

1 ELLISON, SCHNEIDER & HARRIS L.L.P.
2 Christopher M. Sanders (SBN 195990)
3 2600 Capitol Avenue, Suite 400
4 Sacramento, California 95816
5 Telephone: (916)447-2166
6 Facsimile: (916) 447-3512

EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103

7 Attorneys for Cross-Defendants,
8 County Sanitation Districts of Los Angeles County Nos. 14 and 20

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
12

13 COORDINATION PROCEEDING SPECIAL
14 TITLE (RULE 1550(b))

Judicial Council Coordination Proceeding
No. JCCP 4408

15 ANTELOPE VALLY GROUNDWATER
16 CASES

SANTA CLARA CASE NO.: 1-05-CV-049053
The Honorable Jack Komar, Judge Presiding

17 INCLUDED ACTIONS:

**JOINT STATEMENT OF PRIVATE AND
PUBLIC LANDOWNERS REGARDING
MUTUALS' MOTION TO INTERPRET
JUDGMENT (PER COURT'S MAY 3, 2016
MINUTE ORDER)**

18 Los Angeles County Waterworks District No. 40
19 vs. Diamond Farming Company, a corporation,
20 Superior Court of California, County of Los
21 Angeles Case No. BC 325201;

Date: May 25, 2016
Time: 9:00 a.m.
Dept.: Room 222, Los Angeles
Judge: Jack Komar, Presiding

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

26 Wm. Bolthouse Farms, Inc. vs. City of Lancaster,
27 Diamond Farming Company, a corporation vs.
28 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.

I. INTRODUCTION

Cross-Defendants, the Antelope Valley-East Kern Water Agency, the City of Los Angeles,
by and through its Department of Airports, Los Angeles World Airports (LAWA), the County
Sanitation Districts of Los Angeles County Nos. 14 and 20 (LA County Sanitation), Bolthouse

1 Properties, LLC, and WM. Bolthouse Farms, Inc., Diamond Farming Company, Grimmway
2 Enterprises, Inc., Crystal Organic Farms LLC, Lapis Land Company, LLC, Tejon Ranchcorp, Tejon
3 Ranch Company, Granite Construction Company, Craig Van Dam, Delmar D. Van Dam, Gary Van
4 Dam, Gertrude J. Van Dam (collectively, "Overliers") submit this statement in further Opposition to
5 the Motion to Interpret the Judgment and Physical Solution filed by the ANTELOPE VALLEY
6 UNITED MUTUALS GROUP ("the Mutuals"), and pursuant to the Court's May 3, 2016 Minute
7 Order.

8 The Judgment and Physical Solution ("Judgment") was entered on December 23, 2015. It
9 mandates the formation of a five-member Watermaster Board, and provides in Section 18.1.1 that
10 two landowner representatives to the Board shall be "*elected by majority vote of the landowners*
11 *identified on Exhibit 4 (or their successors in interest) . . .*" Under the guise of seeking an Order
12 "interpreting" the foregoing unambiguous language, the Mutuals seek an Order modifying or
13 rewriting this provision of the Judgment, or giving an advisory opinion. The Mutuals also claim that
14 certain improprieties occurred during the five (5) Watermaster formation meetings which were held
15 in January, March and April, 2016. None of the purported evidence proffered in support of the
16 Mutuals' Motion or contained in the Mutuals' recently filed Statement of Exhibits and Evidence
17 supports the Mutuals' argument that the Judgment is ambiguous, in need of clarification, or in need
18 of modification, or that the two landowner seats should be further subdivided by water use to give
19 the Mutuals greater voting power.

20 Based on the evidence proffered by the Mutuals, the Overliers do not believe that the Court
21 should consider any extrinsic evidence to interpret or modify the Judgment and therefore do not
22 presently intend to call any witnesses in their case-in-chief. The Overliers submit the Court should
23 first determine whether Section 18.1.1 is ambiguous; if the Court determines an ambiguity exists, the
24 Court should then require an offer of proof on the ambiguity from the Mutuals, and allow the parties
25 to conduct discovery on that point.

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II. STATEMENT

A. **The Mutuals' Extrinsic Evidence Is Irrelevant And Not Admissible To Contradict, Vary, Or Amend The Judgment.**

As indicated in their Joint Opposition to the Motion posted and filed on May 12, 2016, the Overliers submit that the Mutuals' motion should be denied, in its entirety; and that there is no need for an evidentiary hearing thereon.

The Judgment is essentially a contract. "The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties." (*People v. Shelton* (2006) 37 Cal.4th 759, 767; *Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390.) That intent must, in the first instance, be determined from the language of the contract itself. (*State v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1018.) "The mutual intention of the parties is to be inferred, if possible, solely from the written provisions of the contract. Where contractual language is clear and explicit, it governs." (*Powerine Oil Co., Inc.*, 45 Cal.4th at 1018.) Thus, the plain language of the contract governs its interpretation. (Civ.Code § 1638.) Ordinary words are given their ordinary meaning and technical words being given a technical meaning. (Civ. Code §§ 1641, 1644, 1645.)

The parol evidence rule "generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument." (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343 [citation omitted]; Code Civ., Proc., § 1856(a).) This is because the written agreement supersedes the negotiations which precede or accompany the agreement's execution. (*Id.* at 344.) Thus, the parol evidence rule establishes that prior or contemporaneous agreements cannot contradict the terms contained in an integrated written agreement. (*Id.*; *Founding Members of the New Port Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 954.)

In interpreting the contract, the court determines, as a matter of law, not fact, whether the language is ambiguous. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) Unless such an ambiguity exists, parol evidence is not admissible. (*Id.*) Even where there is an ambiguity, the parol evidence rule bars the introduction of extrinsic evidence of prior or contemporaneous statements to vary or contradict the terms of a writing that was intended by the parties as a final expression of their

1 agreement as to those terms. (Code Civ. Proc., § 1856(a); *Pacific Gas & Elec. Co. v. G.W. Thomas*
2 *Drayage* (1968) 69 Cal.2d 33, 39-40; *Winet v. Price, supra*, 4 Cal.App.4th 1159, 1166.)

3 **B. The Mutuals' Proposed Interpretation Would Contradict and Render Part of**
4 **the Judgment Meaningless and Disenfranchise the Public Landowners.**

5 The language of section 18.1.1 of the Judgment is clear and unambiguous. Each landowner
6 shown on Exhibit 4, public and private, has the right to cast one vote per acre-foot of allocation for
7 the landowner seats. There are five public entity landowners listed on Exhibit 4, namely; Antelope
8 Valley Joint Union High School District, AVEK, City of Los Angeles, and County Sanitation
9 Districts of Los Angeles # 14 and #20. Although these five public landowners cannot hold a
10 landowner seat, each is a landowner in the AVAA and bargained for a right to vote on the landowner
11 seats. The Mutuals seek an order amending the Judgment to disenfranchise the public landowners.
12 The request amounts to not simply a clarification of existing language, but a wholesale modification.
13 None of the evidence proffered by the Mutuals supports a different, but reasonable, interpretation.
14 Accordingly, all of the Mutuals extrinsic evidence on this point is not admissible and should be
15 barred.

16 Ironically, after arguing that the public landowners cannot vote, the Mutuals next argue that
17 the two landowner seats should be represented by distinct and diverse interests within the landowner
18 group, such as large vs small, or agriculture vs non-agriculture. (Motion, p. 13-15.) The Mutuals'
19 motive is transparent - to increase the voting power of the Mutuals, a cardinal change in the
20 Judgment. The only evidence proffered to support this argument comes from the failed Antelope
21 Valley Accord. The draft Antelope Valley Accord (Exhibit 3 to Motion) contemplated a 7 to 9
22 member Board, with a seat held by the Mutuals. Obviously, that agreement failed and evidence of
23 the Accord is irrelevant and not admissible to alter or vary the terms of the Judgment. The Mutuals
24 complain that without further subdividing the seats, diverse interests cannot be represented on the
25 Board. To the contrary, Exhibit 4 represents all of the diverse interests. By giving each Party on
26 Exhibit 4 one vote per acre-foot of allocation, all diverse interests are represented commensurate
27 with their respective stake in the water resources. That is exactly what the Stipulating parties agreed
28 to. Moreover, the Mutuals' proposed modification would lead to the absurd result of leaving the

1 public landowners without representation on the Board.

2 **C. None of the Mutuals' Proffered Evidence is Offered To Explain Section 18.1.1,**
3 **but Rather Offered to Vary, Contradict or Modify the Judgment.**

4 None of the declarations, exhibits or other evidence proffered by the Mutuals demonstrates
5 that the Judgment is ambiguous, or that the Stipulating Parties reached some other agreement not
6 reflected in the Judgment. In fact, the Mutuals concede that no such extraneous agreement was
7 reached, and instead attempt to rely on deal points from the failed Antelope Valley Accord. The
8 Court should interpret the Judgment based on the four corners of the document.¹ Because the
9 Mutuals do not propose to offer any admissible evidence to clarify an ambiguity, the private and
10 public landowners do not intend to affirmatively offer any witnesses or evidence on the purported
11 issues raised as to the meaning of Section 18.1.1 of the Judgment, but reserve the right to present
12 rebuttal evidence and testimony, including without limitation the testimony of Jan Goldsmith, Esq.,
13 and possibly other attorneys who participated in the negotiations which resulted in the parties'
14 Stipulation for the Judgment and Physical Solution. The anticipated length of their testimonies
15 would be 2-3 hours. Their proposed testimony would be that the parties' agreed that the public
16 landowners listed on Exhibit 4 would be allowed to vote on the selection of the two landowner
17 representatives to the Watermaster Board, and there was no agreement that the landowner
18 representatives should represent differing water uses. Indeed, the undersigned would be surprised if
19 the Mutuals even attempted to offer any contrary evidence. The statements of law relied upon by the
20 undersigned are set forth herein and in their Joint Opposition posted and filed on May 12, 2016, and
21 Evidence Code section 1152.

22 Additionally, in the event the Court determines to hold an evidentiary hearing as to the
23 Mutuals' allegations that certain improprieties occurred during the Watermaster formation meetings,
24 AVEK intends to call as witnesses Dwayne Chisam (its General Manager), Robert Parris, Esq.
25 (AVEK Board Member), Gregory Reed (by declaration), and possibly others. The anticipated length
26

27 ¹ Significantly, the Mutuals' supporting declarations do not lay any foundation for the claim that the
28 parties agreed and intended that: the word "landowner" should be given the restrictive meaning
suggested in their Motion; or the two landowner seats should represent differing water uses.

1 of their testimonies would be 2-3 hours. AVEK would also offer at that time the exhibits attached to
2 Mr. Chisam's declaration which was posted and filed May 12, 2016. This includes the Nomination
3 form and the Statement of rules and procedures for the election of the two landowner
4 representatives, agreed to by virtually all parties listed on Exhibit 4 who have participated in the
5 process, and which afford due process and fairness to all.

6
7 Dated: May 16, 2016

ELLISON, SCHNEIDER & HARRIS

8 By: Christopher M. Sanders
9 Christopher M. Sanders, Attorneys for
10 COUNTY SANITATION DISTRICTS OF LOS
11 ANGELES COUNTY NOS. 14 AND 20

12 Dated: May 16, 2016

BRUNICK, McELHANEY & KENNEDY PLC

13
14 By: William J. Brunick
15 Leland P. McElhaney
16 Attorneys for ANTELOPE VALLEY EAST
17 KERN WATER AGENCY

18 Dated: May 16, 2016

CLIFFORD & BROWN

19 By: Richard G. Zimmer
20 Richard G. Zimmer
21 Attorneys for BOLTHOUSE PROPERTIES, LLC
22 and WM. BOLTHOUSE FARMS, INC.

23 Dated: May 16, 2016

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

24 By: _____
25 Stanley Powell
26 Attorneys for the CITY OF LOS ANGELES
27 by and through its Department of Airports, Los
28 Angeles World Airports (LAWA)

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Dated: May 16, 2016

LeBEAU-THELEN

By: 

Bob Joyce
Attorneys for DIAMOND FARMING,
GRIMMWAY ENTERPRISES, INC.,
CRYSTAL ORGANIC FARMS and LAPIS
LAND CO.

Dated: May 16, 2016

KUHS & PARKER

By: _____

Robert Kuhs
Attorneys for TEJON RANCHCORP, TEJON
RANCH COMPANY and GRANITE
CONSTRUCTION COMPANY

Dated: May 16, 2016

YOUNG - WOOLRIDGE

By: _____

Scott Kuney
Attorneys for CRAIG VAN DAM, DELMAR
D. VAN DAM, GARY VAN DAM,
GERTRUDE J. VAN DAM

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GRIMMWAY ENTERPRISES, INC.,
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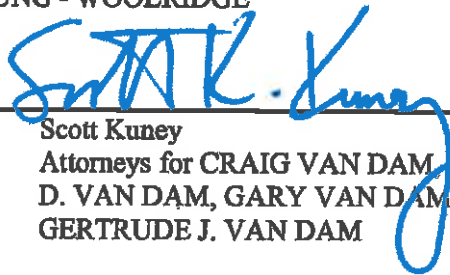
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Dated: May 16, 2016

YOUNG - WOOLRIDGE

By:  _____
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Attorneys for CRAIG VAN DAM, DELMAR
D. VAN DAM, GARY VAN DAM,
GERTRUDE J. VAN DAM

1 **PROOF OF SERVICE**

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

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

7 On May 16, 2016, I served the foregoing document(s) described as: **JOINT**
8 **STATEMENT OF PRIVATE AND PUBLIC LANDOWNERS REGARDING MUTUALS'**
9 **MOTION TO INTERPRET JUDGMENT (PER COURT'S MAY 3, 2016 MINUTE**
10 **ORDER)** on the interested parties in this action served in the following manner:

11 XX **BY ELECTRONIC SERVICE AS FOLLOWS** by **POSTING** the document(s)
12 listed above to the Santa Clara website in the action of the *Antelope Valley Groundwater*
13 *Litigation*, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No.
14 1-05-CV-049053.

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

17 Executed on May 16, 2016, at San Bernardino, California.

18 
19 _____
20 P. Jo Anne Quihuis
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