

1 Thomas S. Bunn III (CSB #89502)  
2 LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP  
3 301 N. Lake Avenue, 10th Floor  
Pasadena, CA 91101-5123  
Telephone: (626) 793-9400  
Facsimile: (626) 793-5900

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4 Attorneys for Defendant and Cross-Complainant,  
5 Palmdale Water District  
6  
7

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

11 Coordination Proceeding  
12 Special Title (Rule 1550 (b))

Judicial Council Coordination  
Proceeding No. 4408

13 **ANTELOPE VALLEY GROUNDWATER**  
14 **CASES**

[Assigned to The Honorable Jack Komar, Judge  
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

**Reply Memorandum In Support Of Motion In  
Limine Number 1 By Los Angeles County  
Waterworks District No. 40**

Date: February 10, 2014  
Time: 9:00 a.m.  
Dept: Old Dept. 1, Los Angeles

20  
21 **1. Introduction.**

22 AGWA's and Bolthouse's oppositions ignore two critical points made in the motion: first, that  
23 an essential component of the calculation of the safe yield was a determination of the amount of return  
24 flows, and second, that any redetermination of the return flow percentage would necessarily change the  
25 court's determination of safe yield. Instead, the oppositions raise a red herring concerning the alleged  
26 hearsay nature of the *recycled water* return flow determination, even though the current phase of the trial  
27 concerns return flows from imported water, not recycled water. Finally, AGWA's opposition confirms  
28

1 that its intent in Phase 5 is to redetermine the overall return flow percentage, not to assert that different  
2 areas in the Basin have different percentages.

3  
4 **2. In determining the safe yield of the Basin, the court necessarily included the return flow**  
5 **amount, which is a component of safe yield.**

6 The only evidence for the safe yield of 110,000 acre-feet per year was the testimony of Mr.  
7 Scalmanini, who testified that that figure was the sum of (1) natural recharge of 60,000 acre-feet per  
8 year, determined three different ways; (2) return flow from native water; and (3) return flow from  
9 imported water. (See District No. 40's Supplemental Request for Judicial Notice, filed January 24, 2014,  
10 Exhibit JJ.) Even though the court did not make a specific finding as to return flow percentages, the  
11 return flow amounts were a necessary part of its decision, and the court acknowledged this in its  
12 statement of decision. (See District No. 40's Request for Judicial Notice, filed March 29, 2013, Exhibit  
13 HH at p. 7.)

14 As the motion points out, redetermination of the return flow amounts would necessarily change  
15 the safe yield amount determined by the court.

16 The filed oppositions ignore these points. AGWA and Bolthouse apparently want the court to  
17 change the return flow percentages without changing the safe yield. But they offer no explanation of  
18 how the court could do this. If the return flow percentages are lowered, then the safe yield will be  
19 lowered.

20  
21 **3. The Hearsay Argument Is a Red Herring.**

22 The oppositions assert that the court cannot determine return flow percentages from the Phase 3  
23 testimony without relying on hearsay evidence. This assertion is incorrect. The court's determination of  
24 safe yield was based upon expert testimony. As acknowledged in the Bolthouse opposition, experts are  
25 permitted to rely on hearsay evidence if it is of a type that reasonably may be relied upon by an expert in  
26 forming an opinion upon the subject to which his testimony relates. (Evid. Code §801.) The court made  
27 it clear in Phase 3 that any hearsay evidence was only being considered as a ground on which the experts  
28 relied, and not for its truth.

1 Furthermore, the work of Peter Leffler, which is asserted in both oppositions to be improper  
2 hearsay, concerned only return flows from recycled water, which are not at issue in Phase 5. The return  
3 flow rights of the public water suppliers arise from irrigation return flows and septic tank return flows,  
4 not recycled water return flows.  
5

6 **4. AGWA has confirmed that it seeks to change the quantities of return flows used in the**  
7 **determination of the safe yield.**

8 In its opposition, AGWA states why it believes Mr. Scalmanini's estimates of return flow were  
9 wrong. (AGWA Opposition at p. 4.) Neither AGWA nor Bolthouse, nor any other party, has expressed  
10 any intent to introduce evidence of different return flows in different areas of the Basin. This intent is  
11 further confirmed by the deposition of AGWA's expert and AGWA's trial brief. (See AGWA's trial  
12 brief at p. 2 ("The purveyors claim that return flows from imported water constitute nearly a quarter of  
13 the safe yield of the Basin. AGWA contests this claim and will present evidence that the actual  
14 percentages of imported water return flow are much lower."))  
15

16 **5. Conclusion**

17 AGWA and Bolthouse want to have their cake and eat it too. They want to keep the safe yield  
18 figure at 110,000 acre-feet per year, but to lower one of the components of that figure. In effect, they  
19 want the court to ignore the basis on which it arrived at the safe yield determination. AGWA and  
20 Bolthouse had ample opportunity to challenge the return flow percentages in Phase 3. They did not do so  
21 at that time, because a successful challenge would have resulted in a lower safe yield. They should not  
22 be permitted to do so now. The motion should be granted.  
23

24 Dated: February 5, 2014

Lagerlof, Senecal, Gosney & Kruse LLP

25  
26 By: \_\_\_\_\_

27 Thomas S. Bunn III  
28 Attorneys for Palmdale Water District