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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 ANTELOPE VALLEY GROUNDWATER
17 CASES

Judicial Council Coordination Proceeding
No. 4408

18 Included Actions:
19 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
20 California, County of Los Angeles, Case No.
BC 325201;

CLASS ACTION

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

21 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
22 California, County of Kern, Case No. S-1500-
CV-254-348;

PUBLIC WATER SUPPLIERS' PHASE 5
TRIAL REQUEST FOR JUDICIAL
NOTICE

Trial Date: February 10, 2014 (Phase 5)

23 Wm. Bolthouse Farms, Inc. v. City of
24 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
25 Water Dist., Superior Court of California,
County of Riverside, Case Nos. RIC 353 840,
26 RIC 344 436, RIC 344 668

27 RICHARD WOOD, on behalf of himself and
all other similarly situated v. A.V. Materials,
28 Inc., et al., Superior Court of California,
County of Los Angeles, Case No. BC509546

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1 Pursuant to Evidence Code Section 452 and 453, Los Angeles County Waterworks
2 District No. 40 (“District No. 40”), City of Palmdale, Palm Ranch Irrigation District, Littlerock
3 Creek Irrigation District, Desert Lake Community Services District, Palmdale Water District,
4 California Water Service Company, Rosamond Community Services District, and Quartz Hill
5 Water District request that the Court take judicial notice of the facts and documents listed below.¹
6 Under Section 453, this Request for Judicial Notice is conditionally mandatory and must be
7 granted if sufficient notice is given to an adverse party and if the court is furnished with sufficient
8 information to enable it to take notice of the matter. (*People v. Maxwell* (1978) 78 Cal.App.3d
9 124, 130-31.) By this request, the moving parties give the Court and adverse parties sufficient
10 notice and information to enable them to take judicial notice of the documents attached hereto and
11 referred by their exhibit number.

12 1. Over 390,000 people reside in the Antelope Valley region of California. The
13 population in the region is expected to increase to potentially 547,000 residents by the year
14 2035. Water is critical to the region’s population. Residents of the Antelope Valley use water
15 for drinking, bathing, domestic and outdoor activities, commercial and industrial uses,
16 recreation and landscaping. Water currently used in the region comes from two primary
17 sources: (1) groundwater; and (2) State Water Project (“SWP”) water. (See 2013 Antelope
18 Valley Integrated Regional Water Management Plan, publically available
19 <http://www.ladpw.org/wwd/avirwmp/index.cfm?fuseaction=finalPlan1>.)

20 2. District No. 40 and other Public Water Suppliers provide water to the end users
21 in the Antelope Valley Region for municipal and industrial uses. Attached hereto to be
22 judicially noticed is Exhibit “A”, a map showing the service areas of the Public Water Suppliers
23 within the Antelope Valley Groundwater Adjudication Basin (“Basin”).

24 3. The use of SWP water in the Antelope Valley results in a certain percentage of
25 return flows entering the Basin. (See Order After Hearing on January 27, 2014: 1. Motion by
26 Cross-Complainant Antelope Valley-East Kern Water Agency (“AVEK”) for Summary
27

28 ¹ All sections references are to the Evidence Code unless otherwise indicated.

1 Judgment/Summary Adjudication (“Order re AVEK’s MSA”); Statement of Decision: Phase
2 Three Trial.)

3 4. In this coordinated proceeding, the Public Water Suppliers seek to establish its
4 rights to return flows from its purchases of SWP water.

5 5. In its ruling on AVEK’s Motion for Summary Adjudication, the Court stated:

6 The return flows result from use of imported water; not just from
7 importation. On the undisputed evidence before the court, AVEK has
8 failed to establish that, as a State Water Project (“SWP”) contractor with a
9 contractual entitlement to receive and deliver SWP water to public water
10 suppliers and private property owners, it is an appropriator or importer of
11 SWP water such that it may retain a prior right to recapture return flows
12 from the water delivered to and used by others. AVEK has thus failed to
13 establish it is entitled to summary adjudication of its return flow claim as a
14 matter of law. *The entirety of case law supports that proposition that
15 water users who have imported the water into the basin and who have
16 augmented the water in the aquifer through use are entitled rights to
17 the amount of water augmenting the aquifer. If on the trial of this
18 matter AVEK can establish some quantity of water augments the
19 aquifer because of its use, beyond what it may sell to other water
20 producers/providers, it may establish such rights.* (Emphasis added.)

14 A true and correct copy of the Court’s Order re AVEK’s MSA is attached hereto as Exhibit “B”.

15 The moving parties hereby request the Order to be judicially noticed.

16 **FACTS AND DOCUMENTS SPECIFIC TO AVEK**

17 6. AVEK’s Resolution R-11-09, a copy of which is attached as Exhibit “C”.

18 7. AVEK’s Resolution O-07-2, a copy of which is attached as Exhibit “D”.

19 8. AVEK’s webpage at

20 http://www.avek.org/index.cfm?fuseaction=menu&menu_id=5011 (“AVEK’s Capital Facilities
21 Charges”), a true and correct copy of which is attached as Exhibit “E”.

22 9. “AVEK was formed for the purpose of providing water received from the State
23 Water Project (‘SWP’) as a supplemental source of water to retail water purveyors and other
24 water interests within AVEK’s Jurisdictional Boundaries on a wholesale basis.” (Ex. “C”
25 [AVEK’s Resolution R-11-09].)

26 10. “AVEK does not provide SWP Water directly to any person or entity for domestic
27 or municipal purposes.” (Ex. “C” [AVEK’s Resolution R-11-09].)

1 11. As late as June 19, 2007, “AVEK does not own or operate any facilities that can
2 produce reclaimed water or native groundwater from any area in AVEK’s Jurisdictional
3 Boundaries, and neither does AVEK possess any contractual right or matured water right to
4 produce such waters.” (Ex. “D” [AVEK’s Resolution O-07-2].)

5 12. The customers of Public Water Suppliers who purchase water from AVEK pay
6 “Capital Facilities Charges.” (See Ex. “E” [AVEK’s Capital Facilities Charges].)

7 13. AVEK’s admits it does not intend to use return flows. (See Trial Exhibit 5-D40-
8 22 [AVEK’s Responses to District No. 40’s Request for Admission, Set One].)

9 14. In its water supply contracts with its customers, AVEK does not reserve any
10 interest in the water it sold to its customers. (See Trial Exhibit 5-D40-12 [AVEK’s Water Supply
11 Contract with District No. 40], a copy of which is attached as Exhibit “F”.)

12 15. Article 11 of AVEK’s water supply contracts with its customers provide that
13 AVEK shall not be liable “for the control, carriage, handling, *use*, disposal, distribution or
14 changes occurring in the quality of such water supplied to the Consumer or for claim of damages
15 of any nature . . . ; and the Consumer shall indemnify and hold harmless [AVEK] . . . from any
16 such damages or claims of damages” (See *id.*)

17 **FACTS AND DOCUMENTS SPECIFIC TO DISTRICT NO. 40**

18 16. District No. 40 is one of five Los Angeles County Waterworks Districts
19 (“LACWDs”). LACWDs provide retail water service to approximately 200,000 people in Kagel
20 Canyon, Malibu, Val Verde, Acton and the Antelope Valley regions of the Los Angeles County.
21 (See <http://dpw.lacounty.gov/wwd/web/About/AboutUs.aspx>.)

22 17. The water supply contract between AVEK and District No. 40, a copy of which
23 is attached as Exhibit “F”.

24 18. District No. 40 purchased SWP water from AVEK every year since 1979, in
25 variable amounts ranging from 4,266 acre-feet (“af”) in 1978 to close to 47,000 af in 2006. (See
26 Trial Exhibits 5-D40-2 [Facsimile from AVEK] & 5-D40-4 [Summary Spreadsheet of Water
27 Activity].)
28

1 19. For each year in which District No. 40 purchased water from AVEK, District No.
2 40 pumped groundwater from the Basin and delivered the pumped water to its District No. 40's
3 customers for their municipal and/or industrial use. (See Trial Exhibits 5-D40-5 [Annual
4 Notices of Groundwater Extraction].) District No. 40 has an obligation to provide a secure and
5 reliable drinking water supply to over 170,000 residents in the Antelope Valley region.

6 **FACTS AND DOCUMENTS SPECIFIC TO PALM RANCH IRRIGATION DISTRICT,**
7 **DESERT LAKE COMMUNITY SERVICES DISTRICT ("DLCSD") AND**
8 **LITTLEROCK CREEK IRRIGATION DISTRICT**

9 20. DLCSD provides retail water service to people within its service area, which is
10 contained in the Antelope Valley groundwater basin.

11 21. The water supply contract between AVEK and Desert Lake Community Services
12 District, a copy of which is attached as Exhibit "G" (Exhibit DL-Ph5-10).

13 22. Desert Lake Community Services purchased SWP water from AVEK every year
14 since 1981, in variable amounts ranging from 15 af in 2000 to close to 314 af in 1995. (See
15 Trial Exhibits DL-Ph5-2, DL-Ph5-5:000014-000017 & DL-Ph-5-3 .)

16 23. For each year in which DLCSD purchased water from AVEK, except 2007,
17 DLCSD pumped groundwater from the Basin and delivered the pumped water to DLCSD's
18 customers for their municipal and/or industrial use. (See Trial Exhibits DL-Ph5-1, DL-Ph5-2,
19 DL-Ph5-8-.) DLCSD has an obligation to provide a secure and reliable drinking water supply to
20 its customers.

21 24. PRID provides retail water service to people within its service area, which is
22 contained in the Antelope Valley groundwater basin.

23 25. The water supply contract between AVEK and PRID, a copy of which is
24 attached as Exhibit "H" (Exhibit PR-Ph5-11).

25 26. PRID purchased SWP water from AVEK every year since 1978, in variable
26 amounts ranging from 83.18 af in 2009 to close to 1058 af in 1987. (See Trial Exhibits PR-
27 PH5-2, PR-PH5-3, PR-Ph5-6:000007-000010 & PR-Ph-5-12.)

1 27. For each year in which PRID purchased water from AVEK, PRID pumped
2 groundwater from the Basin and delivered the pumped water to PRID’s customers for their
3 municipal and/or industrial use. (See Trial Exhibits PR-Ph5-1, PR-Ph5-2, PR-Ph5-6:000007-
4 000010, PR-Ph5-5, PR-PH-4, PR-PH5-7, PR-PH5-8, PR-PH5-9.) PRID has an obligation to
5 provide a secure and reliable drinking water supply to its customers.

6 28. LCID provides retail water service to people within its service area, which is
7 contained in the Antelope Valley groundwater basin.

8 29. The water supply contract between DWR and LCID, a copy of which is attached
9 as Exhibit “T” (Exhibit LC-Ph5-11).

10 30. LCID purchased SWP water between 1972 and 1999, in variable amounts
11 ranging from one acre foot (“af”) in 1984 to close to 1517 af in 1981. (See Trial Exhibits LC-
12 PH5-4:000012-000013.) Attached hereto as Exhibit J is a true and correct copy of the DWR’s
13 summary of LCID’s purchases.

14 31. For each year in which LCID purchased water, it also pumped groundwater from
15 the Basin and delivered the pumped water to its customers for their municipal and/or industrial
16 use. (See Trial Exhibits LC-PH5-1, LC-PH5-2, LC-PH5-3, LC-PH5-4: 000012-000013, LC-
17 Ph5-5, LC-PH-5-6, LC-Ph5-7, LC-Ph5-8, LC-Ph5-10.) LCID has an obligation to provide a
18 secure and reliable drinking water supply to its customers.

19 **FACTS SPECIFIC TO PALMDALE WATER DISTRICT**

20 32. Palmdale Water District is an irrigation district formed under division 11 of the
21 Water Code. The District provides retail water service to households and businesses within the
22 Antelope Valley Adjudication Area.

23 33. Palmdale Water District is a State Water Project contractor, and purchases
24 imported water directly from the Department of Water Resources. Palmdale Water District has
25 purchased State Water Project water every year since 1985.
26
27
28

1 34. For each year in which Palmdale Water District purchased water from the State
2 Water Project, the District pumped groundwater from the Basin and delivered the pumped water
3 to its customers for their municipal and industrial use.

4 **FACTS SPECIFIC TO CALIFORNIA WATER SERVICE COMPANY (“CAL**
5 **WATER”)**

6 35. Cal Water is a public water supplier, regulated by the CA Public Utilities
7 Commission

8 36. Cal Water has not previously purchased imported State Project Water from
9 AVEK in Cal Water’s Lancaster System.

10 37. In the past, Cal Water has relied upon groundwater pumping to supply water to
11 its Lancaster System customers.

12 38. Cal Water has applied and paid AVEK all applicable fee, so Cal Water may
13 purchase State Project Water from AVEK in the future.

14 39. Cal Water has never had, and does not now have, its own contract with DWR for
15 delivery of SWP water.

16 40. Cal Water does not have any contractual agreement with its customers which
17 mentions return flows or rights to water within the basin, nor do the PUC regulations which
18 govern its operation mention return flows or rights to water within the basin.

19 **FACTS AND DOCUMENTS SPECIFIC TO ROSAMOND COMMUNITY SERVICES**
20 **DISTRICT**

21 41. Rosamond Community Services District (“RCSD”) provides retail water service
22 to approximately 5,000 households and businesses in the Rosamond community located in Kern
23 County. (See <http://www.rosamondcsd.com>.)

24 42. AVEK and RCSD entered into a Water Service Agreement dated September 15,
25 1970, a copy of which is attached as Exhibit “K”.

26 43. RCSD purchased SWP water from AVEK every year since 1979, in variable
27 amounts ranging from 3.0 af in 1980 to close to 1,650 af in 1995 (See Trial Exhibits 5-
28 RosamondCSD-2 [Statement of Claims].)

1 44. For each year in which RCSD purchased water from AVEK, RCSD pumped
2 groundwater from the Basin and delivered the pumped water to its RCSD's customers for their
3 municipal and/or industrial use. RCSD has an obligation to provide a secure and reliable
4 drinking water supply.

5 **FACTS AND DOCUMENTS SPECIFIC TO QUARTZ HILL WATER DISTRICT**

6 45. Quartz Hill Water District is a domestic public water supplier for the residents of
7 Quartz Hill, and the residents who live in the western portions of the cities of Lancaster and
8 Palmdale. Quartz Hill Water District provides retail water service to approximately 5,800
9 homes.

10 46. The water supply contract between AVEK and Quartz Hill is attached hereto as
11 Exhibit "L".

12 47. Quartz Hill Water District has purchased SWP water from AVEK every year
13 since 1978, in variable amounts ranging up to 4539.4 af in 2006. (See Trial Exhibits 5-QHWD-
14 2 (AVEK Report) and 5-QHWD-3 (Well Report).)

15 48. For each year in which Quartz Hill Water District has purchased water from
16 AVEK, Quartz Hill Water has also pumped groundwater from the Basin, see Trial Exhibit 5-
17 QHWD-3 (Well Report), and delivered the pumped water to its customers for their municipal
18 and/or industrial use. Quartz Hill Water District has an obligation to provide a secure and
19 reliable drinking water supply to its customers, and will continue to have this obligation in
20 perpetuity.

21 **ARGUMENTS**

22 The facts and documents listed above all fall into one of the following categories: (1)
23 court records; (2) official documents of public agencies; (3) legally operative ancient document;
24 and (4) facts and documents commonly known or not reasonably subject to dispute. As such,
25 these facts and documents are judicially noticeable under Section 452.

26 **THE COURT SHOULD TAKE JUDICIAL NOTICE OF COURT RECORDS**

27 Under section 452, subdivision (d), the Court may take judicial notice of the records of the
28

1 courts of the State of California. This includes *any orders*, findings of facts and conclusions of
2 law, and judgments within court records. (*Lockley v. Law Office of Cantrell, Green, Pekich,*
3 *Cruz, and McCort* (2001) 91 Cal.App.4th 875, 882; *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914
4 [court cannot take judicial notice of truth of hearsay allegations or pleadings allegations, but may
5 take judicial notice of truth of facts asserted in documents such as orders, findings of fact and
6 conclusions of law, and judgments].)

7 Here, the moving parties are asking the Court to take judicial notice of: (1) its Order
8 regarding AVEK’s Motion for Summary Adjudication and its findings of fact and conclusions of
9 law (¶¶ 3 & 5); and (2) its findings of fact and conclusions of law in Phase Three (¶3), pursuant to
10 Section 452, subdivision (d).

11 **THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE OFFICIAL DOCUMENTS**
12 **OF PUBLIC AGENCIES**

13 The court may take judicial notice of records of public entities as official acts pursuant to
14 Section 452, subdivision (c). (*Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 416.)
15 Judicial notice may be taken of “regulations and legislative enactments issued under the authority
16 . [of] . . any public entity in the United States.” (Evid. Code § 452, subd. (b); *Beresford*
17 *Neighborhood Association v. City of San Mateo* (1989) 207 Cal.App.3d 1180, 1190.)

18 It is well-established that “[o]fficial acts include records, *reports* and orders of
19 administrative agencies.” (*Rodas v. Spiegel* (2000) 87 Cal.App.4th 513, 518.) Courts take
20 judicial notice of a wide variety of administrative and executive records, reports, and acts under
21 section 452, subdivision (c). (See, e.g., *Masters v. San Bernardino County Employees Retirement*
22 *Ass’n* (1995) 32 Cal.App.4th 30, 37 [taking judicial notice of by-laws of county retirement
23 association]; *City of Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th
24 960 [judicial notice taken of minutes of relevant Regional Water Quality Control Board
25 meetings]; *Post v. Prati* (1979) 90 Cal.App.3d 626 [judicial notice taken of legislative committee
26 reports and excerpts from testimony given at public hearings]; *Laurel Heights Improvement Ass’n*
27 *v. The Regents of the University of California* (1993) 6 Cal.4th 1112, 1123 n. 5 [judicial notice
28 taken of University publication entitled “Procedural Handbook and Model Approach for

1 Implementing the California Environmental Quality Act].)

2 Courts have taken judicial notice of official documents similar to the documents listed
3 above and make findings based on these documents. (*Planning and Conservation League v.*
4 *Department of Water Resources* (2000) 83 Cal.App.4th 892, 898-902.) For example, in *White v.*
5 *State of California* (1971) 21 Cal.App.3d 738, 742-43 n.1, the court took judicial notice of
6 information in a publication issued by the U.S. Army Corps of Engineers entitled “Water
7 Resources Development in California.” The court used this report as the basis for its finding that
8 the Petaluma River was “navigable in fact.” (*Ibid.*) In *Washington v. County of Contra Costa*
9 (1995) 38 Cal.App.4th 890, 901 the court upheld the trial court’s decision to take judicial notice
10 of certain documents submitted by the County of Contra Costa, including the County’s area plan,
11 the County’s inspection report of a chemical facility; documents submitted by the chemical
12 company to County, and other documents submitted by the County relating to its regulation of the
13 chemical company. The trial court admitted these documents pursuant to Evidence Code section
14 452, subdivision (c). (*Ibid.*)

15 Furthermore, the California Supreme Court has taken judicial notice of data contained in a
16 publication issued by the State Department of Education on the ground that the publication was
17 issued an agency of the state. (*Board of Education v. City of Los Angeles v. Watson* (1966) 63
18 Cal.2d 829, 836 n.3.) After taking judicial notice of the publication, the court utilized the data
19 contained therein to support its conclusion that individual school districts in Los Angeles County
20 have larger numbers of students than do the districts in other counties. (*Id.* at 836.) In *Planned*
21 *Parenthood Shasta-Diablo, Inc. v. Williams* (1995) 10 Cal.4th 1009, 1021, the California
22 Supreme Court took judicial notice of official maps maintained by the Public Works Department
23 of the City of Vallejo.

24 The official documents published by AVEK are similar to the records and reports
25 described herein in that they are governmental entity reports on the historical facts. (See ¶¶6-12
26 [AVEK’s ordinances and webpage re AVEK’s Capital Facilities Charges].) Thus, they should be
27 judicially noticed pursuant to Section 452, subdivision (c). Moreover, AVEK’s ordinances are
28 judicially noticeable pursuant to subdivision (b) of Section 452 as regulations and legislative

1 enactments issued by a public agency. Once these official documents are judicially noticed, their
2 existence and contents are established, and no further proof of their existence or contents is
3 required.

4 **THE OFFICIAL RECORDS ARE EXCEPTIONS TO THE HEARSAY RULE**

5 Section 1280 “permits the court to admit an official record or report without necessarily
6 requiring a witness to testify as to its identity and mode of preparation if the court takes judicial
7 notice or if sufficient independent evidence shows that the record or report was prepared in such a
8 manner as to assure its trustworthiness.” (Cal. Law Revision Com. comment, reprinted at 29B pt.
9 4 West’s Ann. Evid. Code (1995 ed.) following § 1280, p. 347.) In addition to taking judicial
10 notice, a court may rely on the rebuttable presumption that official duty has been regularly
11 performed as a basis for finding that the foundational requirements of Section 1280 are met.” (*See*
12 Cal. Evid. Code § 664; *People v. Dunlap* (1993) 18 Cal.App.4th 1468, 1477.)

13 The trustworthiness requirement for the official records exception to the hearsay rule is
14 established by a showing that “the written report is based upon the observations of public
15 employees who have a *duty* to observe the facts and report and record them correctly.” (*Fisk v.*
16 *Department of Motor Vehicles* (1981) 127 Cal. App. 3d 72, 77.) A trial court has broad discretion
17 in determining whether a party has established these foundational requirements. (*People v. Beeler*
18 (1995) 9 Cal.4th 953, 978.)

19 The object of this hearsay exception “is to eliminate the calling of each witness involved
20 in preparation of the record and substitute the record of the transaction instead.” (*County of*
21 *Sonoma v. Grant W.* (1986) 187 Cal.App.3d 1439, 1451.) Moreover, for the exception to apply,
22 “[i]t is not necessary that the person making the entry have personal knowledge of the
23 transaction.” (*Loper v. Morrison* (1944) 23 Cal.2d 600, 609.)

24 “[T]he inclusion of conclusions and opinions in a record does not render it inadmissible
25 per se.” (*People v. Flaxman* (1977) 74 Cal.App.3d Supp. 16, 20 citing Jefferson, California
26 Evidence Benchbook (Cont.Ed.Bar 1972) pages 91, 99.) “The overriding consideration is
27 whether the record is trustworthy.” (*Id.*) “The trustworthiness requirement for this exception to
28 the hearsay rule is established by a showing that the written report is based upon the observations

1 of public employees who have a duty to observe the facts and report and record them correctly.
2 Whether the trustworthiness requirement has been met is a matter within the trial court’s
3 discretion.” (*People v. Parker* (1992) 8 Cal.App.4th 110, 116; see also *In re Jacqueline H* (1979)
4 94 Cal.App.3d 808, 815 [same].)

5 In *People v. Dunlop* (1993) 18 Cal.App.4th 1468, 1470, the Court of Appeal stated that
6 the Section 1280 foundational requirements are met with the presumption in Section 664 that
7 public entities are presumed to perform their official duties:

8
9 Although similar to the business records exception [Evidence Code
10 section 1271], the official records exception differs in one
11 important respect. Evidence Code section 1271 “requires a witness
12 to testify as to the identity of the record and its mode of preparation
13 in every instance. In contrast, [Evidence Code] [s]ection 1280 . . .
14 permits the court to admit an official record or report without
15 necessarily requiring a witness to testify as to its identity and mode
16 of preparation *if the court takes judicial notice or if sufficient
17 independent evidence shows that the record or report was prepared
18 in such a manner as to assure its trustworthiness.*” (Cal.Law
19 Revision Com. com., 29B West’s Ann. Evid. Code (1966 ed) §
20 1280, p. 316, italics added; see *People v. Parker* (1992) 8
21 Cal.App.4th 110, 116-117; *People v. Flaxman* (1977) 74
22 Cal.App.3d Supp. 16, 20-23.)

23 In addition to taking judicial notice, a court may rely on the
24 rebuttable presumption that official duty has been regularly
25 performed (Evid. Code sec. 664) as a basis for finding that the
26 foundational requirements of Evidence Code section 1280 are met.
27 (See *Davenport v. Department of Motor Vehicles* (1992) 6
28 Cal.App.4th 133, 143; *Preis v. American Indemnity Co.* (1990) 220
Cal.App.3d 752, 759.) 18 Cal.App.4th 1468, 1479. [Italics in
original; some citations omitted.]

21 Here, most of the facts to be judicially noticed are contained in official records that were
22 created by public employees, and are based upon the observations of public employees who have
23 a duty to observe the facts and report and record them correctly. (See ¶¶ 1, 8, 12, 15, 17 & 18.)
24 These documents are thus inherently trustworthy.

25 **THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE WATER SUPPLY**
26 **CONTRACT BECAUSE IT IS A LEGALLY OPERATIVE, ANCIENT DOCUMENT**

27 In *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 746, the appellate
28 court affirmed that when “judicial notice is requested of a legally operative document – like a

1 contract – the court may take notice not only of the fact of the document and its recording or
2 publication, but also facts that clearly derive from its legal effect.” Here, the Court may take
3 judicial notice of the water supply contract between AVEK and District No. 40 (“Water Supply
4 Contract”) because it a legally operative document. (See ¶¶ 14 & 16.) Moreover, the Court may
5 take judicial notice of the facts contained therein and facts that derive from its legal effect.

6 The Water Supply Contract is also an ancient document as the parties entered into the
7 agreement in 1970. As such, the contract may be admitted as an exception to the hearsay rule.
8 Section 1331 provides that “[e]vidence of a statement is not made inadmissible by the hearsay
9 rule if the statement is contained in a writing more than 30 years old and the statement has been
10 since generally acted upon as true by persons having an interest in the matter.” The Water Supply
11 Contract meets the age requirement of Section 1331, and the contract has been since generally
12 acted upon as true by the interested parties in this case. The contract should thus be admitted as
13 an exception to the hearsay rule.

14 **THE COURT MAY TAKE JUDICIAL NOTICE OF FACTS AND DOCUMENTS NOT**
15 **REASONABLY SUBJECT TO DISPUTE**

16 Judicial notice may be taken of “facts and propositions that are of such common
17 knowledge within the territorial jurisdiction of the court that they cannot reasonably be the
18 subject of dispute.” (Evidence Code § 452, subd. (g).) Judicial notice may also be taken of “facts
19 and propositions that are not reasonably subject to dispute and are capable of immediate and
20 accurate determination by resort to sources of reasonably undisputed accuracy.” (Evidence Code
21 § 452, subd. (h).) The moving parties request judicial notice the above-listed records and facts
22 because they are not reasonably subject to dispute and are supported by admissible evidence. For
23 example, there is no dispute that District No. 40 provides water to its customers in the Antelope
24 Valley for their domestic and commercial uses. (¶¶ 2 & 19.) Nor is there any dispute that AVEK
25 admits it intends to abandon return flows in the Basin. (¶13.) Moreover, the service areas of the
26 Public Water Suppliers are commonly known and are not subject to reasonable dispute. (¶2, Ex.
27 A.)

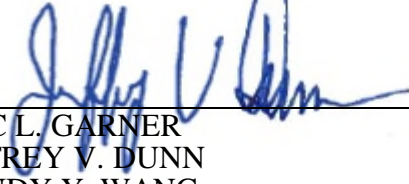
28 **CONCLUSION**

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For the foregoing reasons, the moving parties respectfully requests that the Court take
judicial notice of the above listed facts and documents.

Dated: February 14, 2014

BEST BEST & KRIEGER LLP

By 
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PROOF OF SERVICE

I, Sandra K. Sandoval, declare:

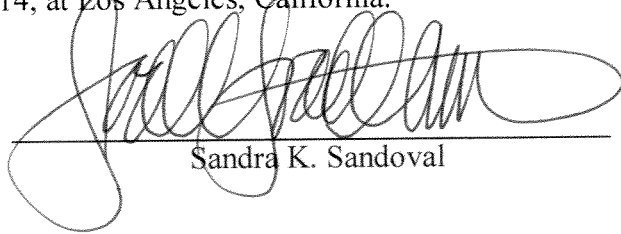
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On February 14, 2014, I served the within document(s):

PUBLIC WATER SUPPLIERS' PHASE 5 REQUEST FOR JUDICIAL NOTICE

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 14, 2014, at Los Angeles, California.


Sandra K. Sandoval

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