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9

*Exempt from filing fee pursuant to  
Gov't. Code Section 6103*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
12

13 Coordination Proceeding  
14 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding  
No. 4408

15 **ANTELOPE VALLEY**  
16 **GROUNDWATER CASES**

**Santa Clara Case No.**  
**1-05-CV-049053**  
The Honorable Jack Komar, Dept.17

17 **Included Actions:**

**ANTELOPE VALLEY-EAST KERN  
WATER AGENCY'S STATEMENT RE  
PHASE V TRIAL PROPOSAL**

18 Los Angeles County Waterworks District  
19 No. 40 vs. Diamond Farming Company, a  
20 corporation, Superior Court of California,  
County of Los Angeles, Case No.  
BC325201;

21 Los Angeles County Waterworks District  
22 No. 40 vs. Diamond Farming Company, a  
23 corporation., Superior Court of California,  
County of Kern, Case No. S-1500-CV-254-  
348;

**Date: July 29, 2013**  
**Time: 10:30 a.m.**  
**Dept.: 48, Los Angeles Superior Court**

24 Wm. Bolthouse Farms, Inc. vs. City of  
25 Lancaster, Diamond Farming Company, a  
26 corporation, vs. City of Lancaster, Diamond  
27 Farming Company, a corporation vs.  
Palmdale Water District, Superior Court of  
California, County of Riverside, Case Nos.  
RIC 353840, RIC 344436, RIC 344668.

1 The Antelope Valley - East Kern Water Agency submits the following proposal about  
2 issues to be tried during the Phase V trial.

3 1. Ownership of Return Flows

4 AVEK does not yet know the specific time periods which will be applicable to the Public  
5 Water Suppliers' prescription claims. If the claimed period(s) of prescription include any part  
6 of the time period during which AVEK has imported State Water Project water (i.e., since  
7 1974), then AVEK proposes that before evidence specific to the prescription claims is received,  
8 the issue of ownership of return flows should be tried first. The reason for this is obvious:

- 9 • Return flows pumped by the PWS manifestly could not support their prescription claims  
10 against property owners with overlying rights to pump native groundwater;
- 11 • Property owners with overlying rights to pump native groundwater, will undoubtedly  
12 defend against the PWS prescription claims by contending, at least in part, that return  
13 flows were the first water pumped by the PWS, and such pumping of return flows clearly  
14 cannot support the PWS prescription claims against any other party's right to pump  
15 native groundwater;
- 16 • Likewise, to the extent property owners with overlying rights claim the right to pump  
17 return flows based on their purchases of imported water, the PWS may contend that the  
18 first water pumped by such property owners with overlying rights should be deemed to  
19 be return flows, rather than native groundwater, in which event, such pumping could not  
20 support a self help defense to the PWS prescription claims.

21 For these reasons, AVEK proposes that ownership of return flows should be the first  
22 issue determined in the Phase V trial, unless the PWS clearly indicate that the evidence to be  
23 presented in support of their prescription claims will not include evidence of pumping within  
24 the last 10 years.

25 The Court is aware, of course, that AVEK disputes that any other person owns, or has  
26 a right to use, the return flows resulting from AVEK imported water (see the Notice of Motion  
27 and Motion *In Limine* of Antelope Valley - East Kern Water Agency re Admission of Evidence  
28 and Argument Relating to Return Flows filed March 29, 2013 and Antelope Valley-East Kern

1 Water Agency's Reply Brief in Support of its *In Limine* Motion to Preclude Argument or  
2 Evidence Relating to Return Flows, filed on May 3, 2013, and are incorporated herein by this  
3 reference as though set forth in full herein).

4 In the area(s) which benefit from return flows remaining in the ground, as the importer  
5 and owner of such return flows AVEK intends to maintain such return flows in the ground, and  
6 thereby supplement and replenish the groundwater in the Basin for the benefit of all interested  
7 parties and AVEK's taxpayers.

8 2. Amount of Safe Yield Attributable to Return Flows

9 The Court also will recall that Waterworks District 40 and Quartz Hill recently filed their  
10 own *in limine* motions claiming that additional evidence should not be received on *the quantity*  
11 *of return flows available for pumping* as part of the Basin's Safe Yield, claiming that the amount  
12 of return flows which can be pumped annually is 28,000 AF. Objections thereto were filed by  
13 various parties. AVEK raised due process, notice and other objections thereto (see Antelope  
14 Valley - East Kern Water Agency's Opposition to Motions *In Limine* of Los Angeles County  
15 Waterworks District No. 40 and Quartz Hill Water District to Preclude Evidence re: Percentage  
16 of Safe Yield Attributable to Imported Water, which was filed on April 19, 2013, and is  
17 incorporated in full by this reference.)<sup>1</sup>

18 Recent studies performed by Robert Wagner indicate that the claimed amount of return  
19 flows available for pumping (28,000 AF per year) are overestimated. This means that a  
20 significant overdraft could occur if parties were allowed to pump, ostensibly as return flows,  
21 28,000 AF per year when in fact: actual return flows are significantly less than 28,000 AF; and  
22 much of the water that ostensibly would be pumped as return flows would, in reality, be native  
23 groundwater. Because the quantity of return flows available for pumping is such a critical factor,  
24  
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26 <sup>1</sup> Therein, AVEK's expert consultant/witness, Robert Wagner opined regarding the evidence  
27 of return flows presented during the Phase III trial that, as to the M&I assumed percentage of 39%,  
28 the 11% component thereof for outdoor irrigation return flow is not supported and is overestimated,  
and the 17% component thereof for septic disposal is also overestimated but by a smaller amount.

1 this issue should be evaluated and determined as soon as possible, based upon competent  
2 evidence as to the amount of return flows currently available from imported water.

3 For the foregoing reasons, AVEK respectfully submits that both the quantity and the  
4 ownership of return flows should be determined first in the Phase V trial.

5 Dated: July 22, 2013

**BRUNICK, McELHANEY & KENNEDY**

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7  
8 By:   
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12 ANTELOPE VALLEY-EAST KERN  
13 WATER AGENCY  
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I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 1839 Commercenter West, San Bernardino, California 92408-3303.

On July 22, 2013, I served the foregoing document(s) described as: **ANTELOPE VALLEY-EAST KERN WATER AGENCY'S STATEMENT RE PHASE V TRIAL PROPOSAL** on the interested parties in this action served in the following manner:

■ **BY ELECTRONIC SERVICE AS FOLLOWS** by posting the document(s) listed above to the Santa Clara website in the action of the *Antelope Valley Groundwater Litigation*, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No. 1-05-CV-049053.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 22, 2013, at San Bernardino, California.

  
P. Jo Anne Quihuis