

5-AVUMG-4

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

16 ANTELOPE VALLEY GROUNDWATER
17 CASES

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

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

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

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

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

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

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
SUPPLEMENTAL REQUEST FOR
JUDICIAL NOTICE OF PHASE THREE
TRIAL TESTIMONIES AND EXHIBITS

Trial Date: February 10, 2014 (Phase V)

[Concurrently filed with Motion in Limine
Number One]

1 **I. INTRODUCTION**

2 Pursuant to Evidence Code Sections 452 and 453, Los Angeles County Waterworks
3 District No. 40 ("District No. 40") requests that the Court take judicial notice of the following
4 documents for use in support of District No. 40's Motion in Limine and during Phase 5 trial:

5 Exhibits attached to District No. 40's Request for Judicial Notice, Dated March 29, 2013

6 1. Exhibits accompanying District No. 40's Request for Judicial Notice of trial
7 testimony, exhibits and Statement of Decision from Phase 3 of the trial ("March 2013 RJN"),
8 which was posted and filed on or about March 29, 2013 and is accessible at
9 www.scefilings.org/document/document.jsp?documentId=79042.¹

10 Transcripts of Joseph Scalmanini's Trial Testimony and Related Exhibits

11 2. Pages 30-31 of the transcript of Joseph Scalmanini's trial testimony on January
12 10, 2011, true and correct copies of which are attached hereto as Exhibit "II".

13 3. Exhibit 12 of Joseph Scalmanini's trial testimony on January 10, 2011, titled
14 "Sustainable Yield," a true and correct copy of which is attached hereto as Exhibit "JJ".

15 4. Pages 514-516 of the transcript of Joseph Scalmanini's trial testimony on
16 January 13, 2011, true and correct copies of which are attached hereto as Exhibit "KK".

17 Transcripts of Court Proceeding in Phase 5

18 5. Pages 17-18 and 24-26 of the transcript of Court hearing in this matter on
19 October 16, 2013, true and correct copies of which are attached hereto as Exhibit "LL".

20 **II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF RECORDS OF THIS**
21 **ACTION**

22 Courts may take judicial notice of "[r]ecords of [] any court of this state." (Evid. Code
23 §452, subd. (d); see, *People v. Buckley* (1986) 185 Cal. App. 3d 512, 525 [judicial notice taken of
24 preliminary hearing transcript]; *Knoff v. San Francisco* (1969) 1 Cal. App. 3d 184, 200 [grand
25 jury testimony transcripts "were subjects of which the trial court could properly take judicial

26
27 ¹ At the January 15, 2014 hearing regarding discovery and District No. 40's *ex parte* application to quash deposition
28 of Mr. Joseph Scalmanini, the Court indicated that it will take the March 2013 RJN under consideration. In an effort
to reduce duplicative filings, District No. 40 hereby incorporates the March 2013 RJN by reference and requests the
Court to allow the use of exhibits accompanying the March 2013 RJN for use in Phase 5 trial.

1 AGRICULTURAL USE. IF THOSE PERCENTAGES GO DOWN,
2 MATHEMATICALLY SPEAKING, THE TOTAL SAFE YIELD MUST ALSO
3 GO DOWN.

4 THE COURT: YOU LET YOUR VOICE DROP.

5 MR. WEEKS: IF THE URBAN RETURN FLOW USE IS NOT
6 39.1 PERCENT, THE TOTAL SAFE YIELD MUST GO DOWN
7 MATHEMATICALLY SPEAKING.

8 THE COURT: LET ME STOP YOU FOR JUST A MINUTE.
9 I'M NOT GOING TO REHEAR THE ISSUE OF THE SAFE YIELD
10 ABSENT SOME JUSTIFICATION FOR REOPENING THE CASE AND
11 SETTING ASIDE THE PREVIOUS DECISION, AND I'VE HEARD
12 NOTHING THAT TELLS ME I SHOULD DO THAT. THAT'S A
13 DIFFERENT ISSUE THAN THE ISSUE OF WHAT THE PARTIES CLAIM
14 THE RIGHTS MIGHT BE.

15 AND BECAUSE THERE ARE VARIABLES, YOU CAN
16 TALK ABOUT 39.1 PERCENT. YOU CAN TALK ABOUT ANY TYPE OF
17 PERCENTAGES. THOSE ARE AVERAGES, AND THEY DO NOT TAKE
18 INTO CONSIDERATION PARTICULAR FACETS OF AN INDIVIDUAL'S
19 USE OF WATER AND HOW IT IS USED AND WHAT FACTORS MIGHT
20 BE PRESENT THAT WOULD IMPACT DIFFERENTLY THE RIGHT TO
21 CLAIM A PERCENTAGE OF RETURN FLOWS. I'M NOT GOING TO
22 PRECLUDE THAT, BUT I'M NOT GOING TO MODIFY THE ORIGINAL
23 DECISION AS TO WHAT CONSTITUTES SAFE YIELD UNLESS THERE
24 IS A LEGAL BASIS FOR THE COURT TO SET THAT ASIDE, AND
25 I'VE HEARD NONE AT THIS POINT.

26 MR. DUNN: YOUR HONOR, MAY I BE HEARD JUST ON THAT
27 LAST POINT.

28 THE COURT: YES.

1 MR. DUNN: THE LEGAL BASIS THAT WE'RE TALKING
2 ABOUT HERE IS THE SAFE YIELD. SAFE YIELD, AS A MATTER
3 OF LAW, REQUIRES THE DETERMINATION OF THE RETURN FLOW
4 COMPONENT AMOUNT AND THE NATIVE SUPPLY AMOUNT FOR THE
5 BASIN. I UNDERSTAND WHAT THE COURT'S CONCERN IS, AS
6 EXPRESSED THIS MORNING, ABOUT WHAT A PARTICULAR PARTY
7 MIGHT CLAIM OF THAT AMOUNT. BUT WE CANNOT RELITIGATE
8 THE OVERALL AMOUNT OF SAFE YIELD IN THE BASIN --

9 THE COURT: I HAVE NO INTENTION OF DOING THAT.

10 MR. DUNN: BUT I THINK -- WELL, IF WE GO FORWARD
11 AND WE ALLOW PARTIES TO COME BEFORE THE COURT AND
12 PRESENT TO YOU DIFFERENT RECHARGE AMOUNTS FOR THE STATE
13 PROJECT WATER, IT -- IT NECESSARILY REQUIRES THE COURT
14 TO REDETERMINE THE SAFE YIELD COMPONENT.

15 THE COURT: I DON'T FOLLOW THAT AT ALL. WHAT I AM
16 CONCERNED ABOUT IS WHAT EACH INDIVIDUAL'S CLAIM WITH
17 REGARD TO RETURN FLOWS MIGHT BE, AND THAT VARIES FROM
18 PARCEL TO PARCEL, I PRESUME, FROM CITY TO CITY. AND
19 THOSE ARE THE FACTORS THAT I'M CONCERNED ABOUT. NOW,
20 WHETHER THE COURT ACCEPTS TESTIMONY THAT THE PERCENTAGES
21 ARE DIFFERENT, THAT'S ANOTHER QUESTION.

22 MR. DUNN: IF I CAN --

23 THE COURT: IT'S A DIFFERENT QUESTION.

24 MR. DUNN: IF I CAN APPROACH THIS IN A DIFFERENT
25 WAY, IN MAKING THE SAFE YIELD DETERMINATION, THE COURT
26 TOOK AN AVERAGE OF DIFFERENT TYPES OF RECHARGE BY
27 DIFFERENT TYPES OF WATER USERS. AND BASED ON THE
28 TESTIMONY THAT CAME BEFORE THE COURT IN THE PHASE 3

1 LANDOWNERS PERSUADE -- PRESENT EVIDENCE THAT RETURN FLOW
2 FOR URBAN USE IS 15 PERCENT. THEY ARE LOWERING THE
3 RETURN FLOW OF NATIVE WATER, AND THEY'RE LOWERING THE
4 RETURN FLOW OF IMPORTED WATER, WHICH IS WHAT WE OPPOSE,
5 WHICH IS A WHOLESALE RESTATEMENT OF THE TOTAL SAFE
6 YIELD.

7 THE COURT: THE AMOUNT OF RETURN FLOWS THAT WAS
8 TESTIFIED TO IN THE PHASE 3 TRIAL WAS TAKEN AS GENERALLY
9 ACCEPTED NUMBERS FROM THE LITERATURE TESTIFIED TO BY THE
10 EXPERTS. AND I DO NOT RECALL THAT THERE WAS ANY REAL
11 DISPUTE AS TO WHAT THE PERCENTAGES WERE DEPENDING UPON
12 WHAT THE USES WERE, WHETHER IT WAS MUNICIPAL, WHETHER IT
13 WAS INDUSTRIAL, WHETHER IT WAS AGRICULTURAL, WHETHER IT
14 WAS A RESIDENCE WITH A SEPTIC TANK OR CONNECTED TO A
15 SEWER, OR WHATEVER IT MIGHT BE.

16 AND MY RECOLLECTION IS NOT PERFECT AS TO
17 WHAT THE TESTIMONY WAS AT THIS POINT. THAT WAS SOME
18 TIME AGO. I'D HAVE TO GO BACK AND READ THE TESTIMONY
19 ITSELF IN ORDER TO REFRESH MY MEMORY. THAT TESTIMONY
20 WAS ESSENTIALLY UNCONTRADICTED, IF I REMEMBER CORRECTLY,
21 AND I WOULD NOT EXPECT TO HEAR ANY EVIDENCE THAT THOSE
22 NUMBERS WERE WRONG.

23 MR. WEEKS: YOU WILL.

24 THE COURT: WELL, MAYBE. MAYBE I WILL.

25 MR. WEEKS: WELL, I HOPE YOU DON'T BUT --

26 THE COURT: AT THIS POINT -- OKAY? -- I AM
27 CONCERNED THAT A PARTY ESTABLISH WHAT RETURN FLOW
28 NUMBERS THEY HAVE BASED UPON WHAT THEIR PUMPING IS AND

1 BASED UPON -- I'M SORRY -- BASED UPON THE WATER THAT
2 THEY RECEIVE FROM THE STATE WATER PROJECT OR SOME OTHER
3 SOURCE THAT IS EXPORTED OR IMPORTED FROM OUTSIDE THE
4 AREA AND THEN WHAT THEIR USES MIGHT BE THAT WOULD
5 REFLECT WHAT THE AMOUNT OF THEIR RETURN FLOWS MIGHT BE.

6 THAT'S WHAT I'M CONCERNED ABOUT HEARING.
7 THAT'S WHAT I THINK I'M GOING TO HEAR, AND WE'LL SEE IF
8 SOMEBODY OFFERS OTHER TYPES OF EVIDENCE.

9 MR. WEEKS: WELL, IF THE COURT --

10 THE COURT: I'M NOT RULING ON THE ADMISSIBILITY OF
11 EVIDENCE TODAY. OKAY? THAT'S NOT WHAT I'M DOING. WHAT
12 I'M TRYING TO DO IS TO FOCUS ON A CASE MANAGEMENT ORDER
13 THAT WILL PERMIT US TO PREPARE FOR TRIAL IN THE NEXT
14 PHASE IN AN ORDERLY FASHION.

15 MR. MCLACHLAN?

16 MR. TOOTLE: YOUR HONOR, JOHN TOOTLE FOR CAL
17 WATER. CAN I BE HEARD, PLEASE.

18 THE COURT: AFTER MR. MCLACHLAN.

19 MR. TOOTLE: THANK YOU.

20 MR. MCLACHLAN: I'D LIKE TO SIMPLIFY THIS A LITTLE
21 BIT BECAUSE WHAT WE'RE TALKING ABOUT IS ESSENTIALLY A
22 VERY BASIC, GENERALIZED ARITHMETIC EQUATION. $A + B$
23 $= C$, C BEING THE TOTAL SAFE YIELD NUMBER THAT
24 YOUR HONOR ESTABLISHED IN PHASE 3. NOBODY IS TRYING TO
25 CHALLENGE THAT, BUT YOUR HONOR DID NOT SET A AND B ,
26 WHICH ARE THE NATIVE RECHARGE -- OTHERWISE SOMETIMES
27 REFERRED TO AS THE NATIVE SAFE YIELD -- AND, IN THIS
28 CASE, THE RETURN FLOWS.

1 IF THE RETURN FLOWS ARE HIGHER, THEN
2 OBVIOUSLY WE KNOW THAT A IN THIS EQUATION, THE NATIVE
3 SAFE YIELD, DECREASES. BUT AT SOME POINT IN THIS
4 PROCEEDING YOUR HONOR DOES HAVE TO ESTABLISH A AND B,
5 BUT THOSE PHASES OF TRIAL HAVEN'T OCCURRED YET. AND THE
6 NOTION THAT THE 110,000 TOTAL SAFE YIELD NUMBER HAS TO
7 GO UP OR DOWN, IF RETURN FLOWS AREN'T STATIC, IS WRONG
8 BECAUSE WHAT HAPPENS IN THE EQUATION IS THAT WE THEN
9 KNOW, IF THE COURT SETS THE TOTAL RETURN FLOW NUMBER AT
10 X PERCENT, THAT THE NATIVE SAFE YIELD IS THEN DETERMINED
11 BECAUSE THERE'S ONLY THREE VARIABLES IN THIS EQUATION.

12 SO IT DOESN'T SEEM VERY COMPLICATED, AND WE
13 KNOW THAT THE COURT HAS MADE NO FINDINGS OF FACT ON
14 EITHER THE NATIVE SAFE YIELD OR THE RETURN FLOWS.

15 THE COURT: WELL, OBVIOUSLY, THEY WERE SORT OF
16 IMPLIED FINDINGS, I THINK, WITH REGARD TO THE RETURN
17 FLOW NUMBERS, THE PERCENTAGES THAT THE COURT WAS GIVEN,
18 TESTIFIED TO, AND ACCEPTED BY THE COURT. THOSE NUMBERS
19 ARE NOT LIKELY TO CHANGE.

20 THE -- BUT AT THIS POINT I'M NOT RULING ON
21 OBJECTIONS TO EVIDENCE. I'M TRYING TO FOCUS ON A CASE
22 MANAGEMENT ORDER.

23 MR. DUNN: AND FOCUSING ON THE CASE MANAGEMENT
24 ORDER, THE DISPUTE THAT HAS ARISEN BETWEEN THE PARTIES
25 IS ARE WE GOING TO PUT ON A CASE FOR RETURN FLOWS THAT
26 SHOWS HOW MUCH A PARTY CLAIMS, RETURN FLOW AMOUNT, BY
27 SHOWING HOW MUCH STATE PROJECT WATER IS PURCHASED AND
28 THEN TAKING A PERCENTAGE AMOUNT OF THAT AND ESTABLISHING