

Richard A. Marcus, Esq. SBN 183140
Law Offices of Richard A. Marcus
28494 Westinghouse Place, Suite 205
Valencia, CA 91355
Phone: (661) 257-8877
fax: (661) 775-9423
e-mail: richard@attorneyrichardmarcus.com

Attorneys for Craig Van Dam

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

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

Including Consolidated Actions:

Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.; Superior Court of
California, County of Los Angeles, Case No.
BC325201;

Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.; Superior Court of
California, County of Kern, Case No. S-1500-CV-
254348;

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 353840, RIC
344436, RIC 344668;

AND RELATED ACTIONS.

Judicial Council Coordination Proceeding
No. 44008

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

Assigned to the Honorable Jack Komar,
Judge of the Santa Clara Superior Court
Department 17C

**NOTICE OF MOTION AND MOTION
TO APPROVE TRANSFER OF WATER
RIGHTS TO CRAIG VAN DAM;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
CRAIG VAN DAM IN SUPPORT
THEREOF**

Date: _____, 2023
Time: _____ am/pm
Dept: Courtcall

**TO THE HONORABLE JACK KOMAR, JUDGE OF THE SUPERIOR COURT,
ALL INTERESTED PARTIES, ALL PERSONS REQUESTING NOTICE, AND THEIR
RESPECTIVE ATTORNEYS OF RECORD:**

1 **PLEASE TAKE NOTICE** that on a date and time to be selected by Judge Komar, per
2 his Complex Coordinator Clerk, Rowena Walker, as the Santa Clara County Superior Court [for
3 above-entitled Court located at 111 N Hill St Los Angeles CA] may hear the matter, Moving
4 Party, Craig Van Dam, will and hereby does move the Court for an order approving his
5 application to transfer 500 acre-feet of permanent production water rights from High Desert
6 Dairy, LLC (hereinafter "HDD") a member, to Craig Van Dam, as an individual member.

7 The general grounds for granting this Motion are as follows:

8 1. On February 4, 2020, a meeting took place between all three members of High
9 Desert Dairy, LLC at which time they unanimously approved the transfer as a return of capital, as
10 reflected in the minutes. To the extent that the unanimous vote of February 4th, 2020 is held to be
11 insufficient, as a member managed LLC, the CA Corporation's Code and Paragraph 6.1 of the
12 amended and restated Operating Agreement of HDD requires only a majority vote. Craig Van
13 Dam and Dean Van Dam, constituting 66 and 2/3 % of the members have voted in favor of the
14 transfer. Further, Paragraph 4.4 of the amended and restated Operating Agreement of HDD
15 requires a majority vote for a member to make a withdrawal from that member's capital account.
16 While Paragraph 5.1(b) of the Operating Agreement provides that decisions as to the timing, form
17 and amount of "distributions" must be made by all the Members, this provision of the agreement
18 pertains to the distribution of profit, and not a return on capital. A return on capital only requires
19 a majority vote under Sections 6. and 4.4;

20 2. The Watermaster Engineer has confirmed that the transfer complies with the
21 judgment and that no material injury will result to the Basin from the transfer; and

22 3. The Watermaster Board requires all decisions to be unanimous. Director Kathy
23 MacLaren abstained and Alternate Director Matt Knudson participating in place of Director
24 Parris recused himself due to a conflict of interest caused by Gary Van Dam being on AVEK's
25 Board of Directors, precluding the possibility of a unanimous vote.

26 This Motion is based on the Declaration of Craig Van Dam, and the Memorandum of
27 Point and Authorities, all of which are attached hereto; all other pleadings and documents filed in
28

1 this Action; together with any additional evidence and legal argument which may be presented at
2 or prior to the hearing of this Motion.
3

4 Respectfully Submitted,

5 LAW OFFICES OF RICHARD A. MARCUS
6

7 Dated: August 2, 2023

8 
9 Richard A. Marcus, Esq.
10 Attorneys for Craig Van Dam
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 On or about August 12, 2016, Gertrude Van Dam as Co-Trustee of the Delmar G., and
4 Gertrude G. Van Dam Family Trust, Craig Van Dam and Dean Van Dam entered into an
5 operating agreement for High Desert Dairy, LLC. (hereinafter "HDD") Exhibit "A". On or about
6 January 1, 2017, the members of HDD entered into an amended and restated Operating
7 Agreement, a true copy of which is attached hereto as Exhibit "B". By Assignment Agreement
8 dated January 1, 2019, a true copy of which is attached hereto as Exhibit "C", Gertrude Van Dam
9 assigned her interests to Gary Van Dam.

10 At all times relevant hereto, the three brothers are the members of HDD, with each
11 member holding 1/3 of all voting rights. See Statement of Information filed March 3, 2023 with
12 the California Secretary of State , a true copy of which is attached hereto as Exhibit "D".

13 On or about September 23, 2022, Craig Van Dam and Dean Van Dam submitted a
14 Transfer Request form to transfer 500 acre feet (AF) of permanent production rights as a
15 distribution from the company (HDD) to an individual member, Craig Van Dam. See Exhibit
16 "E" consisting of the transfer request form and portion of the judgment demonstrating that HDD
17 and Craig Van Dam are members. On or about March 6, 2023, the Antelope Valley Watermaster
18 Engineer issued its report, a true copy of which is attached hereto as Exhibit " F" finding that the
19 transfer complied with the judgment and the potential for material injury was minimal.

20 On or about March 21, 2023, Gary Van Dam submitted written opposition to the transfer
21 wherein he threatened litigation in the event of a transfer, claiming that any such transfer would
22 be fraudulent. A true copy of said opposition is attached hereto as Exhibit "G". On or about
23 April 14, 2023, attorney Steven Derryberry, Esq., submitted a letter, Exhibit "H", on behalf of
24 Craig Van Dam and Dean Van Dam responding to the March 21, 2023 letter of Gary Van Dam.

25 On or about May 23, 2023, attorney Richard A. Marcus, Esq. submitted a letter in further
26 support of the transfer application on Craig Van Dam's behalf. A true copy of said letter is
27 attached hereto as Exhibit "I". The letter included minutes from a meeting which took place on
28 February 4th 2020. The meeting was attended by CPA Chris Garnier, who submitted a declaration

1 under penalty of perjury, also attached hereto as part of Exhibit "T". The declaration explained
2 that the transfer was a return on capital distribution that had been agreed to by Gary at the 2/4/20
3 meeting.

4 At the May 24th, 2023 regularly scheduled AV Watermaster Board meeting, item 12.a.
5 was the consideration of the transfer of the water rights (Resolution R. 23-27). The Board tabled
6 the item to be presented at the hearing at the June 28, 2023 Board hearing. See Exhibit "J" a true
7 copy of the minutes from the May 24, 2023 meeting. After the meeting, Mr. Parton contacted
8 Mr. Marcus and informed him that indemnification agreements would be required from Craig and
9 Dean Van Dam. The agreements were prepared by Mr. Parton and timely executed and returned
10 to Mr. Parton. True copies of said indemnity agreements are attached hereto as Exhibit "K".

11 Gary Van Dam is a director on the Board of "AVEK", the Antelope Valley-East Kern
12 Water Agency Financing Authority. Robert Parris, one of the six Watermaster Board Members,
13 is also an AVEK Board member. At an AVEK Board meeting which took place on May 24,
14 2023, a determination was made that because of Mr. Parris' conflict of interest, General Manager
15 Knudson was appointed to act as the Watermaster Board member representing AVEK's interests.
16 A decision was made by AVEK that Mr. Knudson would be abstaining from the vote due to
17 AVEK's conflict of interest caused by Gary being on the Board of AVEK.

18 At the June 28, 2023 meeting, after a closed session discussion between the board and is
19 legal counsel, Craig Parton, Esq., a vote was taken on the resolution. Four directors voted in
20 favor of the resolution. Director Kathy MacLaren abstained, and Director Matt Knudson, acting
21 in place of Rex Parris recused himself. See Exhibit "L" copy of Board's minutes from June 26,
22 2028 meeting. Because the Board can only act by unanimous decision, and unanimous decision
23 could not be achieved, the Board could never approve the transfer. For the reasons set forth
24 below, this Court, under a standard of de novo review, should approve the transfer.

25 **II. UNDER CALIFORNIA LAW, EXCEPT AS OTHERWISE PROVIDED, A**
26 **MEMBER MANAGED LIMITED LIABILITY COMPANY VESTS EQUAL VOTING**
27 **RIGHTS IN THE MANAGEMENT AND CONDUCT OF THE LLC WITH DISPUTES**
28 **DECIDED BY A MAJORITY OF MEMBERS.**

1 A limited liability company is a member-managed liability company unless the articles of
2 organization contain a statement to the effect that the limited liability company is to be
3 manager-managed. Corp. Code, § 17704.07, subd. (a). In a member-managed liability company,
4 the management and conduct of the limited liability company are vested in the members. Corp.
5 Code, § 17704.07, subd. (b)(1). Except as otherwise provided, each member has equal rights in
6 the management and conduct of the limited liability company's activities including equal voting
7 rights. Corp. Code, § 17704.07, subd. (b)(2). A difference arising among members as to a matter
8 in the ordinary course of the activities of the limited liability company must be decided by a
9 majority of the members. Corp. Code, § 17704.07, subd. (b)(3).

10 **III. HIGH DESERT DAIRY, LLC IS A MEMBER MANAGED LLC AND ITS**
11 **OPERATING AGREEMENT PROVIDES FOR A VOTE BY THE MAJORITY OF ITS**
12 **MEMBERS.**

13 High Desert Dairy, LLC is a member managed LLC. Paragraph 6. of the amended and
14 restated Operating Agreement ("Operating Agreement") of HIGH DESERT DAIRY, LLC made
effective January 1, 2017 provides as follows:

15 6. Management and Operation of Business

16 6.1 Management

17 (a) Gertrude shall be the manager of the everyday operations of the Company,
18 however, Gertrude may delegate tasks and duties to the other Members from time
to time.

19 (b) Otherwise, the Company's management of the Company is vested in the
20 Members. For purposes of this Agreement, unless otherwise expressly stated, the
21 vote or consent of the Members means the vote or consent of holders of a
majority of the Membership Interests. Any Member exercising management
22 powers or responsibilities is deemed to be a manager for purposes of applying the
provisions of the LLCL, unless the context otherwise requires. The Members have
23 and are subject to all of the duties and liabilities of managers provided in the
LLCL. Pursuant to the LLCL, no formal meeting or written consent of the
24 Members is required to make decisions or to take actions on behalf of the
Company.

25 Thus, pursuant to the CA Corporation Code, and the Operating Agreement, because High
26 Desert Dairy is a member managed LLC, a majority vote is required for the LLC to take action in
27 the event of a disagreement between its members.
28

1 **IV. THE OPERATING AGREEMENT PROVIDES THAT CAPITAL**
2 **DISTRIBUTIONS ARE TO BE MADE BY MAJORITY VOTE OF THE MEMBERS.**

3 Paragraph 4.4 of the amended and restated Operating Agreement ("Operating
4 Agreement") of HIGH DESERT DAIRY, LLC made effective January 1, 2017 provides as
5 follows:

6 Except as provided in Section 11.1 of this Agreement, no Member has the right to
7 withdraw any portion of the Member's Capital Account without the consent of a
8 Majority of the Members. In accordance with the LLCL, a Member may, under
9 certain circumstances, be required to return to the Company, for the benefit of the
 Company or the Company's creditors, amounts previously wrongfully distributed
 to the Member. [emphasis added].

10 **V. ALL THREE MEMBERS APPROVED OF THE TRANSFER TO CRAIG**
11 **VAN DAM ON FEBRUARY 20, 2023.**

12 The minutes of the meeting of February 20, 2020 indicate that all three members approved
13 of the transfer to Craig Van Dam on February 20, 2020. This is further confirmed by the
14 declaration of the CPA, Christopher Garnier.

15 **VI. EVEN IF GARY WERE TO TAKE THE POSITION THAT HE NEVER**
16 **CONSENTED TO THE TRANSFER AT THE MEETING OF FEBRUARY 4TH, 2020,**
17 **PURSUANT TO CODE, PARAGRAPH 6 AND PARAGRAPH 4.3 OF THE OPERATING**
 AGREEMENT, A MAJORITY VOTE IS ALL THAT IS NEEDED TO EFFECTUATE
 THE TRANSFER.

18 Even if Gary were to take the position that he never consented to the transfer at the
19 meeting of February 4th, 2020, pursuant to Code, Paragraph 6 and paragraph 4.3 of the Operating
20 Agreement, a majority vote is all that is needed to effectuate the transfer. Despite what Gary may
21 argue, he would not have the unilateral authority as "manager" to decide this issue.

22 While Paragraph 5.1(b) of the Operating Agreement provides that: " Each decision as to
23 the timing, form and amount of "distributions" must be made by all the Members.", this provision
24 of the agreement pertains to the distribution of profit, and not a return on capital. A return on
25 capital requires a majority vote under Sections 6. and 4.4.
26

1 **VII. THE WATERMASTER ENGINEER APPROVED THE TRANSFER,**
2 **FINDING THT NO MATERIAL INJURY WOULD RESULT FROM THE PROPOSED**
3 **TRANSFER.**

4 The Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases
5 Final Judgment (“Judgment”), Santa Clara Case No. 1-05-CV-049053 signed December 23,
6 2015, is to administer the Judgment. A process for considering and approving applications for
7 transfers is set forth in the Judgment and in the Rules and Regulations unanimously adopted by
8 the Board pursuant to Resolution No. R-20-12. The Watermaster Engineer is authorized under
9 the Judgment to recommend to the Watermaster Board that applications for transfers be denied or
10 approved and that approval may be pursuant to certain conditions. Pursuant to the terms of the
11 Judgment, the Watermaster Engineer is required to make certain findings and to consider,
12 investigate and recommend to the Watermaster Board denial or approval, or approval with certain
13 conditions, of these applications consistent with the terms of the Judgment.

14 By letter dated March 6, 2023, Exhibit “F”, the Watermaster Engineer indicated that it
15 had reviewed the application for the transfer, had made the appropriate findings that all
16 conditions for transfers under the Judgment and the Rules and Regulations have been satisfied,
17 and that no Material Injury will result from the proposed transfers.

18 **VIII. THE TRANSFER APPLICATION IS IN ACCORDANCE WITH THE**
19 **ANTELOPE VALLEY WATERMASTER RULES AND REGULATIONS ADOPTED**
20 **JUNE 24, 2020.**

21 Transfers are governed by Section 13 of the Antelope Valley Watermaster Rules and
22 Regulations adopted June 24, 2020 which provides in pertinent part as follows:

23 **13. TRANSFERS**

24 a. Purpose

25 (a) The Judgment allows Production Rights and certain other rights to be
26 transferred among Parties as provided in this section. Transfers can provide
27 flexibility to the Parties with respect to timing and location of groundwater production while
28 maintaining consistency with the purposes of the Judgment and compliance with the Physical
Solution.

 b. Basis

1 (a) Transfers of Production Rights are allowed in the Judgment as follows:
2 "Pursuant to terms and conditions to be set forth in the Watermaster rules and
3 regulations, and except as otherwise provided in this Judgment, Parties may
4 transfer all or any portion of their Production Right to another Party so long as
5 such transfer does not cause Material Injury. All transfers are subject to hydrologic
6 review by the Watermaster Engineer." [¶16.1] One-time temporary transfers,
7 multi-year transfers, and permanent transfers of a Production Right are allowed
8 between Parties.

9 f. Transfer Requests

10 (a) Prior to a transfer, Parties are required to submit a Transfer Request Form to
11 the Watermaster for review. The form will include specific information required
12 for the Watermaster Engineer to record and track each transfer and to conduct a
13 hydrologic review, including a Material Injury analysis. Although all transfers will
14 be subject to hydrologic review by the Watermaster Engineer, no Material Injury
15 analysis will be required on a transfer that results from a property sale.

16 (b) The request will identify both the rights holder and the transferee. Unless
17 clearly stated otherwise in the Transfer Request Form, the rights holder will retain
18 responsibility for the Administrative Assessments on the transferred rights, if any.
19 Watermaster Staff will confirm that all overdue assessments associated with the
20 Parties involved in the transfer are settled before the transfer request will be
21 considered by the Watermaster Engineer. The Transfer Request Form must bear
22 the notarized signatures of both the rights holder and the transferee. Watermaster
23 Staff will not consider a Transfer Request Form without the notarized signatures
24 of all Parties thereto.

25 The Watermaster may, but is not required to, investigate a Party's legal authority
26 to enter into a transfer, or a person's authority to execute a Transfer Request Form
27 on behalf of a Party thereto. Any costs or legal fees incurred by the Watermaster
28 for such investigation, in the Watermaster's sole discretion, shall be borne by the
29 Party submitting the request, payable to the Watermaster prior to submittal of the
30 Transfer Request to the Watermaster Engineer for hydrologic review and Material
31 Injury analysis. Watermaster may require a person, Party or Parties requesting a
32 transfer to indemnify the Watermaster, as a condition for approving the transfer,
33 for any costs and legal fees incurred by the Watermaster resulting from a challenge
34 to that person, Party or Parties' legal authority to entered into such transfer, or to a
35 person's authority to execute a Transfer Request Form on behalf of a Party thereto.

36 g. Hydrologic Review and Material Injury Analysis

37 (a) Although transfers will be managed within the Native Safe Yield as defined by
38 the Judgment, transfers may change the distribution of pumping in the Basin
39 spatially and/or over time. The Watermaster Engineer will conduct a hydrologic
40 review and Material Injury analysis on all transfers¹⁶ that considers whether the
41 transfer will have the potential to: cause material physical harm to the Basin, any
42 Subarea, or any Producer, Party, or Production Right including, but not limited to,
43 Overdraft, degradation of water quality by introduction of contaminants to the
44 aquifer by a Party and/or transmission of those introduced contaminants through
45 the aquifer, liquefaction, and subsidence and other material physical injury caused
46 by elevated or lowered groundwater levels. Material physical harm does not
47 include "economic injury" that results from other than direct physical causes,
48 including any adverse effect on water rates, lease rates, or demand for water.
49 [¶3.5.81.1]

1 (b) The Watermaster Engineer must make the finding that the transfer will not
2 cause, or will fully mitigate [¶3.5.81.2] the potential for, Material Injury in order
3 for the transfer to be approved by the Board.

4 h. Approval of Transfers

5 (a) Based on the information, recommendation, and Material Injury analysis
6 provided by the Watermaster Engineer, the Watermaster Board must make the
7 following findings in order to approve
8 the transfer:

9 (1) the transfer complies with the Judgment

10 (2) the transfer does not cause Material Injury.

11 See also, Stipulation for Judgment (Ex. 1. Of Proposed Judgment) at page 42, Section
12 16.1 permitting transfers between parties. Both HDD and Craig Van Dam are Parties. See
13 Exhibit 4 to Judgment (Antelope Valley Groundwater Cases Final Judgment, Santa Clara Case
14 No. 1-05-CV-049053 signed December 23, 2015.

15 **IX. SECTION 18 OF ANTELOPE VALLEY WATERMASTER RULES AND**
16 **REGULATIONS ADOPTED JUNE 24, 2020 GOVERNS DE NOVO COURT REVIEW**
17 **OF WATERMASTER ACTION.**

18 Section 18 provides in pertinent part as follows:
19 Effective Date of Watermaster Action

20 (a) Any order, decision, or action of the Watermaster shall be deemed to have
21 occurred on the date of the order, decision, or action. [¶20.3.1]

22 c. Notice of Motion for Judicial Review

23 (a) Any Party may, by a regularly noticed motion, petition the Court for review
24 within ninety (90) days of the action or decision by the Watermaster, except
25 motions for review of assessments under the Judgment shall be filed within thirty
26 (30) days of mailing of the notice of the assessment. The motion shall be deemed
27 to be served to the Parties when: (a) it is served pursuant to Paragraph 20.7 of the
28 Judgment by e-filing on the Watermaster website at www.avwatermaster.org ; or
(b) a copy, conformed as filed with the Court, has been delivered to Watermaster
Staff, along with the required payment to the Watermaster for the service costs.

d. De Novo Nature of Proceeding

(a) Upon filing of a motion or petition to review a Watermaster decision or action,
the Watermaster shall notify the Parties of a date when the Court will take
evidence and hear argument. The Court's review shall be de novo and the
Watermaster decision or action shall have no evidentiary weight in such
proceeding.

Because the Watermaster Engineer found that all conditions for transfers under the Judgment and the Rules and Regulations have been satisfied, and that no Material Injury will result from the proposed transfer, and because the transfer of water rights is a return on capital, whether this Court finds that Gary previously consented to the transfer or he did not, inasmuch as a two third's majority vote is all that is required, the Court should approve the transfer application.

Dated: August 2, 2023

By: _____

Richard A. Marcus, Esq.
Attorney for Craig Van Dam

1 **DECLARATION OF CRAIG VAN DAM IN SUPPORT**

2 I, Craig Van Dam, declare as follows:

3
4 1. I am the Movant herein. I have personal knowledge of the matters set forth herein,
5 and if called as a witness, I could competently testify thereto.

6 2. On February 4, 2020, a meeting took place between all three members of High
7 Desert Dairy, LLC.

8 3. Those members consisted of myself, my brother Dean Van Dam, and my other
9 brother, Gary Van Dam.

10 4. Each of us has an equal 33 and 1/3 per cent interest in High Desert Dairy, LLC, a
11 member managed California Limited liability Company.

12 5. On or about August 12, 2016, Gertrude Van Dam as Co-Trustee of the Delmar G,
13 and Gertrude G. Van Dam Family Trust, Craig Van Dam and Dean Van Dam entered into an
14 operating agreement for High Desert Dairy, LLC. (hereinafter "HDD") Exhibit "A".

15 6. On or about January 1, 2017, my mother, myself and Dean as the three members
16 of HDD entered into an amended and restated Operating Agreement, a true copy of which is
17 attached hereto as Exhibit "B".

18 7. By Assignment Agreement dated January 1, 2019, a true copy of which is
19 attached hereto as Exhibit "C", Gertrude Van Dam assigned her interests to Gary Van Dam.

20 8. At all times relevant hereto, myself, Dean and Gary hold 100% of the membership
21 interests equally in HDD. As evidence of this, I respectfully submit Exhibit "D", a true and
22 correct copy of a Statement of Information filed March 3, 2023 with the California Secretary of
23 State listing Craig Van Dam, Gary Van Dam and Dean Van Dam as members of HDD.

24 9. On or about September 23, 2022, I and Dean Van Dam submitted a
25 Transfer Request form to transfer 500 acre feet (AF) of permanent production rights as a
26 distribution from the company (HDD) to me. A true and correct copy of the transfer application
27 is attached hereto as Exhibit "E".
28

1 10. On or about March 6, 2023, the Antelope Valley Watermaster Engineer issued its
2 report, a true copy of which is attached hereto as Exhibit "F" finding that the transfer complied
3 with the judgment and the potential for material injury was minimal.

4 11. On or about March 21, 2023, Gary Van Dam submitted written opposition to the
5 transfer wherein he threatening litigation in the event of a transfer, claiming that any such transfer
6 would be fraudulent. A true copy of said opposition is attached hereto as Exhibit "G".

7 12. On or about April 14, 2023, attorney Steven Derryberry, Esq., submitted a letter,
8 Exhibit "H", on behalf of myself and Dean responding to the March 21, 2023 letter of Gary Van
9 Dam.

10 13. On or about May 23, 2023, my attorney, Richard A. Marcus, Esq. submitted a
11 letter to Mr. Parton in further support of the transfer application. A true copy of said letter is
12 attached hereto as Exhibit "I".

13 14. The letter included minutes from a meeting which took place on February 4th
14 2020. The meeting was attended with CPA Chris Garnier, who submitted a declaration under
15 penalty of perjury, also attached hereto as part of Exhibit "I" explaining that the transfer was a
16 return on capital distribution that had been agreed to by all three of us, including Gary, at our
17 2/4/20 meeting.

18 15. At the May 24th, 2023 regularly scheduled AV Watermaster Board meeting, item
19 12.a. was the consideration of the transfer of the water rights (resolution R. 23-27).

20 16. The Board tabled the item to be presented at the hearing at the June 28, 2023
21 Board hearing. See Exhibit "J" minutes from May 24, 2023 meeting.

22 17. After the meeting, Mr. Parton I saw Mr. Marcus speaking with Mr. Parton, who
23 had informed Mr. Marcus that indemnification agreements would be required from Craig and
24 Dean Van Dam.

25 18. The agreements were prepared by Mr. Parton and timely executed and returned to
26 Mr. Parton by myself and Dean Van Dam through my attorney's office.

27 19. True copies of said indemnity agreements are attached hereto as Exhibit "K".

28 20. Gary Van Dam is a director on the Board of "AVEK", the Antelope Valley-East

1 Kern Water Agency Financing Authority.

2 21. Robert Parris, one of the six Watermaster Board Members, is also an AVEK
3 Board member.

4 22. It is my understanding from listening to a tape of the proceedings which took
5 place at the AVEK Board meeting which took place on May 24, 2023, a determination was made
6 that because of Mr. Parris' conflict of interest, General Manager Knudson was appointed to act as
7 the Watermaster Board member representing AVEK's interests.

8 23. At the June 28, 2023 meeting, after a closed session discussion between the board
9 and is legal counsel, Craig Parton, Esq., a vote was taken on the resolution.

10 24. Four directors voted in favor of the resolution. Kthy Maclaren abstained and Matt
11 Knudson recused himself. See Exhibit "L" copy of Board's minutes from June 26, 2028 meeting.

12 25. I respectfully submit that to the extent the unanimous vote of February 4th, 2020
13 was not sufficient evidence of unanimous agreement for the transfer, as set forth in the
14 accompanying memo of points and authorities, as a member managed LLC, the CA Corporation'
15 Code and Paragraph 6.1 of the amended and restated Operating Agreement of HDD requires only
16 a majority vote.

17 26. My brother Dean Van Dam and I, constituting 66 and 2/3 % of the members voted
18 in favor of the transfer.

19 26. Further, Paragraph 4.4 of the amended and restated Operating Agreement of HDD
20 requires a majority vote for a member to make a withdrawal from that member's capital account.

21 27. While Paragraph 5.1(b) of the Operating Agreement provides that decisions as to
22 the timing, form and amount of "distributions" must be made by all the Members, this provision
23 of the agreement pertains to the distribution of profit, and not a return on capital.

24 28. A return on capital only requires a majority vote under Sections 6. and 4.4 and the
25 transfer of the water rights is a return on capital.

26 29. The Watermaster Engineer has confirmed that the transfer complies with the
27 judgment and that no Material Injury will result to the Basin from the transfer.
28

1 30. Based upon the foregoing, I respectfully request that the Court approve the
2 transfer of water rights application from HDD to me. We are both members and bound by the
3 judgment.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Dated: August 2, 2023



Craig Van Dam