

BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
JEFFREY V. DUNN, Bar No. 131926
STEFANIE HEDLUND MORRIS, Bar No. 239787
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612
TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
Attorneys for Cross-Complainant
LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE SECTION
6103

OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
JOHN F. KRATTLI, Bar No. 82149
COUNTY COUNSEL
WARREN WELLEN, Bar No. 139152
PRINCIPAL DEPUTY COUNTY COUNSEL
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-8407
TELECOPIER: (213) 687-7337

Attorneys for Cross-Complainant LOS ANGELES
COUNTY WATERWORKS DISTRICT NO. 40

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

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.
BC 325201;

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, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination 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
PHASE IV TRIAL BRIEF

Trial: May 28, 2013

1 **I. INTRODUCTION**

2 During the Phase IV trial, Los Angeles County Waterworks District No. 40 ("District No.
3 40") will present government records through Mr. Adam Ariki including, notices of groundwater
4 extraction and diversion, reports to other State and local entities regarding groundwater pumping
5 and other documents or testimony evidencing District No. 40 pumped 16,583.24 acre-feet of
6 groundwater in 2011 and 20,618.99 acre-feet of groundwater in 2012 from the Antelope Valley
7 Groundwater Adjudication Area ("Basin"). Mr. Ariki is responsible for District No. 40's
8 groundwater production and is the Assistant Deputy Director with the County of Los Angeles
9 Department of Public Works. He is authorized to authentic documents on behalf of District No.
10 40 and has authenticated each of the exhibits to be provided to the Court during the Phase IV trial.

11 **II. DISTRICT NO. 40 REGULARLY RECORDS ITS GROUNDWATER PUMPING**
12 **IN THE REGULAR COURSE OF ITS GOVERNMENTAL OPERATIONS**

13 District No. 40 is a public agency that operates five large water systems responsible for
14 providing water to over 55,000 homes and businesses.¹ District No. 40 pumps groundwater from
15 the Basin and imports State Water Project water. To ensure a safe and reliable public water
16 supply to its customers and to comply with various regulatory requirements, District No. 40
17 routinely generates records on its water production and its groundwater delivery.²

18 Government records are admissible under California Evidence Code Section 1280 to
19 prove the occurrence or existence of an act, condition or event recorded in the record, provided
20 that the writing "was made by and within the scope of duty of a public employee" and "was made
21 at or near the time of the act, condition, or event." (*Jazayeri v. Mao* (2009) 174 Cal. App. 4th
22 301, 318 ["official records exception to the hearsay rule is beyond dispute"].) Moreover, these
23 records were prepared in the "regular course of business" and also fall under the business record
24 exception to the hearsay rule. (Evid. Code §1271.)

25 ¹ See Exhibits "4-D40-2" (2011 Department of Water Resource, Public Water System Statistics), "4-D40-3" (2012
26 Department of Water Resource, Public Water System Statistics), "4-D40-4" (2011 Annual Report to the Drinking
27 Water Program) and "4-D40-5" (2012 Annual Report to the Drinking Water Program).

28 ² See Exhibits "4-D40-2" (2011 Department of Water Resource, Public Water System Statistics), "4-D40-3" (2012
 Department of Water Resource, Public Water System Statistics), "4-D40-4" (2011 Annual Report to the Drinking
 Water Program), "4-D40-5" (2012 Annual Report to the Drinking Water Program), and "4-D40-6" (Spreadsheet for
 Calendar Years 2011 and 2012).

Here District No. 40 has kept records or submitted reports that are admissible under the official and business records exceptions to the hearsay rule.

A. Groundwater Extraction Notices

Section 5001 of the Water Code requires “[e]ach person who, after 1955, extracts ground water in excess of 25 acre-feet in any year [to] file with the [State Water Resource Control Board] [“(State Board”)”] on or before March 1st of the succeeding year a ‘Notice of Extraction and Diversion of Water.’” The annual Notice of Extraction and Diversion of Water must contain, among other things: (1) “[t]he quantity of water taken from each surface and ground water source from which such person received any water in the preceding calendar year”; and (2) “[l]ocation of each such surface and ground water source through or by means of which water has been taken in such preceding year.”

To comply with its obligations under the Water Code, District No. 40 keeps records in the regular course of its governmental operations that track groundwater pumped from each well. Each District No. 40 well has a flow meter that measures water produced. The meter readings are recorded on a monthly basis and form the basis of District No. 40’s groundwater production, which is then reported to the State Board. District No. 40 produced the relevant meter readings in its responses to the Discovery Order for the Phase IV trial and at Adam Ariki’s deposition. Importantly, these meter readings are used to compile reports made to various State and local agencies.

B. Annual Reports to the Drinking Water Program

As a public water supplier, District No. 40 is also subject to various reporting requirements of the California Safe Drinking Water Act, Health & Saf. Code § 116270 *et seq.* Section 116530 of the Health and Safety Code provides:

A public water system shall submit a technical report to the department as part of the permit application or when otherwise required by the department. This report may include, but not be limited to, detailed plans and specifications, water quality information, and physical descriptions of the existing or proposed system, and financial assurance information.

(Health & Saf. §116530.) Consequently, District No. 40 submits, for each of its five water systems, an annual report to California's Drinking Water Program that details its water sources and amount of water produced from each source.³ Such reporting is made possible by District No. 40's flow meter records.

C. Public Water System Statistics

District No. 40 participates in the California Department of Water Resources ("DWR") annual yearly survey of public water agencies in California by completing a Public Water System Statistics Form. The data gathered from the DWR survey is used to update the California Water Plan (Bulletin 160) and Urban Water Use in California (Bulletin 166). The DWR survey asks public water agencies to specify, among other things: (1) its water production by source and by month; and (2) its water deliveries by customer class and by month.⁴ As part of its course of business, District No. 40 completes the survey for each of its five water systems on a yearly basis.

During his deposition, Mr. Ariki, Assistant Deputy Director with the County of Los Angeles Department of Public Works, confirmed District No. 40's flow meter monthly recordings and groundwater production tracking.⁵ At trial, Mr. Ariki will testify that the water meter records, the Notices of Extraction and Diversion, the Public Water System Statistics, the Annual Reports to the Drinking Water Program, and other internal documents and records were made in the regular course of District No. 40's business and were made at or near the time of the relevant event.

III. CONCLUSION

The records and testimony that District No. 40 will present during the Phase IV trial will prove that District No. 40 pumped 16,583.24 acre-feet of groundwater in 2011 and 20,618.99 acre-feet of groundwater in 2012 from the Basin.

\\

\\

³ Exhibits "4-D40-4" (2011 Annual Report to the Drinking Water Program) and "4-D40-5" (2012 Annual Report to the Drinking Water Program).

⁴ Exhibits "4-D40-2" (2011 Department of Water Resource, Public Water System Statistics) and "4-D40-3" (2012 Department of Water Resource, Public Water System Statistics),

⁵ Deposition Transcript of Adam Ariki, Tr. 64:9-65:7.

1 Dated: May 28, 2013

BEST BEST & KRIEGER LLP

2
3 By: 

4 ERIC L. GARNER
5 JEFFREY V. DUNN
6 STEFANIE D. HEDLUND
7 Attorneys for Cross-Complainant
8 LOS ANGELES COUNTY
9 WATERWORKS DISTRICT NO. 40
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 May 28, 2013, I served the within document(s):

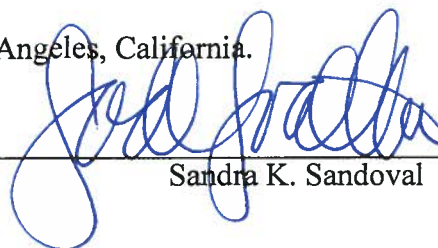
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S
PHASE IV TRIAL BRIEF

- ☒ 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 caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

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 May 28, 2013, at Los Angeles, California.


Sandra K. Sandoval

26345.00000\7985037.2