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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY GROUNDWATER
12 CASES

13 Included Actions:

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co.
16 Superior Court of California, County of Los
17 Angeles, Case No. BC325201;

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

23 Wm. Bolthouse Farms, Inc. v. City of
24 Lancaster
25 Diamond Farming Co. v. City of Lancaster
26 Diamond Farming Co. v. Palmdale Water Dist.
27 Superior Court of California
28 County of Riverside, consolidated actions
Case Nos. RIC 353840, RIC 344436,
RIC 344668.

**Judicial Council Coordination Proceeding
No. 4408**

QUARTZ HILL WATER DISTRICT REPLY
TO OPPOSITIONS TO MOTION IN
LIMINE REGARDING QUANTITY OF
RETURN FLOWS OF:

1. Antelope Valley East Kern Water District
2. Bolthouse Properties, LLC
3. AGWA

Date: May 13, 2013

Time: 9:00 a.m.

Department: 1

Hon. Jack Komar

Quartz Hill Water District replies to the oppositions to the Motion for Order In Limine One of Antelope Valley East Kern Water District; Bolthouse Properties, LLC; and Antelope Valley Groundwater Agreement Association.

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1 **I. INTRODUCTION**

2 The quantity of imported water return flows expressed as a percentage was determined by
3 this court in the phase 3 decision. Attempts to change this percentage are nothing less than an
4 attempt to change the phase 3 decision.

5 This court ought to deny these attempts to revisit this issue. All parties who currently
6 import, or who import in the future, should receive an individualized right to recapture the return
7 flows from the water they import.

8
9 **II. DUE PROCESS REGARDING RETURN FLOWS HAS BEEN SATISFIED**

10 AVEK and Bolthouse argue that the quantity of imported water return flows were not at
11 issue at the Phase 3 trial. This is incorrect. Safe Yield was at issue at the Phase 3 trial, and
12 imported water return flows are a component of the Safe Yield. On page 2, line 12 of this court's
13 decision, this court held that one of the issues of the phase three trial was the safe yield. On page
14 8, line 15, this court stated that it heard "from a very large number of experts, some of whom
15 provided opining testimony of what constitutes safe yield." Weighing these various expert
16 opinions, this court found the Safe Yield was 110,000, page 9, line 28.

17 The record is replete with testimony on this subject, which is referenced in the motion.
18 Phase 3 trial Exhibit A95, attached as Exhibit Four to the motion, specifically discusses and
19 calculates return flows for the court. Due process was met by examination and cross-examination
20 on this issue by Bolthouse, and all other interested parties. For the Public Water Suppliers Mr.
21 Scalamanini testified regarding return flows. For the landowners, Mr. Kimmelshue testified
22 regarding return flows. Many exhibits were introduced on this subject. The court's decision of a
23 Safe Yield included return flows.
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1 **III. THE COURTS PRIOR COMMENTS ARE NOT A BASIS TO DENY THIS**
2 **MOTION**

3 There is considerable argument about the court’s comments regarding the form of the
4 Phase 3 order. Obviously, this does not limit the court in granting this motion. Simply because this
5 court chose not to set forth the components of the Safe Yield, does not mean that additional
6 evidence should be received on the subject. This is especially important since this claimed
7 additional evidence would contradict and seek to modify the Phase 3 judgment.

8 The comments cited by Bolthouse only support this position. The Phase 3 decision did not
9 determine any specific parties imported water return flows rights. All imported water will return to
10 the aquifer in the same percentage, based upon if it is used on agricultural or urban land. All
11 parties who import water will have the same right to recapture this water.

12
13 **IV. THE PHASE 3 JUDGMENT DECIDED CURRENT CONDITIONS**

14 The Phase 3 decision used over fifty years of historical data (called “Base Period”) to
15 calculate the current Safe Yield. As cultural conditions change, then the Safe Yield, and therefore
16 the return flow percentage, will need to be recalculated. Just a few short years after a
17 determination of the Safe Yield, there is no good cause for this court to revisit this issue.

18 The parties opposing this motion have not, and cannot, offer any basis that the last five
19 years is a reasonable base period to redetermine the Safe Yield, or the return flow component of
20 the Safe Yield.

21
22 **V. OTHER ARGUMENTS IN OPPOSITION TO THE MOTION IN LIMINE**
23 **HAVE NO MERIT**
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1 **A The Phase 4 Trial Regards The Quantity of Return Flows Expressed as**
2 **Percentage, Not Their Management**

3 This court has never stated that the Phase 4 trial will relate to the management of the
4 imported water return flows. The total amount of return flows will fluctuate based upon the
5 amount of water imported the prior year. This is why this court ought to specifically find in the
6 Phase 4 trial the percentages that led to the Safe Yield result in the Phase 3 trial. 33.33% of
7 imported water used on agricultural property and 39.1% of the water used on urban property
8 returned to the aquifer.

9 Speculation regarding how the return flows may be regulated should be left to another
10 phase of trial, or the watermaster.

11
12 **B The Return Flows are Based on Science and were at issue at the Phase 3 trial.**

13 This court heard plenty of scientific evidence at the Phase 3 trial, and based upon that
14 evidence, found that the Safe Yield was 110,000. No additional scientific evidence is needed, and
15 would only seek to revisit the Phase 3 decision.

16
17 **C A Motion in Limine is the appropriate method to exclude evidence on matters**
18 **that have already been decided by this court**

19 This motion is not brought for the court to decide the issue as to the quantity of return
20 flows. That issue has already been decided. This motion is brought to exclude evidence regarding
21 this already decided issue. As such, it is an appropriate motion, and ought to be granted.

22
23 **D The Return Flow Expert Opinion is not Excludable Hearsay**

24 This court may receive expert opinion (Evid. Code § 801). An expert opinion may be
25 based upon hearsay (*People v. Hallquist* (2005) 133 Cal.App.4th 291, 296). This court properly
26 admitted and considered Mr. Scalmanini’s expert opinion regarding the return flow percentages.

27 The motion in limine seeks to exclude evidence contrary to the quantity of return flows,
28 expressed as a percentage. The motion does not seek the inclusion of any other evidence.

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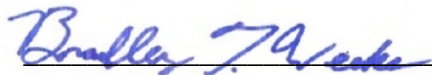
VI. CONCLUSION

Quartz Hill's motion in limine to exclude evidence regarding quantity of return flows should be granted.

Respectively submitted,

CHARLTON WEEKS LLP

Dated: May 3, 2013



Bradley T. Weeks
Attorney for Quartz Hill Water District

PROOF OF SERVICE

I am employed in the aforesaid county, State of California; I am over eighteen years of age and not a party to the within action; my business address is 1031 West Avenue M-14, Suite A, Palmdale, California, 93551.

On May 3, 2013, at my place of business at Palmdale, California, a copy of the following DOCUMENT(s):

QUARTZ HILL WATER DISTRICT REPLY TO OPPOSITIONS TO MOTION IN LIMINE REGARDING QUANTITY OF RETURN FLOWS

By posting the DOCUMENT listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater Matter:

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

Executed on May 3, 2013


Bradley T. Weeks