  
7 Basin, the Verdugo Basin and the Eagle Rock Basin,  
8 correct?

9 A. Yes.

10 Q. And were those four basins hydraulically  
11 connected?

10:59:48

12 A. I'm pretty sure Eagle Rock was not. The  
13 others, I think there was some minor connection that was  
14 considered to be inconsequential, but I don't remember  
15 that level of detail, not extremely well.

11:00:06

16 Q. In the Court's determination of safe yield,  
17 it had to account for outflows from each of the basins,  
18 correct?

19 A. Well, the referee did all the accounting and  
20 I don't remember that level of detail.

11:00:21

21 Q. Let me have marked as Tejon's first in order,  
22 I believe it would be on our record D-1.

23 (Exhibit Number D-1 was marked  
24 for identification.)

25 BY MR. KUHS:

11:01:08

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**PROOF OF SERVICE**

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

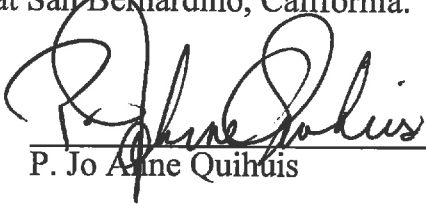
I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 1839 Commercenter West, San Bernardino, California 92408-3303.

On February 4, 2014, I served the foregoing document(s) described as: **ANTELOPE VALLEY-EAST KERN WATER AGENCY'S OPPOSITION TO METROPOLITAN WATER DISTRICT'S MOTION TO QUASH TRIAL SUBPOENA** 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 February 4, 2014, at San Bernardino, California.

  
\_\_\_\_\_  
P. Jo Anne Quihuis