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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

15 Included Actions:

16 Los Angeles County Waterworks District No. 40
17 v. Diamond Farming Co., Superior Court of
18 California, County of Los Angeles, Case No. BC
19 325201;

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

24 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
25 Diamond Farming Co. v. Lancaster, Diamond
26 Farming Co. v. Palmdale Water Dist., Superior
27 Court of California, County of Riverside, Case
28 No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

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

**PHASE 6 TRIAL BRIEF OF TEJON
RANCHCORP AND TEJON RANCH
COMPANY**

Phase 6 Trial Date: September 28, 2015
Time: 10:00 a.m.
Dept.: 1
Judge: Hon. Jack Komar

TEJON RANCHCORP AND TEJON RANCH COMPANY (collectively, **Tejon**) submit
the following Trial Brief for the Phase 6 Trial.

1 **A. Tejon Is A Settling Party.**

2 Tejon is a party to the Stipulation for Entry of Judgment and Physical Solution
3 **(Stipulation).**

4 **B. Witnesses.**

5 Tejon may call one or more of the following witnesses at trial:

- 6
- 7 1. Dan Flory, AVEK General Manager who is expected to testify to the sale and
8 delivery of imported water to Tejon.
 - 9 2. Dennis Atkinson, Vice-President of Agricultural Operations for Tejon who may
10 be called to testify to Tejon's imported water supplies, return flows, and the
11 reasonable and beneficial use of water.

12 Tejon may also call or rely upon one or more of the following expert witnesses:

- 13 3. Robert Wagner, P.E. who is expected to testify to the reasonable and beneficial
14 use of water within the AVAA.
- 15 4. Charles W. Binder, who is expected to testify in support of the Proposed
16 Judgment and Physical Solution.

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19 **C. Tejon's Land Ownership Within The AVAA.**

20 Tejon owns about 33,530 acres of land within the Antelope Valley Area of Adjudication
21 **(AVAA)** westerly of the Bedrock Ridge and southerly of the Willow Springs Fault in the area
22 known as the West Antelope Valley Basin **(West Basin)**. During the Phase 4 Trial Tejon offered
23 and the Court admitted, without objection, Tejon's Response to Phase 4 Discovery Order **(Tejon-**
24 **1)** and the Declaration of Leah Metzger **(Tejon-2)** establishing Tejon's water use and land
25 ownership within the AVAA. During the Phase 5 Trial, Tejon offered and the Court admitted,
26 without objection, Tejon exhibits Tejon-11 through Tejon-24 again establishing Tejon's land
27

ownership within the AVAA. The Phase 5 evidence also established that approximately 28,858 acres of Tejon’s land within the AVAA includes Rancho La Liebre, acquired by an 1846 land grant from the Mexican Governor of California to Tejon’s predecessor in interest Jose Maria Flores, establishing by judgment of the United States District Court for the Southern District of California and protected “inviolable” by the Treaty of Guadalupe Hidalgo and confirmed by Federal Patent against all claims including those of the United States State of California (*Summa Corp. v. California ex rel. State Lands Commission*, 466 U.S. 198, 80 L. Ed. 2d 237, 104 S. Ct. 1751 (1984)).

D. Tejon’s Claim To Groundwater.

Tejon has historically grown alfalfa, grain, hay and forage on several parcels of land within the AVAA, such land being irrigated with groundwater and periodic deliveries of SWP water from AVEK. During the Phase 4 Trial Tejon offered and the Court admitted, without objection, Tejon’s Response to the Phase 4 Discovery Order (**Tejon-1**) and the Declaration of Dennis Atkinson (**Tejon-4**) establishing Tejon's water use on approximately 640 acres of land to grow alfalfa, grain, hay and forage. Additionally, Tejon leases land to National Cement Company which uses groundwater for its mining operations. Tejon’s Well No. 106 became non-operational in late 2010 and remained non-operational throughout 2011, resulting in a loss of about 1,150 acre feet of groundwater production in 2011. Tejon produced 1,603 acre feet of groundwater in 2011 and 2,770 acre feet in 2012. Tejon also purchased 352 acre feet of water in 2011 and 973 acre feet of water in 2012 from AVEK. Water use on Tejon’s land is summarized as follows:

<u>Year</u>	<u>Total Ground Water</u>	<u>AVEK AG Water</u>	<u>Total Water</u>
2000	446	239	685
2001	371	142	513

1	2002	2057	0	2057
	2003	2985	0	2985
2	2004	3209	0	3209
	2005	2294	0	2294
3	2006	2412	0	2412
	2007	2780	0	2780
4	2008	2430	0	2430
	2009	2045	0	2045
5	2010	2229	0	2581
	2011	1603	352	1955
6	2012	2770	991	3761
7				

8 Tejon also has unexercised groundwater rights on over 30,000 acres within the AVAA.

9 **E. Tejon Has A Right To Produce Return Flows From Imported Waters.**

10 In 2002 Tejon submitted a development application to the Los Angeles County
11 Department of Regional Planning for a Master Planned Community known as the Centennial
12 Project, that includes residential housing units, commercial, business park, civic/institutional
13 uses, open space, parks and wastewater reclamation facilities on 12,000 acres of land in the West
14 Basin. The supplies for the Centennial Project include water purchased from AVEK and stored
15 in the Tejon Water Bank, water acquired by Tejon and loaned to AVEK, SWP Table A supplies
16 purchased by Tejon from Tulare Lake Basin Water Storage District (**Tulare Lake**) and Dudley
17 Ridge Water District (**Dudley Ridge**), recycled water, and of course groundwater. Tejon claims
18 the right to recapture and use return flows from these imported water supplies.
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21 **1. Tejon Water Bank.**

22 In addition to being an AVEK customer, Tejon has been a pioneering proactive force in
23 importing and storing foreign water supplies in the AVAA. In 2006 Tejon established the Tejon
24 Water Bank on 160 acres within the AVAA. In 2006 and 2007 Tejon purchased approximately
25 6,700 acre feet of water from AVEK and spread the water for storage in the Tejon Water Bank.
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1 2. **Nickel Water.**

2 In 2008 Tejon purchased 8,898 acre feet of water from Nickel Family LLC (**Nickel**) and
3 in 2009 purchased an additional 6,393 acre feet for a total of 14,786 acre feet of water for storage
4 in the Tejon Water Bank. To help alleviate the water shortage Tejon loaned the Nickel water to
5 AVEK for return in later years.
6

7 3. **Tulare Lake and Dudley Ridge Water.**

8 In 2008 Tejon acquired the rights to approximately 1,451 acre feet of SWP Table A
9 entitlement held by Tulare Lake. In 2010 Tejon acquired the rights to approximately 1,993 acre
10 feet of SWP Table A entitlement held by Dudley Ridge. Tejon then arranged for the transfer of
11 the Tulare Lake and Dudley Ridge Table A entitlement totaling 3,444 acre feet annually to
12 AVEK for conveyance through the State Water Project. When Tejon has a demand for the water,
13 AVEK will convey the water for delivery to Tejon's Centennial Project.
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15 4. **AVEK Table A Water.**

16 Tejon purchases water from AVEK from time to time for agricultural irrigation. In 2008
17 Tejon purchased from AVEK the right to receive 2,362 acre feet of water in the future. Tejon
18 purchased 352 acre feet of water from AVEK in 2011 and an additional 973 acre feet in 2012 for
19 agricultural use.
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21 Tejon's Imported Water Supplies are summarized as follows:

22	1.	AVEK Table A Deliveries	Varies
23	2.	Tejon Banked AVEK Table A	Varies
24	3.	2008 Call Water from AVEK	2,362 AF
25	4.	Return of 2008 Nickel Water	8,393 AF
26	5.	Return of 2009 Nickel Water	6,393 AF
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1 6. Dudley Ridge Table A 1,993 AF per year

2 7. Tulare Lake Table A 1,451 AF per year

3 In *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199 at p. 261, the
4 Supreme Court stated the principal that return flows for imported water belong to the party
5 whose “expenditure and endeavors” bring “into the basin water which otherwise would not have
6 been there.” This logical principal was recently recited in *City of Santa Maria v. Adam* (2012)
7 211 Cal.App.4th 266, 301 wherein the Court stated: “. . . one who brings water into a watershed
8 may retain a prior right to it even after it is used.” The rationale for the rule is straightforward:
9 The party responsible for importing the water should be credited with the “fruits of his
10 endeavors.” (*San Fernando, supra*, at p. 261.)

11 But for Tejon’s expenditures and endeavors, the AVEK Table A water, the Nickel water,
12 the Tulare Lake and Dudley Ridge water, would not have been imported into the AVAA. Thus,
13 Tejon, AVEK, and all of the other Settling Parties have stipulated that Tejon is entitled to
14 produce the return flows from water that Tejon imports into the AVAA, and the watershed,
15 including, AVEK water, Nickel water, Tulare Lake and Dudley Ridge water and any other water
16 sources that Tejon may import into the AVAA.

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20 **F. Phelan CSD Is Not Entitled To Any Relief On Its Remaining Claims.**

21 Courts typically classify water rights in an underground basin as “overlying,
22 appropriative, and prescriptive.” (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th
23 1224, 1240.) Phelan CSD does not use groundwater on its overlying land and therefore does not
24 have an overlying right. Instead, Phelan CSD pumps water for sale to its customers within the
25 Mojave Basin, which is characterized as an appropriative use. (See, e.g., *City of San Bernardino*
26 *v. City of Riverside* (1921) 186 Cal.7, 25, 29-30.) This Court has already determined that Phelan
27

1 CSD does not have an appropriative right to groundwater. Phelan CSD has waived its
2 prescriptive claim. Finally, the Court has determined that Phelan CSD does not deliver imported
3 water into the Basin and therefore has no right to recover return flows from imported water.

4 Phelan CSD cites cases for the proposition that injunctive relief is not available against a
5 public agency if that public agency has dedicated the water to public use prior to commencement
6 of the action. Instead, the remedy is damages for inverse condemnation. (See, e.g., *Peabody v.*
7 *Vallejo* (1935) 2 Cal.2d 351, 377-381; *Wright v. Goleta Water Dist.* (1985) 175 Cal.App.4th 74,
8 90-91.) This principle has been called the doctrine of intervening public use. (See *S. Slater,*
9 *California Water Law and Policy* (2013) pp. 9-50 to 9-52.) The doctrine is of no help to Phelan
10 for at least two reasons. First, the doctrine does not establish a water right, but merely limits the
11 remedy. (See *Wright v. Goleta Water Dist., supra*, 174 Cal.App.3d p. 90 [“intervention of a
12 public use does not bar suit by the owner of a water right; it merely limits its remedy to damages
13 in place of an injunction.”].) Second, the public use must have attached prior to commencement
14 of the action. (*Id.*) Here, Phelan CSD did not begin delivering water from Well 14 to its
15 customers until 2006, long after this adjudication was commenced. If a public use has not
16 attached prior to commencement of the action, and in the absence of a condemnation suit, water
17 rights holders within the Basin are entitled to enjoin Phelan CSD from taking water from the
18 Basin. (See, e.g., *Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489, 533.)

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22 If Phelan CSD desires to continue pumping from the Basin it has two choices: (1) either
23 accept the benefits and burdens of the proposed Judgment and Physical Solution (see Physical
24 Solution section 6.4.1.2) or (2) amend its cross-complaint to allege a cause of action for direct
25 condemnation. (*Tulare Dist. v. Lindsay-Strathmore Dist., supra*, 3 Cal.2d 489 at p. 533-534.)
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27 Either way, Phelan CSD must pay the stakeholders within the Basin for the water it takes.
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1 **G. Reservation of Rights.**

2 The Herculean efforts of all Settling Parties to achieve the Stipulation cannot be
3 understated. The Stipulation is the end result of 15 years of litigation, years of negotiation
4 involving thousands of man hours, truck loads of paper, and even some hurt feelings along the
5 way. The AVAA itself is vast, comprising more than one million acres, and tens of thousands of
6 acres of dormant lands. The varying interests of the water users competing for a very limited
7 supply of water runs the full gamut of water rights and includes the United States' claim to a
8 Federal Reserve Right, Tejon's claim to Rancho Rights, the Public Water Suppliers' prescriptive
9 claims, the Sanitation Districts' claims to recycled water, claims to return flows from imported
10 water, overlying water uses for agriculture, industry, mining and schools, domestic use for
11 mutual water companies, the Wood Class's various claims, and even water for some well
12 deserving ducks. The proposed Judgment and Physical Solution seeks to balance all of these
13 competing interests with an end goal of maximizing water use within the Basin, while achieving
14 water balance and arresting subsidence. The balance achieved is precarious.

15 The Settling Parties, upon execution of the Stipulation, have agreed not to challenge the
16 claims of each other Settling Party *inter se*. Each Settling Party has agreed that if the Judgment
17 and Physical Solution is not approved by the Court as presented, the Stipulation will be void and
18 each Settling Party will return to litigation and then be free to conduct additional discovery,
19 declare and depose expert witnesses, and contest any and all claims of any other party including,
20 without limitation, (1) claims of prescription, and the right to a jury trial, (2) the Federal Reserve
21 Right, (3) claims to return flows from imported water, and (4) any other issues not resolved in
22 prior phases of trial. Tejon specifically reserves all of these rights should the Judgment and
23 Physical Solution not be approved as presented.
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1 Although the Willis Class has decried this as a "dynamite provision" designed to blow-up
2 the settlement, the Stipulation actually serves a more necessary and simplistic purpose - that is to
3 achieve a settlement among more than 140 parties, where no settlement was previously possible.
4 The Stipulation achieves a balance that had eluded the parties and several well-respected
5 mediators, including Justice Robie, for years. The Stipulation makes sure that each Settling
6 Party, no matter how small or how large, is assured that it will received the benefit of a very
7 complicated bargain, while protecting the Basin for the benefit of all.
8

9 **H. Conclusion.**

10 Tejon respectfully requests that the Court find and decree that:

- 11 1. Tejon has overlying groundwater rights within the AVAA;
- 12 2. Tejon's water use is reasonable and beneficial;
- 13 3. Tejon has a right to produce return flows from imported water consistent with the
14 Judgment and Physical Solution;
- 15 4. The proposed Judgment and Physical Solution is a fair and reasonable allocation
16 of the water resources of the AVAA and will benefit and balance the Basin over time and is
17 approved and adopted by the Court as presented;
- 18 5. Phelan Pinon Hills Community Services District take nothing by way of its cross-
19 complaint and be further enjoined from producing water within the AVAA; and
- 20 6. For costs of suit.

21 Dated: September 25, 2015

KUHS & PARKER

22 By /s/
23 Robert G. Kuhs, Attorney for Tejon
24 Ranchcorp and Tejon Ranch Company
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