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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Actions:

Los Angeles County Waterworks District No. 40
v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No. BC
325201;

Los Angeles County Waterworks District No. 40
v. Diamond Farming Co., 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. Lancaster, Diamond
Farming Co. v. Palmdale Water Dist., Superior
Court of California, County of Riverside, Case
No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

**BRIEF OF TEJON RE RIGHT TO
RETURN FLOWS FROM
IMPORTED WATER**

Trial Date: Phase 5 February 10, 2014

Time: 9:00

Dept: TBD

Judge: Hon. Jack Komar

I. INTRODUCTION

TEJON RANCHCORP and TEJON RANCH COMPANY (collectively "Tejon") submit this brief to provide the court with an overview of imported water supplies in the Antelope Valley Area of Adjudication (AVAA).

II. STATEMENT OF FACTS

A. IMPORTED WATER SUPPLIES IN THE AVAA.

The principal source of imported water in the AVAA is State Water Project (SWP) water delivered into the AVAA via the East Branch of the California Aqueduct. Twenty-nine agencies and districts currently have long term contracts with California Department of Water Resources (DWR), so-called State Water Contractors. The DWR contracts provide for a total maximum delivery of 4,129,306 acre feet of Table A water annually. Three of the twenty-nine State Water Contractors operate within the AVAA, namely AVEK, Littlerock Creek Irrigation District (Littlerock ID) and Palmdale Water District (Palmdale WD). A flow chart showing the relationship of these State Water Contractors is attached as **Exhibit A**.

AVEK has a long term contract with DWR for delivery of a maximum of 141,400 acre feet of Table A water annually.¹ Palmdale WD and Littlerock Creek ID also have long term contracts with DWR for delivery of 21,300 acre feet and 2,300 acre feet, respectively, of Table A water. (DWR Bulletin 132-08 pp. 11-12.) Littlerock ID has not imported virtually any of its Table A amount into the AVAA since 1999², apparently preferring to pump the cheaper groundwater and advance its prescription claims at the expense of the Basin.

Contractual relationships for delivery of imported water are numerous and varied. As shown in Exhibit A, Palmdale WD is principally a water retailer selling water to end users within its service area.³ AVEK is both a wholesaler and retailer of water. AVEK sells water to other retailers within the AVAA such as Rosamond CSD, Quartz Hill WD, several mutual water companies and Los Angeles County Waterworks District No. 40 (WD 40). These retailers in turn

¹ AVEK's Table A Allocation recently increased by 3,444 acre-feet annually as a direct result of Tejon's efforts and expenditures. (See Part IIB.)

² Littlerock ID Statement of Claims filed October 24, 2013.

³ Palmdale WD sells water to the United States for operation of Plant 42.

sell water to end users within their respective jurisdictional boundaries. AVEK sells water to the United States, agricultural customers such as Tejon, Grimmway, Bolthouse and others. AVEK also sells water to M&I customers such as U.S. Borax and Tejon.

II. DISCUSSION

A. RETURN FLOWS BELONG TO THE PARTY WHOSE "EXPENDITURES AND ENDEAVORS" BRING INTO THE BASIN WATER THAT WOULD OTHERWISE NOT BE THERE.

In *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, at p. 261, the Supreme Court stated the principle that return flows from imported water belong to the party whose “expenditure and endeavors” bring “into the basin water which otherwise would not be there.” The principle was recently recited in *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 301 wherein the court stated: “one who brings water into a watershed may retain a prior right to it even after it is used.” The rationale for the rule is straightforward: The party responsible for importing the water should be credited with the “fruits of his endeavors in bringing into the basin water that otherwise would not be there.” (*San Fernando, supra*, at p. 261.)

Stating the rule, however, does not resolve the question. A party claiming return flows must show an 'intent" to recapture. And, the right to return flows may be lost by abandonment or transferred by contract. Thus, the court must engage in a fact intensive inquiry to determine which of the many parties in the stream of commerce of imported water should be credited with the right to recapture and reuse return flows from that water based upon that party’s expenditures and endeavors in bringing the water into the basin. Then the court must address whether any party has lost all or a portion of the right by abandonment or contract. Once ownership is established, the court must determine whether those parties claiming prescription in the AVAA

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are legally deemed to have pumped their return flows first, before pumping adversely to the Basin.

B. TEJON'S EXPENDITURES AND ENDEAVORS IN BRINGING IMPORTED WATER INTO THE AVAA.

Tejon owns about 33,000 acres of land in the West Antelope Valley Basin. Historically, Tejon has grown alfalfa and feed stock on its lands irrigated with a combination of groundwater and imported AVEK water. In 2002 Tejon submitted a development application to the Los Angeles County Department of Regional Planning for a master plan community known as The Centennial Project, that includes 22,998 housing units, commercial, business park, civic/institutional uses, open space, parks and waste water reclamation facilities on 12,000 acres of land in the west end of Antelope Valley. The application was deemed complete in 2008. In 2011 Golden Valley Municipal Water District (Golden Valley MWD) approved the water supply assessment (WSA) for the Centennial Project. Base supplies for the WSA include water purchased from AVEK and banked in the Tejon Water Bank, water acquired by Tejon and loaned to AVEK, SWP Table A supplies purchased from Tulare Lake Basin Water Storage District (Tulare Lake) and Dudley Ridge Water District (Dudley Ridge), recycled water, and of course groundwater. Tejon claims the right to recapture and use return flows from these imported water supplies.

1. Tejon Water Bank.

In addition to being an AVEK customer, Tejon has been a pioneering proactive force in importing and storing foreign water supplies in the AVAA. In 2006 Tejon established the Tejon Water Bank on 160 acres within the AVAA. In 2006 and 2007 Tejon purchased approximately 6,700 acre-feet of water from AVEK and spread the water for storage in the Tejon Water Bank. But for Tejon's expenditures and endeavors the water would not have been imported.

