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*Exempt from filing fee pursuant to
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ANTELOPE VALLEY-EAST KERN WATER AGENCY
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
12

13
14 Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding
No. 4408

15 **ANTELOPE VALLEY**
16 **GROUNDWATER CASES**

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

17 **Included Actions:**

18 Los Angeles County Waterworks District
19 No. 40 vs. Diamond Farming Company, a
20 corporation, Superior Court of California,
County of Los Angeles, Case No.
BC325201;

**ANTELOPE VALLEY-EAST KERN
WATER AGENCY'S OPPOSITION TO
MOTION OF LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40
THAT COURT TAKE JUDICIAL
NOTICE OF CERTAIN MATTERS**

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

Trial Date: May 28, 2013
Time: 9:00 a.m.
Room: 1 (Los Angeles Superior Court)

24 Wm. Bolthouse Farms, Inc. vs. City of
25 Lancaster, Diamond Farming Company, a
26 corporation, vs. City of Lancaster, Diamond
27 Farming Company, a corporation vs.
Palmdale Water District, Superior Court of
California, County of Riverside, Case Nos.
RIC 353840, RIC 344436, RIC 344668.
28

1 Cross-Complainant, the Antelope Valley-East Kern Water Agency (AVEK), submits this
2 Opposition to Los Angeles County Waterworks District No. 40 (“District No. 40) REQUEST
3 FOR JUDICIAL NOTICE OF TRIAL TESTIMONIES, EXHIBITS, AND DECISION IN
4 PHASE THREE RE RETURN FLOWS.

5 I.

6 **INTRODUCTION**

7 Pursuant to the provisions of Evidence Code § 452, subdivision (d), District 40 requests
8 that the Court take judicial notice of transcripts of trial testimony of Joseph Scalmanini, Mark
9 J. Wildermuth, Joel E. Kimmelshue, Steven Bachman, N. Thomas Sheahan, and Ericson John
10 List, and related trial exhibits. Implicit therein, is District 40's request that judicial notice be
11 taken as to the truthfulness and/or binding effect of such trial testimonies and trial exhibits. For
12 the following reasons, AVEK respectfully submits that taking judicial notice of the truthfulness
13 or binding effect of such testimonies and exhibits would be entirely inappropriate and contrary
14 to the controlling law governing the taking of judicial notice.

15 II.

16 **BECAUSE THEY ARE REASONABLY SUBJECT TO DISPUTE, THE**
17 **TRUTHFULNESS OF FACTS ALLEGED IN TRIAL TESTIMONIES OR TRIAL**
18 **EXHIBITS MAY NOT BE JUDICIALLY NOTICED**

19 The author of 2Jefferson’s California Evidence Benchbook (4th ed.), §49.10, pp. 1147-
20 1148) succinctly notes:

21 There is a mistaken notion that taking judicial notice of court records under Evid
22 C §452(d) . . . means taking judicial notice of the existence of facts asserted in every
23 document of a court file, including pleadings and affidavits. The concept of judicial
24 notice requires that the matter which is the proper subject of judicial notice be a fact that
25 is not reasonably subject to dispute. Facts in the judicial record that are subject to dispute,
26 such as allegations in affidavits, declarations, . . . are not the proper subjects of judicial
27 notice even though they are in a court record.

28 By logical extension, this applies as well to trial testimonies and trial exhibits.

1 “[W]hen a court takes judicial notice of a document, ‘the truthfulness and proper
2 interpretation of the document are disputable.’” (Id., at p. 1147; *StorMedia Inc. v. Superior*
3 *Court* (1999) 20 Cal. 4th 449, 457, fn 9; and *Laabs v. City of Victorville* (2008) 163 Cal.App.4th
4 1242, 1266 [“while we take judicial notice of the *existence* of the documents in court files, we
5 do not take judicial notice of the truth of the facts asserted in such documents” [emphasis in
6 original].)

7 Even an appellate court opinion’s recitation of facts should not be considered as true on
8 any theory of judicial notice, because such is nothing more than the hearsay assertions of the
9 justices who issued the opinion (2Jefferson, *supra*, §49.11, p.1148; *Lockley v. Law Office of*
10 *Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 887; *Plumley v. Mockett*
11 (2008) 164 Cal.App.4th 2031, 1050 [judicial notice that judge made particular factual findings
12 is far cry from judicial notice that facts found by judge must necessarily be true].)

13 **III.**

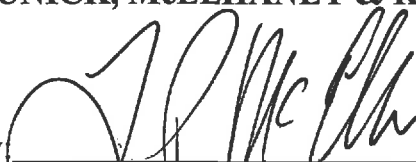
14 **CONCLUSION**

15 For the foregoing reasons, AVEK respectfully submits that the Court should deny District
16 No. 40's request for judicial notice.

17 Dated: April 19, 2013

BRUNICK, McELHANEY & KENNEDY

18
19
20 By



21 WILLIAM J. BRUNICK
22 LELAND P. McELHANEY
23 Attorneys for Cross-Complainant,
24 ANTELOPE VALLEY-EAST KERN
25 WATER AGENCY

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PROOF OF SERVICE

**STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}**


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.

On April 19, 2013, I served the foregoing document(s) described as: **ANTELOPE VALLEY-EAST KERN WATER AGENCY'S OPPOSITION TO MOTION OF LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 THAT COURT TAKE JUDICIAL NOTICE OF CERTAIN MATTERS** on the interested parties in this action served in the following manner:

■ **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 April 19, 2013, at San Bernardino, California.


P. Jo Anne Quihuis