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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 ANTELOPE VALLEY EAST KERN  
WATER DISTRICT OPPOSITION TO  
MOTION IN LIMINE REGARDING RIGHT  
TO RECAPTURE RETURN FLOWS

Date: May 13, 2013  
Time: 9:00 a.m.  
Department: 1  
Hon. Jack Komar

Quartz Hill Water District replies to the opposition to the Motion for Order In Limine Two  
by the Antelope Valley East Kern Water District.

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1 **I. INTRODUCTION**

2 Quartz Hill Water District<sup>1</sup> respectively disagrees with AVEK’s analysis of the law  
3 regarding the right to recapture imported water return flows. AVEK’s claim that Quartz Hill does  
4 not pay for the imported water is semantics. AVEK is a middleman, nothing more. AVEK is not  
5 an importer and is not entitled to the return flows of imported water.  
6

7 **II. SAN FERNANDO AND GLENDALE HOLD THAT QUARTZ HILL IS A**  
8 **WATER IMPORTER**

9 AVEK argues that because Metropolitan Water District and the Los Angeles County Flood  
10 Control District did not make a claim to the water they was sold in the cases *City of Los Angeles v.*  
11 *City of San Fernando* (1975) 14 Cal.3d 199 and *City of Los Angeles v. City of Glendale* (1943) 23  
12 Cal.2d 68, therefore those the cases are not analogous to this case.  
13

14 Reversing this argument, AVEK implicitly argues that if Metropolitan Water District or  
15 the Los Angeles County Flood Control District *had* made a claim to the water they sold, then the  
16 court *would* have awarded them the right to recapture the imported water return flows.

17 Metropolitan and the Flood Control District knew they had no claim to recapture the return  
18 flows, so the choose not to make it. There is no reason to believe that Metropolitan the Flood  
19 Control District magnanimously decided to give away this valuable asset.

20 Significantly, AVEK’s argument assumes that if Metropolitan or the Flood Control District  
21 had made a claim to the imported water they sold, they would have been awarded that water. The  
22 opinions do not support this argument.

23 Finally, AVEK’s argument is inherently illogical. If Metropolitan or the Flood Control  
24 District had the right to recapture the return flows, then no one else did. In neither case was the  
25 right transferred to Los Angeles or Glendale. If the right was abandoned, then Los Angeles or  
26 Glendale could not have received the right.

27 \_\_\_\_\_  
28 <sup>1</sup> The motion in limine and this reply has equal applicability to Rosamond Community Service District, Palm Ranch  
Irrigation District, Los Angeles County Waterworks District 40, and California Water Services Company.

1 The courts found that Los Angeles and Glendale were the importer and had the right to  
2 recapture the return flows. The courts did not find that these rights were derivative of  
3 Metropolitan or the Flood Control District. Accordingly the plain meaning of the court’s decision  
4 out to be followed, the importer is the party that purchases and delivers the water, not middlemen  
5 such as Metropolitan, the Flood Control District, or AVEK.

6  
7 **III. SANTA MARIA WAS NOT DISTINGUISHED**

8 AVEK spends many pages attempting to persuade this court that the appellate court meant  
9 something other than what it said in *City of Santa Maria v. Adam* (2012) 211 Cal.App.4<sup>th</sup> 266. The  
10 court held “Return flows in the Basin are derived from State Water Project (SWP) water imported  
11 by several of the public water producers.” *Id.* at 7. “[O]ne who brings water into a watershed may  
12 retain a prior right to it even after it is used. The practical reason for the rule is that the importer  
13 should be credited with the “fruits of his endeavors in bringing into the basin water that would not  
14 otherwise be there.” *Id.* at 35.

15 The *Santa Maria* decision was not distinguished by AVEK. As the importer, Quartz Hill  
16 and the other Public Water Suppliers Are entitled to recapture the return flows of the water they  
17 paid to have imported. Quartz Hill joins in Los Angeles County Waterworks District 40’s further  
18 briefing on this subject.

19  
20 **IV. AVEK PAYS NOTHING FOR THE WATER IT IMPORTS**

21 There is no dispute regarding who pays whom for the imported water. Quartz Hill pays  
22 AVEK, and then, *and only then*, does AVEK import the water. Under the logic of AVEK’s  
23 agreement, the importer of the water is the State Water Project. It is the State Water Project that  
24 physically moves the water into the Antelope Valley.

25 The public, including the customers of Quartz Hill, Los Angeles County Waterworks  
26 District 40, Rosamond Community Service District, Palm Ranch Irrigation District, and any many  
27 others paid for the infrastructure that AVEK boasts of. The public pays for the roads and fire  
28

1 protection that AVEK uses. The public also pays for the schools for the employees of AVEK, and  
2 the police that protects AVEK.

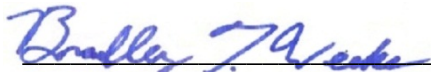
3 The general payment of property taxes, some of which has paid for AVEK's infrastructure,  
4 gives AVEK no claim to the water purchased by Quartz Hill, and paid for by its customers.

5  
6 **V. CONCLUSION**

7 Quartz Hill's motion in limine to exclude evidence that AVEK has the right to recapture  
8 imported water purchased by Quartz Hill should be granted..

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10  
11 Dated: May 3, 2013

CHARLTON WEEKS LLP



Bradley T. Weeks  
Attorney for Quartz Hill Water District

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**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 ANTELOPE VALLEY EAST KERN WATER DISTRICT OPPOSITION TO MOTION IN LIMINE REGARDING RIGHT TO RECAPTURE 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