

BRADLEY T. WEEKS, Bar No. 173745
CHARLTON WEEKS LLP
1031 West Avenue M-14, Suite A
Palmdale, CA 93551
www.charltonweeks.com
(661) 265-0969

Attorney for Quartz Hill Water District
Defendant/Cross Complainant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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. BC325201;

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. 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.

**Judicial Council Coordination Proceeding
No. 4408**

MOTION IN LIMINE TWO: QUARTZ HILL
WATER DISTRICT MOTION IN LIMINE
REGARDING RIGHT TO IMPORTED
WATER RETURN FLOWS

Date: May 13, 2013
Time: 9:00 a.m.
Department: 1
Hon. Jack Komar

Quartz Hill Water District moves for order in limine to exclude evidence regarding the
right to recapture imported water return flows.

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I. INTRODUCTION

Quartz Hill Water District has in the past, and will in the future, purchase water from the State Water Project. This purchase will be through the Antelope Valley East Kern Water Agency (“AVEK”).

As a State Water Contractor, AVEK has agreed to deliver water through its treatment and distribution system to Quartz Hill. AVEK only delivers water for which Quartz Hill has ordered and paid.

There is no dispute that Quartz Hill¹ has caused the water to be imported, and paid for it. AVEK claims that, even though it did not pay for the water, it should be able to recapture the quantity of water that returns to the aquifer from that imported water. This water is commonly called return flows.

AVEK’s attempt to get something for nothing flies in the face of California water law. It is the public policy of California that water importers should be rewarded for the fruits of their labor. Another policy is to encourage the importation of non-native water into an over drafted basin.

AVEK’s claim flies in the face of both of these public policies. If Quartz Hill (or any other party) does not receive the return flows from the water it pays to import, it will be unfairly deprived of the value it has paid for.

Taking away Quartz Hill’s right to recapture return flows from the water it imports, will encourage Quartz Hill, the watermaster, and every customer of AVEK to import less water. This is exactly opposite where the incentives should lie. Public policy is that groundwater users in an overdrafted basin should be encouraged to import non-native water.

As a matter of law, the party who imports water has the right to recapture the return flows. There is no legal support for AVEK’s claim.

¹ While this is written from the perspective of Quartz Hill Water District, it is equally applicable to all Public Water Supplier customers of AVEK, including LA County Waterworks District 40, Rosamond Community Service District, Palm Ranch Community Service District, and in soon California Water Services Company.

II. BACKGROUND

Water in the State Water Project is delivered to the people of California through State Water Project Contractors. Those contractors either directly serve their customers, or act as middlemen, who in turn deliver the water to other Public Water Suppliers.

In the Antelope Valley, there are three State Water Contractors, Littlerock Irrigation District, Palmdale Water District, and AVEK.

AVEK in turn delivers water to Quartz Hill Water District, Los Angeles County Waterworks District 40, Rosamond Community Service District, and Palm Ranch Irrigation District, among others. Increasing the importation of water through the State Water Project will be a crucial component of any physical solution and will be necessary to bring the basin into balance.

AVEK claims that, even though it did not pay for the importation of water, it nevertheless has the right to recapture the return flows from that water.

III. OBJECTIONS

This motion seeks an order to exclude any witness from presenting any evidence that AVEK has the right to recapture the return flows of imported water that AVEK sold to Quartz Hill Water District, or any other Public Water Supplier.

IV. THE PARTY WHO IMPORTS WATER HAS THE RIGHT TO THE RETURN FLOWS

A. California Water Code section 7075 Gives Quartz Hill the right to reclaim the water it imported

California Water Code section 7075 states “Water which has been appropriated may be turned into the channel of another stream, mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another shall not be diminished.”

1 This section of the water code applies to groundwater and gives Quartz Hill the right to the
2 return flows of the water it imports (*City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68,
3 77).

4
5 **B. Case Law holds that Quartz Hill has the right to reclaim the water it imported**

6 In the seminal case *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199
7 (1975) the Metropolitan Water District, as a State Water Contractor, imported water from the State
8 Water Project, and sold that water to the cities of Glendale and Burbank. Glendale and Burbank
9 then delivered this water to their customers (*Id.* at 261).

10 Applying the facts of *City of Los Angeles v. City of San Fernando* to our case, AVEK
11 would stand in the place of the Metropolitan Water District and Quartz Hill would stand in the
12 place of Glendale and Burbank.

13 The in *San Fernando* the Court first articulated the general provision that delivery of water
14 to residential customers in no way impairs a parties right to recapture the return flows from those
15 deliveries.

16 Defendants argue that . . . [once] delivered water leaves the deliveror's
17 possession, and it is then impossible to ascertain whether it is consumed, leaves
18 the basin or percolates into the basin's underground supply. . . . The fact that the
19 water drawn from a tap into a portable receptacle becomes the customer's
20 disposable personal property does not impair plaintiff's right to recapture the
21 return flow which is in fact produced by deliveries of its imported water. (*City of*
22 *Los Angeles v. City of San Fernando, supra*, 14 Cal.3d at 260).

23 Thus Glendale and Burbank had the right to recapture the return flows from the water they
24 imported. "Defendants Glendale and Burbank each delivers imported MWD water to users within
25 its territory in the San Fernando basin and each has been extracting ground water in the same
26 territory before and during the importation. Accordingly, each has rights to recapture water
27 attributable to the return flow from such" (*City of Los Angeles v. City of San Fernando, supra*, 14
28 Cal.3d at 260-261).

1 Were AVEK's theory correct, that as the State Water Project Contractor it is entitled to the
2 return flows, in *City of Los Angeles v. City of San Fernando* the right to the return flows would
3 have been awarded to the Metropolitan Water District, not Glendale and Burbank.

4 AVEK is part of the infrastructure of water supply in California. By analogy, the question
5 may be characterized as the difference between a freeway and a toll road. A toll road charges its users
6 a fee. AVEK seeks the equivalent of this toll in the form of the return flows. But in fact, Public
7 Water Suppliers and taxpayers (most of whom are the rate payers of Public Water Suppliers) paid
8 for this infrastructure, which AVEK manages. AVEK is not a toll road, it is a freeway, which may
9 be used without direct cost. The support to maintain it comes from the Public Water Suppliers and
10 taxpayers, and it exists to assist the economy generally. That is why the "tolls," in this case the
11 return flows, should not go to a public infrastructure intended to support the general economy and
12 paid for by tax payer dollars. In other words, AVEK did not pay for this water itself, and therefore
13 is not entitled to the benefit of the return flows.

14 This law was recently reaffirmed in the case *City of Santa Maria v. Adam* (2012) 211
15 Cal.App.4th 266. Again, in that case the return flows were derived from State Water Project water
16 imported by several of the public water producers *City of Santa Maria v. Adam, supra*, 211
17 Cal.App.4th at p. 280.

18 The Court in *Santa Maria* held "one who brings water into a watershed may retain a prior
19 right to it even after it is used. (*Glendale, supra*, at pp. 76–77, 142 P.2d 289.) The practical reason
20 for the rule is that the importer should be credited with the "fruits of his endeavors in bringing into
21 the basin water that would not otherwise be there." *City of Santa Maria v. Adam, supra*, 211
22 Cal.App.4th 266, 301.

23
24 **C. Public Policy expressed in Case Law holds that Quartz Hill has the right to**
25 **reclaim the water it imported**

26 In *City of Los Angeles v. City of San Fernando* the court founded its reasoning in public
27 policy. The court distinguished between return flows from imported water and return flows from
28 native water. Only the importers of water have the right to reclaim the return flows. "Even though

all deliveries produce a return flow, only deliveries derived from imported water add to the ground supply. The purpose of giving the right to recapture returns from delivered imported water priority over overlying rights and rights based on appropriations of the native ground supply is to credit the importer with the fruits of his expenditures and endeavors in bringing into the basin water that would not otherwise be there. Returns from deliveries of extracted native water do not add to the ground supply but only lessen the diminution occasioned by the extractions.” (*City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d at p. 261).

This public policy was affirmed in *City of Santa Maria v. Adam*, *supra*, 211 Cal.App.4th 266, 301. Therein the court held “One who brings water into a watershed may retain a prior right to it even after it is used. The practical reason for the rule is that the importer should be credited with the “fruits of his endeavors in bringing into the basin water that would not otherwise be there.”

Quartz Hill, and every Public Water Supplier who imports water, is just as entitled to the fruits of their endeavors as the importers in *City of Los Angeles v. City of San Fernando* and *City of Santa Maria v. Adam*. Quartz Hill purchased the water, and therefore has the right to use its return flows.

V. THE PROTECTIONS OF WATER CODE SECTION 106.5 RESULT IN QUARTZ HILL WATER DISTRICT HOLDING THE RIGHTS THE RETURN FLOWS

Water Code section 106.5 states “It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses” (Wat. Code, § 106.5).

The legislature has guided this Court to protect the water rights of Quartz Hill, and all the other public water suppliers. This Court should to protect Quartz Hill from the attempt of AVEK to take the return flows of water Quartz Hill has paid for.

1 **VI. CONCLUSION**

2 The rate payers of Quartz Hill caused the State Water Project water to be imported, and
3 they paid for that importation. The rate payers should therefore receive the benefit of this
4 expenditure—the return flows.

7 Dated: March 29, 2013

CHARLTON WEEKS LLP

8 

9 Bradley T. Weeks

10 Attorney for Quartz Hill Water District

PROOF OF SERVICE

I am employed in the aforesaid county, State of California; I am over eighteen years of age and not a party to the within action; my business address is 1031 West Avenue M-14, Suite A, Palmdale, California, 93551.

On March 29, 2013, at my place of business at Palmdale, California, a copy of the following DOCUMENT(s):

MOTION IN LIMINE TWO: QUARTZ HILL WATER DISTRICT MOTION IN LIMINE REGARDING RIGHT TO IMPORTED WATER RETURN FLOWS

By posting the DOCUMENT listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater Matter:

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

Executed on March 29, 2013


Bradley T. Weeks