

William J. Brunick, Esq. [SB No. 46289]  
Steven K. Beckett, Esq. [SB No. 97413]  
Steven M. Kennedy, Esq. [SB No. 141061]  
BRUNICK, McELHANEY & BECKETT  
1839 Commercenter West  
P.O. Box 6425  
San Bernardino, California 92412-6425  
Telephone: (909) 889-8301  
Facsimile: (909) 388-1889

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Attorneys for ANTELOPE VALLEY- EAST KERN WATER AGENCY

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

Coordination Proceeding  
Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding  
No. 4408

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Hon. Judge Jack Komar

**Included actions:**

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co., et al.  
Superior Court of California, County of Los  
Angeles,  
Case No. BC 325 201  
Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co., et al.  
Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348  
Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California County of  
Riverside, consolidated actions, Case nos. RIC  
353 840, RIC 344 436, RIC 344 668

**POSITION STATEMENT OF ANTELOPE  
VALLEY-EAST KERN WATER AGENCY  
RE UNITED STATES' MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: September 21, 2006  
Time: 10:00 a.m.  
Dept: 1, Room 534

**AND RELATED ACTIONS.**

**POSITION STATEMENT OF ANTELOPE VALLEY-EAST KERN WATER AGENCY  
RE MOTION FOR JUDGMENT ON THE PLEADINGS**

1 Cross-Defendant/Cross-Complainant ANTELOPE VALLEY-EAST KERN WATER AGENCY  
2 (“AVEK”) submits the following statement of position concerning the *Motion for Judgment on the*  
3 *Pleadings* (“the Motion”) filed by the United States in the above-captioned proceeding:

4 AVEK is self-governing special district duly organized and operating pursuant to the Antelope  
5 Valley-East Kern Water Agency Law, California Water Code Appendix Section 98-49 et seq. AVEK’s  
6 jurisdictional boundaries are located in the Antelope Valley and include a majority of the land mass  
7 overlying the Antelope Valley Groundwater Basin (the “Basin”). AVEK is a party to a long-term contract  
8 with the State of California that entitles AVEK to receive the greatest amount of import water from the  
State Water Project for delivery and use within the Basin.

9 AVEK is informed and believes that the Basin is and has been in an overdraft condition for more  
10 than five (5) consecutive years. During these time periods, the total annual demand on the Basin has  
11 exceeded the supply of water from natural sources. Consequently, there is and has been a progressive and  
12 chronic decline in Basin water levels and the available natural supply is being and has been chronically  
13 depleted. Based on the present trends, demand on the Basin will continue to exceed supply. Until limited  
14 by order and judgment of the court, potable Basin water will be exhausted and land subsidence will  
15 continue.

16 Due to the shortage of water in the Basin, certain other public water suppliers purchase State Water  
17 Project water from AVEK. State Project water originates in northern California and would not reach the  
18 Basin but for the importation thereof by AVEK. Absent AVEK’s importation of State Project water into  
19 the Basin, the other water producers in this action would need to pump additional groundwater from the  
20 Basin each year. By storing State Project water or other imported water in the Basin, the parties herein  
21 can recover the stored water during time of drought, water supply emergencies, or other water shortages  
to ensure a safe and reliable supply of water to the public.

22 Unless the rights, if any, of the parties hereto to produce water from the available supply within  
23 the Basin are each determined and established, and those without rights are limited as prayed, the available  
24 supply will eventually become endangered. New pumpers and those who continue to increase their  
25 quantities of production will acquire new rights to greater quantities of water which will reduce the rights

1 of many persons who presently produce water, and eventually will render the available supply inadequate  
2 to fulfill all rights.

3 As a result, AVEK filed a Cross-Complaint for declaratory and injunctive relief in this proceeding  
4 which seeks a judicial determination of rights to all water within the Basin. An adjudication is necessary  
5 to protect and conserve the limited water supply that is vital to the public health, safety, and welfare of  
6 all persons and entities that depend upon native water from the Basin and supplemental water from  
7 AVEK.

8 In its Cross-Complaint, AVEK requests that this Court consider a “physical solution” to the water  
9 rights dispute in the Basin. A physical solution is a common-sense approach to resolving water rights  
10 litigation that seeks to satisfy the reasonable and beneficial needs of all parties through augmenting the  
11 water supply or other practical measures. The physical solution is a practical way of fulfilling the mandate  
12 of the California Constitution (Article X, Section 2) that the water resources of the State be put to use to  
the fullest extent of which they are capable.

13 AVEK believes that this Court must determine, impose, and retain continuing jurisdiction in order  
14 to enforce a physical solution upon the parties who pump water from the Basin, and thereby prevent  
15 irreparable injury to the Basin. However, the goals of a physical solution to the continued overdrafting  
16 of the Basin would be completely frustrated if - after significant expenditures of time, effort, and expense -  
17 any resolution that may be reached by this Court is subsequently undermined by the failure to join all  
18 necessary or indispensable parties in this case or this Court is later found to lack subject matter jurisdiction  
19 over any party to this litigation, as argued by the United States in the Motion pursuant to the McCarran  
Amendment (43 U.S.C. Section 666).

20 Therefore, AVEK’s position with respect to the Motion is that the United States is a necessary and  
21 indispensable party in this litigation. Any physical solution that is developed by this Court must be  
22 binding upon the United States or it will be of minimal use in addressing the water-supply problems  
23 associated with the continued overdrafting of the Basin.

24 Additionally, final resolution of all jurisdictional issues should be achieved before the parties and  
25 this Court engage in substantial time, effort, and expense to litigate the substantive issues in this case and

1 develop a physical solution that could be subject to being set aside on appeal. [See City of Barstow v.  
2 Mojave Water Agency (2000) 23 Cal. 4<sup>th</sup> 1224, 5 P.3d 853, 99 Cal. Rptr. 2d 294.]

3 Thus, AVEK supports a decision on the Motion that results in the continued participation of the  
4 United States as a party to this case and provides for all jurisdictional issues to be fully and finally  
5 resolved prior to the phased trials of the other matters involved in this proceeding. Otherwise, the public  
6 benefits that would be achieved by the development of a physical solution to the overdrafting of the Basin  
7 would be unduly compromised.

8 Dated: September 1, 2006

BRUNICK, McELHANEY & BECKETT

9 *Steven M. Kennedy*

10 By: \_\_\_\_\_

William J. Brunick

Steven K. Beckett

Steven M. Kennedy

11 Attorneys for ANTELOPE VALLEY-EAST KERN  
12 WATER AGENCY  
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