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12 ANTELOPE VALLEY-EAST KERN WATER AGENCY

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

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

15 Coordination Proceeding
16 Special Title (Rule 1550(b))

17 **ANTELOPE VALLEY**
18 **GROUNDWATER CASES**

19 **Included Actions:**

20 Los Angeles County Waterworks District
21 No. 40 vs. Diamond Farming Company, a
22 corporation, Superior Court of California,
23 County of Los Angeles, Case No.
24 BC325201;

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

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

Judicial Council Coordination Proceeding
No. 4408

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

**DECLARATION OF DAN FLORY IN
SUPPORT OF ANTELOPE VALLEY-
EAST KERN WATER AGENCY'S
MOTION FOR SUMMARY
ADJUDICATION**

Date: January 27, 2014
Time: 9:00 a.m.
Room: To be determined
Judge: Hon. Jack Komar

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

1 Dan Flory declares and states:

- 2 1. I am the General Manager for the Antelope Valley - East Kern Water Agency (AVEK),
3 a party to this action. I have personal knowledge of all of the facts set forth below and,
4 if called as a witness, I could and would testify competently thereto.
- 5 2. In 1959, residents of Kern, Ventura and Los Angeles Counties formed the Antelope
6 Valley-East Kern Water Agency ("AVEK") for the purpose of contracting with the State
7 of California for the purchase and delivery of Supplemental Water (California Water
8 Code Appendix 98-1, et seq.).
- 9 3. In 1962, AVEK signed a Water Supply Contract with the State (Exhibit 1 hereto) to
10 insure delivery of AVEK Imported Water to supplement Antelope Valley Groundwater.
- 11 4. Of the 29 State Project Water Contractors, AVEK has the third largest water entitlement,
12 which allows AVEK to take an annual maximum entitlement of up to 141,400 AF of
13 Imported Water.
- 14 5. Due to environmental, supply and climate limitations inherent in the State Water Project,
15 AVEK's contract with the State of California has a delivery reliability factor of
16 approximately 60% of AVEK's annual entitlement of 141,400 AF.
- 17 6. AVEK imports more State Project Water into the Antelope Valley Adjudicated Basin
18 (AVAA) than does any other State Project Water Contractor.
- 19 7. Initial funds for the construction of the State Water Project facilities were obtained
20 through a \$1.75 billion bond issue, ratified by California voters in 1960.
- 21 8. AVEK and its taxpayers have paid a total of \$475,777,218.84 to insure participation in
22 the California State Water Project, and to construct the "infrastructure" needed to import,
23 transport, treat and deliver AVEK Imported Water to its customers (including the Public
24 Water Suppliers).
- 25 9. All direct payments to the State of California have been paid by AVEK (and indirectly
26 by its taxpayers) for the required infrastructure construction, and for the purchase and
27 importation of the State Project Water contracted for by AVEK.
- 28

10. Public Water Suppliers, on the other hand, have not made any direct payments to the State of California for the State Project contracted for by AVEK.
11. AVEK services a land area of 2,400 square miles in the three counties, including land areas both inside and outside the AVAA.
12. The adjudicated boundaries in this action represent 58% of the total land area serviced by AVEK.
13. AVEK's Imported Water is pumped from the Sacramento Delta down the 444 mile aqueduct.
14. After crossing the Techachapis, the aqueduct divides into the East and West branches; AVEK receives its Imported Water through the aqueduct's East Branch.
15. In 2011 and 2012 alone, AVEK delivered to its agricultural, industrial and municipal customers within the AVAA a total of 100,718 AF of Imported Water.
16. AVEK taxpayers also have directly paid for, and continue to pay for, construction of the internal treatment and distribution systems whereby AVEK Imported Water is eventually delivered to AVEK's agricultural, industrial and municipal customers both within and outside the AVAA.
17. The bulk of AVEK's Imported Water is treated and distributed to AVEK customers through the Domestic-Agricultural Water Network (DAWN) Project facilities.
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.
19. The DAWN Project was financed by a local \$71 million bond issue authorized by AVEK voters in 1974.
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.
21. The second bond issue in 1976, Series B, of \$19 million has also been completely repaid AVEK taxpayers.

- 1 22. In 1977, the \$18 million Series C bond issue authorized Phase Three of the DAWN
2 facilities construction; the Series C bonds have been completely repaid by AVEK
3 taxpayers.
- 4 23. In August, 1986, the final Phase of the DAWN Project construction commenced when
5 AVEK's Board of Directors authorized expenditure of the remaining \$11 million in
6 Series D bonds; these funds were used to construct internal local facilities to distribute
7 AVEK Imported Water.
- 8 24. The attached AVEK map (Exhibit 2) depicts existing AVEK owned facilities and
9 improvements under construction including future banking improvements.
- 10 25. AVEK's Water Supply Stabilization Project No. 2 (WSSP2) is a groundwater banking
11 project that will increase the reliability of the Antelope Valley Region's water supplies
12 by storing excess water available from the State Water Project (SWP) during wet periods
13 and recovering it to serve to customers during dry and high demand periods or during a
14 disruption in deliveries from the SWP.
- 15 26. By banking excess water for future use, the WSSP2 will significantly reduce the
16 Region's dependence on constant water deliveries of State Water Project from the Delta.
- 17 27. The WSSP2 will also help to stabilize the groundwater basin and preserve agricultural
18 land and open space.
- 19 28. From 2011 through 2012, AVEK banked a total of approximately 36,502 AF, and claims
20 the right to recapture 90% of that amount, or 32,851 AF, as Return Flow resulting
21 therefrom.
- 22 29. When deemed necessary by AVEK due to water supply shortfalls from SWP water or
23 other operational strategies, AVEK will recover not more than 90% of the volume of
24 water that is put into the groundwater bank.
- 25 30. Recovery operations will take place with the construction of 10 groundwater recovery
26 wells with depths averaging about 600 feet; well yields will range between 500 gpm to
27 2,800 gpm.
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- 1 31. Since inception of the State Water Project, AVEK taxpayers have paid a total of
2 \$475,777,218.84 to insure participation in the California State Water Project, and to
3 construct AVEK's treatment and distribution systems for the delivery of AVEK Imported
4 Water.
- 5 32. AVEK is both a wholesaler and retailer of AVEK Imported Water - wholesaling water
6 to the Public Water Suppliers, and retailing water to ultimate customers which include
7 AVEK's agricultural and other private customers.
- 8 33. AVEK has not assigned or transferred to any other person its right to recapture or use the
9 Return Flows resulting from AVEK Imported Water.
- 10 34. AVEK has not abandoned or otherwise relinquished its claimed right to recapture and
11 use Return Flows resulting from AVEK Imported Water.
- 12 35. AVEK's Board of Directors has determined that, in the exercise of AVEK's claimed
13 right to recapture and control the use of Return Flows, and except in emergencies (i.e.,
14 in the event AVEK's allocation of State Project Water is not sufficient to meet the
15 critical needs of its customers, requiring AVEK to recapture Return Flows to meet those
16 needs), AVEK's preference is to maintain all Return Flows from AVEK Imported Water
17 in the Basin, to gradually increase the groundwater supply and raise water levels over a
18 period of time, and thereby augment the AVAA's available supply.
- 19 36. This practice will benefit AVEK's existing and future customers and taxpayers, both
20 inside and outside te AVAA.
- 21 37. In the case at bar, the PWS are not "member agencies" of AVEK, their representatives
22 do not sit on AVEK's Board of Directors, and they do not determine the rates paid for
23 the AVEK Imported Water they receive.
- 24 38. The PWS are merely customers of AVEK.
- 25 39. AVEK owns wells which can be used to recapture Return Flows from AVEK Imported
26 Water; AVEK is currently drilling additional wells, and is contemplating purchasing
27 other property with water well production capability.
28

1 40. DWR has never claimed a right to Return Flows resulting from AVEK Imported Water;
2 DWR has never manifested an "intent" to recapture such Return Flows; and DWR does
3 not have production wells in the AVAA capable of capturing Return Flows.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct, and that this declaration was executed in Lancaster, California, on
6 October 22, 2013.
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11 DAN FLORY
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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.

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 November 11, 2013, at San Bernardino, California.


P. Jo Anne Quihuis