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8 Attorneys for Cross-Complainant,  
9 ANTELOPE VALLEY-EAST KERN WATER AGENCY

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 OF  
UNDISPUTED FACTS IN SUPPORT OF  
ITS MOTION FOR SUMMARY  
ADJUDICATION**

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: January 27, 2014  
Time: To be determined  
Room: To be determined  
Judge: Hon. Jack Komar

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.

Trial Date: February 10, 2014 (Phase V)  
Time: 9:00 a.m.

1 The following statement of undisputed facts and supporting evidence is submitted in  
2 support of the Antelope Valley - East Kern Water Agency's motion for summary adjudication,  
3 which is filed and posted concurrently herewith.

4 **MOVING PARTY'S UNDISPUTED**  
5 **MATERIAL FACTS**

**SUPPORTING EVIDENCE**

6 1. In 1959, residents of Kern, Ventura and  
7 Los Angeles Counties formed AVEK for  
8 the purpose of contracting with the State for  
9 the purchase and delivery of supplemental  
State Water Project [SWP] water for use in  
AVEK's service area within the Antelope  
Valley (California Water Code Appendix  
98-1, et seq.)

1. Dan Flory dec., ¶ 2.

10 2. In 1962, AVEK signed a Water Supply  
11 Contract with the State (Exhibit 1 hereto) to  
insure delivery of SWP water to supplement  
Antelope Valley groundwater.

2. Dan Flory dec., ¶ 3; Exhibit 1.

12 3. Of the 29 State Project Water  
13 Contractors, AVEK has the third largest  
14 water entitlement, which allows AVEK to  
take an annual maximum entitlement of up  
to 141,000 AF of Imported Water.

3. Dan Flory dec., ¶ 4.

15 4. Due to environmental, supply and  
16 climate limitations inherent in the State  
17 Water Project, AVEK's contract with the  
State of California has a delivery reliability  
18 factor of approximately 60% of AVEK's  
annual entitlement of \$141,000 AF.

4. Dan Flory dec., ¶ 5.

19 5. By far, AVEK imports more SWP water  
20 into the area of adjudication than does any  
other State Water Contractor.

5. Dan Flory dec., ¶ 6.

21 6. Initial funds for the construction of the  
22 State Water Project facilities were obtained  
through a \$1.75 billion bond issue, ratified  
by California voters in 1960.

6. Dan Flory dec., ¶ 7.

23 7. AVEK's taxpayers have paid a total of  
24 \$475,777,218.84 to insure participation in  
25 the California State Water Project, and to  
construct the "infrastructure" needed to  
import, transport, treat and deliver AVEK  
imported water to its customers.

7. Dan Flory dec., ¶ 8.

1 8. All direct payments to the State of  
2 California have been paid by AVEK (and  
3 indirectly by its taxpayers) for the required  
4 infrastructure construction, and for the  
purchase and importation of the SWP water  
contracted for by AVEK.

8. Dan Flory dec., ¶ 9.

5 9. AVEK's customers (including the Public  
6 Water Suppliers) have not made any direct  
payments to the State of California for the  
SWP water contracted for by AVEK.

9. Dan Flory dec., ¶ 10.

7 10. AVEK services a land area of 2,400  
8 square miles in the three counties, including  
land areas both inside and outside the area  
of adjudication.

10. Dan Flory dec., ¶ 11.

9 11. The adjudicated boundaries in this  
10 action represent 58% of the total land area  
served by AVEK.

11. Dan Flory dec., ¶ 12.

11 12. AVEK's imported SWP water is  
12 pumped from the Sacramento Delta down  
the 444 mile aqueduct.

12. Dan Flory dec., ¶ 13.

13 13. After crossing the Techachapis, the  
14 aqueduct divides into the East and West  
branches; AVEK receives its imported  
15 SWP water through the aqueduct's East  
Branch.

13. Dan Flory dec., ¶ 14.

16 14. In 2011 and 2012 alone, AVEK  
17 delivered to its agricultural, industrial and  
municipal customers within the area of  
18 adjudication a total of 100,718 AF of  
imported SWP water.

14. Dan Flory dec., ¶ 15.

19 15. [Not used.]

15. [Inapplicable.]

20 16. AVEK taxpayers also have directly  
21 paid for, and continue to pay for,  
construction of the internal treatment and  
22 distribution systems whereby AVEK's SWP  
imported water is eventually delivered to  
23 AVEK's agricultural, industrial and  
municipal customers, both within and  
outside the area of adjudication.

16. Dan Flory dec., ¶ 16.

24 17. The bulk of AVEK's SWP imported  
25 water is treated and distributed to AVEK  
customers through the Domestic-  
26 Agricultural Water Network (DAWN)  
Project facilities.

17. Dan Flory dec., ¶ 17.

18. The DAWN Project consists of: more than 100 miles of distribution pipeline; four water treatment plants; four eight-million gallon storage reservoirs near Mojave; one three-million gallon capacity reservoir at Vincent Hill Summit; and one one-million gallon reservoir at Godde Hill Summit. 18. Dan Flory dec., ¶ 18.
19. The DAWN Project was financed by a local \$71 million bond issue authorized by AVEK voters in 1974. 19. Dan Flory dec., ¶ 19.
20. The first bond issue, Series A, of \$23 million was used for project start-up construction. AVEK taxpayers have completely repaid the Series A bonds. 20. Dan Flory dec., ¶ 20.
21. The second bond issue in 1976, Series B, of \$19 million has also been completely repaid by AVEK taxpayers. 21. Dan Flory dec., ¶ 21.
22. In 1977, the \$18 million Series C bond issue authorized Phase Three of the DAWN facilities construction; the Series C bonds have been completely repaid by AVEK taxpayers. 22. Dan Flory dec., ¶ 22.
23. In August, 1986, the final Phase of the DAWN Project construction commenced when AVEK's Board of Directors authorized expenditure of the remaining \$11 million in Series D bonds; these funds were used to construct internal local facilities to distribute AVEK Imported Water. 23. Dan Flory dec., ¶ 23.
24. AVEK's map depicts existing AVEK owned facilities, and improvements under construction including future water banking improvements. 24. Dan Flory dec., ¶ 24, Exhibit 2.
25. AVEK's Water Supply Stabilization Project No. 2 (WSSP2) is a groundwater banking project that will increase the reliability of the Antelope Valley Region's water supplies by storing excess water available from the SWP during wet periods and recovering it to serve to customers during dry and high demand periods or during a disruption in deliveries from the SWP. 25. Dan Flory dec., ¶ 25.
26. By banking excess water for future use, the WSSP2 will significantly reduce the Region's dependence on constant water deliveries of SWP water from the Delta. 26. Dan Flory dec., ¶ 26.

- 1 27. The WSSP2 will also help to stabilize 27. Dan Flory dec., ¶ 27.  
2 the groundwater in the area of adjudication  
3 and preserve agricultural land and open  
4 space.
- 5 28. From 2011 through 2012, AVEK has 28. Dan Flory dec., ¶ 28.  
6 spread and banked a total of approximately  
7 36,502 AF, and claims the right to recapture  
8 90% of that amount, or 32,851 AF, as the  
9 return flow resulting therefrom.
- 10 29. When deemed necessary by AVEK due 29. Dan Flory dec., ¶ 29.  
11 to water supply shortfalls from SWP water  
12 or other operational strategies, AVEK will  
13 recover not more than 90% of the volume  
14 of water that is put into the groundwater  
15 bank.
- 16 30. Recovery operations will take place 30. Dan Flory dec., ¶ 30.  
17 with the construction of 10 groundwater  
18 recovery wells with depths averaging about  
19 600 feet; well yields will range between 500  
20 gpm to 2,800 gpm.
- 21 31. Since inception of the State Water 31. Dan Flory dec., ¶ 31.  
22 Project, AVEK taxpayers have paid a total  
23 of \$475,777,218.84 to insure participation  
24 in the SWP, and to construct AVEK's  
25 treatment and distribution systems for the  
26 delivery of AVEK's imported SWP water.
- 27 32. AVEK is both a wholesaler and retailer 32. Dan Flory dec., ¶ 32.  
28 of its SWP imported water - wholesaling  
water to the Public Water Suppliers, and  
retailing water to end users, including  
AVEK's agricultural and other private  
customers.
33. AVEK has not assigned or transferred 33. Dan Flory dec., ¶ 33.  
to any other person any portion of AVEK's  
SWP "entitlement," or its right to recapture  
or use the return flows resulting from  
AVEK's SWP imported water.
34. AVEK has not abandoned or otherwise 34. Dan Flory dec., ¶ 34.  
relinquished its claimed right to recapture  
and use return flows resulting from  
AVEK's SWP imported water.

1 35. AVEK's Board of Directors has  
2 determined that, except when AVEK's  
3 allocation of SWP water is insufficient to  
4 meet the critical needs of its customers  
5 (requiring AVEK to recapture return flows  
6 to meet those needs), AVEK's preference is  
7 to maintain all return flows in the  
8 groundwater, to thereby gradually augment  
9 and increase the groundwater supply in the  
10 area of adjudication.

11 36. This practice will benefit AVEK's  
12 existing and future customers and  
13 taxpayers, both inside and outside the area  
14 of adjudication.

15 37. AVEK's Cross-Complaint contends:  
16 "The rights of Cross-Defendants, if any, are  
17 limited to the Native Supply of the Basin  
18 and/or their own Imported Water. Cross-  
19 Defendants' rights, if any, do not extend to  
20 water imported into the Basin by [AVEK]"  
21 (AVEK Cross-Complaint, ¶ 32); "As the  
22 primary importer of supplemental State  
23 Project water in the Basin, [AVEK] has the  
24 sole right to recapture Return Flows  
25 attributable to its State Project water. The  
26 rights of Cross-Defendants, if any are  
27 limited to the native supply of the Basin  
28 and/or to their own imported water, and do  
not extend to groundwater attributable to  
[AVEK's] return flows" (Id., ¶ 38).

38. The Metropolitan Water District  
(MWD) was formed in 1929 of 13 original  
member agencies, including the cities of  
Los Angeles, Glendale and Burbank.

39. Burbank, Glendale, and Los Angeles  
are all "member agencies" of MWD; their  
representatives are members of MWD's  
Board of Directors; and each is directly  
involved in the governance and policy  
decisions of MWD, including determining  
the rates they must pay for MWD water.

40. As a practical matter, MWD does not  
have any existence separate from its  
member agencies.

35. Dan Flory dec., ¶ 35.

36. Dan Flory dec., ¶ 36.

37. See AVEK's cross complaint filed in  
this action.

38. Findings of Fact and Conclusions of  
Law [FFCL], dated January 26, 1979,  
22:23-24:1, Exhibit 1 to Request for  
Judicial Notice (RJN) filed concurrently  
herewith.

39. The Metropolitan Water District Act,  
Sections 133 and 135 (Exhibit 3 to RJN);  
MWD's "History and First Annual Report,  
Commemorative Edition," June 2011, pages  
311-312 (Exhibit 2 to RJN), and anticipated  
deposition testimony of MWD's PMK, and  
exhibits attached thereto.

40. See Exhibits 1, 2, 3, and 4 of RJN,  
and anticipated deposition testimony of  
MWD's PMK, and exhibits attached  
thereto.



1 41. In the case at bar, the Public Water  
2 Suppliers are not "member agencies" of  
3 AVEK, their representatives do not sit on  
4 AVEK's Board of Directors, and they do  
not determine the rates paid for the SWP  
imported water they receive from AVEK.

5 42. The PWS are merely customers of  
6 AVEK.

7 43. During the period of time relevant to  
8 the decision in *City of Los Angeles v. City*  
9 *of San Fernando*, i.e., from 1955 through  
10 1968, MWD did not intend to recapture, or  
11 claim a right to recapture return flows  
resulting from imported water MWD  
delivered to its member agencies, Burbank,  
Glendale, Los Angeles and San Fernando,  
in the Upper Los Angeles River Area  
("ULARA").

41. Dan Flory dec., ¶ 37.

42. Dan Flory dec., ¶ 38.

43. See Remand Procedure Order No. 1,  
Exhibit 14 of Request for Judicial Notice  
["The complaint . . . was filed on  
September 30, 1955; "final arguments  
ended July 20, 1967;" "On March 14, 1968,  
comprehensive findings of fact and  
conclusions of law were signed and filed . .  
. The Judgment was entered the following  
day, March 15, 1968" ]; July, 1962 Report  
of Referee, Vol. I, Exhibit 11 of Request for  
Judicial Notice, p. 90 ["Metropolitan has  
urged the member municipalities to acquire  
adequate storage and maintain existing  
ground water pumping facilities for  
emergency service and to provide for  
peaking during the periods of extraordinary  
demand"]; and anticipated deposition  
testimony of MWD's PMK, and exhibits  
attached thereto.

1 44. During the period of time relevant to the  
2 decision in *City of Los Angeles v. City of*  
3 *San Fernando*, i.e., from 1955 through  
4 1968, MWD did not own or operate water  
5 production wells within the ULARA which  
6 could be used to recapture return flows.

44. See Remand Procedure Order No. 1,  
Exhibit 14 of Request for Judicial Notice  
[“The complaint . . . was filed on  
September 30, 1955; “final arguments  
ended July 20, 1967;” “On March 14, 1968,  
comprehensive findings of fact and  
conclusions of law were signed and filed . .  
. The Judgment was entered the following  
day, March 15, 1968” ]; DWR Bulletin No.  
181-69, Watermaster Service in ULARA  
for October 1, 1968 through September 30,  
1969, Exhibit 13 to Request for Judicial  
Notice, pp. 29, 57, 58, 72-75 [identifying  
parties who have made “ground water  
extractions,” none of which include MWD,  
and stating on page 34: “To the best of the  
Watermaster’s knowledge, and information  
on hand, the Western Oil and Gas  
Association is the only nonparty extracting  
groundwater within the ULARA”]; July,  
1962 Report of Referee, Vol. II, Exhibit 12  
of Request for Judicial Notice, pp. I-12 to I-  
57, which identifies parties with wells in the  
San Fernando Basin, none of which include  
MWD; and anticipated deposition testimony  
of MWD’s PMK and the Upper Los  
Angeles River Area Watermaster, and  
exhibits attached thereto.



1 45. During the period of time relevant to  
2 the decision in *City of Los Angeles v. City*  
3 *of San Fernando*, i.e., from 1955 through  
4 1968, MWD did not spread or inject water  
5 for underground storage within the  
6 ULARA.

16 46. MWD did not join, and was not made a  
17 party to the proceeding in *City of Los*  
18 *Angeles v. City of San Fernando*

21 47. AVEK owns wells which can be used  
22 to recapture return flows from AVEK's  
23 SWP imported water; AVEK is currently  
24 drilling additional wells, and is  
25 contemplating purchasing other property  
26 with water well production capability.

45. See July, 1962 Report of Referee, Vol. I, Exhibit 11 of Request for Judicial Notice, p. 141 ["Owens River water delivered by the Los Angeles Aqueduct is the only import supply of which a part is spread for direct recharge of the ground water"], p. 215 ["Imported Water has been spread only by the City of Los Angeles"], and p. 90 ["Metropolitan has urged the member municipalities to acquire adequate storage and maintain existing ground water pumping facilities for emergency service and to provide for peaking during the periods of extraordinary demand"]. See DWR Bulletin No. 181-69, Watermaster Service in ULARA for October 1, 1968 through September 30, 1969, Exhibit 13 to Request for Judicial Notice, pp. 7, 14, 15, which identify the parties spreading water in the Basin, of which MWD is not one. See, also, ULARA Watermaster Report for water year 1978-1979, Exhibit 10 to Request for Judicial Notice, p. 35, showing that water was then being spread by MWD's member agencies only; see also anticipated deposition testimony of MWD's PMK and the Upper Los Angeles River Area Watermaster, and exhibits attached thereto.

46. Court's Findings of Fact and Conclusions of Law, pp. 7-10 (Exhibit 1 to Request for Judicial Notice), and Attachments "B," "C," and "D," and Judgment entered January 26, 1979, pp. 21-22 (Exhibit 4 to Request for Judicial Notice), and Attachments "B," "C," and "D" thereto.

47. Dan Flory dec., ¶ 39.

1 48. DWR has never claimed a right to  
2 return flows resulting from AVEK's SWP  
3 imported water; DWR has never manifested  
4 an "intent" to recapture such return flows;  
and DWR does not have production wells in  
the area of adjudication capable of  
capturing return flows.

48. Dan Flory dec., ¶ 40.

5 49. From the inception of AVEK's  
6 participation in the State Water Project,  
7 AVEK's taxpayers have paid a total of  
8 \$475,777,218.84 to insure participation  
9 therein, and to construct, maintain and  
operate the "infrastructure" needed to  
import, transport, treat and deliver AVEK  
imported water to its customers.

49. Dwayne Chisam dec., ¶2.

10 50. AVEK also has incurred and paid  
11 energy and related costs related to the actual  
transportation of SWP water which total  
\$331,663,051.00.

50. Dwayne Chisam dec., ¶3.

12 51. Accordingly, the total cost incurred and  
13 paid by AVEK and its taxpayers to obtain,  
14 transport, treat and deliver SWP water to its  
customers is \$807,440,269.84 (i.e.,  
\$475,777,218.84 + \$331,663,051.00).

51. Dwayne Chisam dec., ¶4.

15 52. From 1972 (when AVEK first began  
16 importing SWP water) through 2012,  
17 AVEK has imported a total of 1,976,971 AF  
of SWP water.

52. Dwayne Chisam dec., ¶5.

18 53. Some loss unavoidably results during  
19 the transportation, treatment and delivery  
20 stages; as a result, AVEK delivered to its  
customers during the same time period a  
total of 1,923,039 AF.

53. Dwayne Chisam dec., ¶6.

21 54. Accordingly, the average total cost per  
22 acre feet to AVEK and its taxpayers for the  
23 water delivered to AVEK customers from  
1972 through 2012 is \$419.88 per AF (i.e.,  
\$807,440,269.84 ÷ 1,923,039).

54. Dwayne Chisam dec., ¶7.

24 55. During the same time period, AVEK  
25 has delivered to Waterworks District #40 a  
total of 808,790 AF.

55. Dwayne Chisam dec., ¶8.

1 56. The total cost incurred and paid by  
2 AVEK and its taxpayers in procuring and  
3 delivering the SWP water that was sold and  
4 delivered to Waterworks District #40 is  
approximately \$339,594,745.20 (i.e.,  
808,790 AF x \$419.88 per AF).

56. Dwayne Chisam dec., ¶9.

5 57. Waterworks District #40 has paid a  
6 total of only \$177,693,610.00 for the  
7 aforesaid 808,790 AF of SWP water it  
8 purchased and received from AVEK, or  
\$219.70AF (i.e., \$177,693,610.00 ÷  
808,790 AF).

57. Dwayne Chisam dec., ¶10.

9 58. Thus, for the water received by it,  
10 Waterworks District #40 paid \$200.28AF  
11 less than the actual cost of the water (i.e.,  
\$419.88 - \$219.70) or only 52% of the total  
12 cost of the water it received (i.e.,  
\$177,693,610.00 ÷ \$339,594,745.20).

58. Dwayne Chisam dec., ¶11.

13 59. Therefore, AVEK and its taxpayers  
14 have subsidized the cost of the water  
15 delivered to Waterworks District #40, by  
16 paying the additional cost of such water in  
the amount of \$161,901,135.20 (i.e.,  
\$339,594,745.20 - \$177,693,610.00).

59. Dwayne Chisam dec., ¶12.

17 60. Considered in a slightly different way,  
18 Waterworks District #40 received 42% of  
19 the total water delivered to AVEK's  
20 customers (i.e., 808,790AF ÷  
1,923,039AF), but paid only 22% of the  
21 total cost of that water (i.e., \$177,693,610 ÷  
\$807,440,269.84).

60. Dwayne Chisam dec., ¶13.

22 61. The amount of money paid directly by  
23 Waterworks District #40, combined with  
24 the payments made by taxpayers located  
within the area of adjudication serviced by  
both Waterworks District #40 and AVEK,  
is still less than the total actual cost of the  
water AVEK delivered to Waterworks  
District #40.

61. Dwayne Chisam dec., ¶14.

25 62. Some of Waterworks District #40's  
26 customers are located outside of both  
27 AVEK's service area and the area of the  
28 adjudication; accordingly, those customers  
of Waterworks District #40 do **not** pay  
property taxes which support AVEK's  
importation of SWP water at all.

62. Dwayne Chisam dec., ¶15.

1 63. Many of AVEK's taxpayers are "non-  
2 users," i.e., they either take water from  
3 wells or leave their properties fallow; as a  
4 result, such non-users do not benefit  
5 directly from the SWP, although their  
property taxes significantly subsidize the  
SWP water purchased by Waterworks  
District #40 and other AVEK customers.

63. Dwayne Chisam dec., ¶16.

6 Dated: November 11, 2013

**BRUNICK, McELHANEY & KENNEDY**


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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.

■ **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.

Executed on November 11, 2013, at San Bernardino, California.

  
P. Jo Anne Quihuis