

Attorneys for Defendant and Cross-Complainant,
Phelan Piñon Hills Community Services District

Coordination Proceeding
Special Title (Rule 1550(b))

Included Actions:

*Los Angeles County Waterworks District
No. 40 v.
Diamond Farming Co., et al.*
Kern County Superior Court, 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.
Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS

) (For Filing Purposes Only: Santa Clara
) County Case No.: 1-05-CV-049053)

) (Filing Fees Exempt, Per Gov't Code § 6103)

PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT'S REQUEST FOR
JUDICIAL NOTICE (PHASE 5 TRIAL)

Phase Five Trial:

) Date: February 10, 2014
) Time: 9:00 a.m.
) Dept.: Room 222 (Old Dept. 1)

) (Phase Six Trial Date: August 4, 2014)

1 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to Evidence Code §§ 452 and 543, Phelan Piñon
3 Hills Community Services District ("Phelan Piñon Hills"), hereby requests that the Court take
4 judicial notice of the following documents and the contents thereof for the Phase Five Trial, filed
5 concurrently herewith as follows:

- 6 1. Exhibit "A": Local Agency Formation Commission County of San Bernardino's
7 Certificate of Completion for Change of Organization with Effective Date of March
8 18, 2008, identified on Phelan Piñon Hills' Exhibit List for Phase Five Trial
9 ("Phelan's Exhibit List") as 5-PhelanCSD-1.
- 10 2. Exhibit "B": County of Los Angeles Quitclaim Deed to San Bernardino County
11 Service Area 70, Improvement Zone L for Parcel 32, in the County of Los Angeles,
12 as shown of a Record of Survey filed in Book 74, Page 43, identified on Phelan's
13 Exhibit List as 5-PhelanCSD-2.
- 14 3. Exhibit "C": Adoption of Negative Declaration for Well 14 and Notice of
15 Determination for construction of a well, dated August 29, 2000, identified on
16 Phelan's Exhibit List as 5-PhelanCSD-3.
- 17 4. Exhibit "D": California Department of Public Health Correspondence to San
18 Bernardino County Service Area 70, Improvement Zone L from approximately 1999
19 regarding water supply demands, identified on Phelan's Exhibit List as 5-
20 PhelanCSD-4.
- 21 5. Exhibit "E": PPHCSD's Annual Notice of Groundwater Extraction & Diversion
22 for 2011, identified on Phelan's Exhibit List as 5-PhelanCSD-16.
- 23 6. Exhibit "F": PPHCSD's *Amended* Annual Notice of Groundwater Extraction &
24 Diversion for 2010, identified on Phelan's Exhibit List as 5-PhelanCSD-17.
- 25 7. Exhibit "G": PPHCSD's Annual Notice of Groundwater Extraction & Diversion
26 for 2005 through 2009, identified on Phelan's Exhibit List as 5-PhelanCSD-18.

8. Exhibit “H”: Portion of Certified Transcript of Trial Testimony of Joseph Scalmanini from January 13, 2011 regarding percentage of outside irrigation in the Antelope Valley, identified on Phelan’s Exhibit List as 5-PhelanCSD-19.
9. Exhibit “I”: Portion of *Summary Expert Report* (dated July, 2010) regarding percentage of outside irrigation in the Antelope Valley, identified on Phelan’s Exhibit List as 5-PhelanCSD-20.
10. Exhibit “J”: Court’s Order After Hearing on Jurisdictional Boundaries, dated November 3, 2006, also available on the Court’s website for this matters as Document #325.
11. Exhibit “K”: Phelan Piñon Hills’ Cross-Complaint for Declaratory, Injunctive and Other Equitable Relief Including a Physical Solution, filed December 31, 2008, also available on the Court’s website for this matter as Document #2350.
12. Exhibit “L”: Portions of Joseph Scalmanini’s Phase Three trial testimony on January 13, 2011, true and correct copies of which are attached hereto.
13. Exhibit “M”: Portions of Joseph Scalmanini’s Phase Three trial testimony on January 20, 2011, true and correct copies of which are attached hereto.
14. Exhibit “N”: Amended Statement of Partial Decision for Phase IV Trial With Party Name Corrections, dated July 19, 2013 with a “filed” stamp, also available on the Court’s website for this matters as Document #6973.

Exhibits A through D

Exhibits A through D, *supra*, are subject to judicial notice pursuant to Section 452, subsections (b), (c), and/or (h) because each of those items were official acts by public agencies, and as further articulated herein. (*See, Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 416.) Judicial notice may be taken of “regulations and legislative enactments issued under the authority [of] . . . any public entity in the United States.” (Evid. Code § 452, subd. (b); *Beresford Neighborhood Association v. City of San Mateo* (1989) 207 Cal.App.3d 1180, 1190.) It is well-established that “[o]fficial acts include records, *reports* and orders of administrative agencies.” (*Rodas v. Spiegel* (2000) 87 Cal.App.4th 513, 518.)

1 Courts take judicial notice of a wide variety of administrative and executive records, reports,
2 and acts under section 452, subdivision (c). (See, e.g., *Masters v. San Bernardino County*
3 *Employees Retirement Ass'n* (1995) 32 Cal.App.4th 30, 37 [taking judicial notice of by-laws of
4 county retirement association]; *City of Sacramento v. State Water Resources Control Board* (1992)
5 2 Cal.App.4th 960 [judicial notice taken of minutes of relevant Regional Water Quality Control
6 Board meetings]; *Post v. Prati* (1979) 90 Cal.App.3d 626 [judicial notice taken of legislative
7 committee reports and excerpts from testimony given at public hearings]; *Laurel Heights*
8 *Improvement Ass'n. v. The Regents of the University of California* (1993) 6 Cal.4th 1112, 1123 n. 5
9 [judicial notice taken of University publication entitled "Procedural Handbook and Model
10 Approach for Implementing the California Environmental Quality Act].)

11 Courts have taken judicial notice of official documents similar to the documents listed
12 above and make findings based on these documents. (*Planning and Conservation League*
13 *v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 898-902.) For example, in *White v.*
14 *State of California* (1971) 21 Cal.App.3d 738, 742-43 n.1, the court took judicial notice of
15 information in a publication issued by the U.S. Army Corps of Engineers entitled "Water
16 Resources Development in California." The court used this report as the basis for its finding that
17 the Petaluma River was "navigable in fact." (*Ibid.*) In *Washington v. County of Contra Costa*
18 (1995) 38 Cal.App.4th 890, 901 the court upheld the trial court's decision to take judicial notice of
19 certain documents submitted by the County of Contra Costa, including the County's area plan, the
20 County's inspection report of a chemical facility; documents submitted by the chemical company
21 to County, and other documents submitted by the County relating to its regulation of the chemical
22 company. The trial court admitted these documents pursuant to Evidence Code section 452,
23 subdivision (c). (*Ibid.*)

24 Furthermore, the California Supreme Court has taken judicial notice of data contained in a
25 publication issued by the State Department of Education on the ground that the publication was
26 issued an agency of the state. (*Board of Education v. City of Los Angeles v. Watson* (1966) 63
27 Cal.2d 829, 836 n.3.) After taking judicial notice of the publication, the court utilized the data
28 contained therein to support its conclusion that individual school districts in Los Angeles County

1 have larger numbers of students than do the districts in other counties. (*Id.* at 836.) In *Planned*
2 *Parenthood Shasta-Diablo, Inc. v. Williams* (1995) 10 Cal.4th 1009, 1021, the California Supreme
3 Court took judicial notice of official maps maintained by the Public Works Department of the City
4 of Vallejo.

5 **Exhibits E through G**

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

15 The trustworthiness requirement for the official records exception to the hearsay rule is
16 established by a showing that “the written report is based upon the observations of public
17 employees who have a *duty* to observe the facts and report and record them correctly.” (*Fisk v.*
18 *Department of Motor Vehicles* (1981) 127 Cal. App. 3d 72, 77.) A trial court has broad discretion
19 in determining whether a party has established these foundational requirements. (*People v. Beeler*
20 (1995) 9 Cal.4th 953, 978.) The object of this hearsay exception “is to eliminate the calling of each
21 witness involved in preparation of the record and substitute the record of the transaction instead.”
22 (*County of Sonoma v. Grant W.* (1986) 187 Cal.App.3d 1439, 1451.) Moreover, for the exception
23 to apply, “[i]t is not necessary that the person making the entry have personal knowledge of the
24 transaction.” (*Loper v. Morrison* (1944) 23 Cal.2d 600, 609.) “[T]he inclusion of conclusions and
25 opinions in a record does not render it inadmissible per se.” (*People v. Flaxman* (1977) 74
26 Cal.App.3d Supp. 16, 20 citing Jefferson, California Evidence Benchbook (Cont.Ed.Bar 1972)
27 pages 91, 99.) “The overriding consideration is whether the record is trustworthy.” (*Id.*) “The
28 trustworthiness requirement for this exception to the hearsay rule is established by a showing that

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

8 Whether the trustworthiness requirement has been met is a matter within the trial court's
9 discretion." (*People v. Parker* (1992) 8 Cal.App.4th 110, 116; see also *In re Jacqueline H* (1979)
10 94 Cal.App.3d 808, 815 [same].) In *People v. Dunlop* (1993) 18 Cal.App.4th 1468, 1470, the Court
11 of Appeal stated that the Section 1280 foundational requirements are met with the presumption in
12 Section 664 that public entities are presumed to perform their official duties: Although similar to
13 the business records exception [Evidence Code section 1271], the official records exception differs
14 in one important respect. Evidence Code section 1271 "requires a witness to testify as to the
15 identity of the record and its mode of preparation in every instance. In contrast, [Evidence Code]
16 [s]ection 1280 . . .

17 **Exhibits J, K, and N**

18 Under section 452, subdivision (d), the Court may take judicial notice Exhibits J, K, and N,
19 *supra*, because the records of the courts of the State of California. This includes *any orders*,
20 findings of facts and conclusions of law, and judgments within court records. (*Lockley v. Law*
21 *Office of Cantrell, Green, Pekich, Cruz, and McCort* (2001) 91 Cal.App.4th 875, 882; *Day v. Sharp*
22 (1975) 50 Cal.App.3d 904, 914 [court cannot take judicial notice of truth of hearsay allegations or
23 pleadings allegations, but may take judicial notice of truth of facts asserted in documents such as
24 orders, findings of fact and conclusions of law, and judgments].)

25 **Exhibits H, I, L, and M**

26 Exhibits H, I, L, and M, *supra*, are subject to judicial notice because Sections 1291 and
27 1292 permit the Court to take judicial notice of "former testimony" particularly given that the
28 witness who provided the former testimony (Mr. Joseph Scalmanini) is "unavailable," as the Court

1 found during a recent hearing in which a party sought the deposition of Mr. Scalmanini for the
2 Phase Five trial.

3
4 Dated: February 18, 2014

Respectfully submitted,

ALESHIRE & WYNDER, LLP

5
6 By: 

7 Wesley A. Miliband
8 Attorneys for Cross-Defendant and
9 Cross-Complainant,
10 Phelan Piñon Hills Community
11 Services District
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PROOF OF SERVICE

I, Linda Yarvis,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On February 18, 2014, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S REQUEST FOR JUDICIAL NOTICE (PHASE 5 TRIAL)** as follows:

☒ (ELECTRONIC SERVICE) By posting the document(s) listed above to the Santa Clara County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org.

☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, 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.

☐ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on February 18, 2014, at Irvine, California.

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

Linda Yarvis
(Type or print name)

(Signature)