

Case No. S251709

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

PROTECTING OUR WATER & ENVIRONMENTAL
RESOURCES et al.,
Plaintiffs and Appellants,

v.

STANISLAUS COUNTY et al.,
Defendants and Respondents.

Court of Appeal of the State of California
Fifth Appellate District, Case No. F073634
Superior Court of the State of California
County of Stanislaus, Case No. 2006153
The Honorable Roger M. Beauchesne, Judge, Presiding

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF AMICUS
CURIAE BRIEF OF COUNTY OF SAN LUIS OBISPO, JUSTIN
VINEYARDS AND WINERY LLC, LAPIS LAND COMPANY, LLC,
PASO ROBLES VINEYARDS, INC. AND MOONDANCE
PARTNERS, LP**

Rita L. Neal (SBN 151156)
Erica A. Stuckey (SBN 266341)
COUNTY COUNSEL, COUNTY
OF SAN LUIS OBISPO
1055 Monterey Street, Suite D320
San Luis Obispo, CA 93408
Telephone: (805) 781-5400
Facsimile: (805) 781-4221
Email: estuckey@co.slo.ca.us

*Attorneys for County of San Luis
Obispo, et al.*

Courtney Vaudreuil (SBN 223439)
ROLL LAW GROUP PC
11444 W. Olympic Blvd.
Los Angeles, CA 90064-1557
Telephone: (310) 966-8400
Facsimile: (310) 966-4781
Email: courtney.vaudreuil@roll.com

*Attorneys for JUSTIN Vineyards and
Winery LLC*

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11444 W. Olympic Blvd.
Los Angeles, CA 90064-1557
Telephone: (310) 966-8400
Facsimile: (310) 966-4781
Email: courtney.vaudreuil@roll.com

*Attorneys for JUSTIN Vineyards and
Winery LLC*

Timothy M. Taylor (SBN 144335)
Allison C. Smith (SBN 242663)
STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: (916) 447-0700
Facsimile: (916) 447-4781
Email: tim.taylor@stoel.com

*Attorneys for
Lapis Land Company, LLC*

Thomas D. Green (SBN 93908)
Michelle L. Gearhart (SBN 263573)
ADAMSKI MOROSKI MADDEN CUMBERLAND & GREEN LLP
Post Office Box 3835
San Luis Obispo, CA 93403-3835
Telephone: (805) 543-0990
Facsimile: (805) 543-0980
Email: green@ammcglaw.com
Email: gearhart@ammcglaw.com

Attorneys for Paso Robles Vineyards, Inc. and Moondance Partners, LP

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452 and 459, and California Rules of Court, rule 8.520(g), amici curiae County of San Luis Obispo (“SLO County”) and Real Parties in Interest JUSTIN Vineyards and Winery LLC, Lapis Land Company, LLC, Paso Robles Vineyards, Inc. and Moondance Partners, LP (collectively, “Real Parties”) move this Court for an order taking judicial notice of the following documents in support of SLO County’s and Real Parties’ Amicus Curiae Brief:

- Exhibit A. Declaration of Elizabeth A. Pozzebon in Support of Amicus Curiae Brief of SLO County and Real Parties;
and
- Exhibit B. SLO County Code, Chapter 8.40 – Construction, Repair, Modification and Destruction of Wells.

As set forth below, this Court is authorized under Evidence Code section 459 to take judicial notice of any matter specified in Evidence Code section 452. The foregoing documents are judicially noticeable under section 452 of the Evidence Code and necessary and appropriate to understand the similarities between SLO County’s well construction ordinance and the ordinance of Stanislaus County, to understand evidence before the Second District Court of Appeal in rendering the opinion in *California Water Impact Network v. County of San Luis Obispo* (2018) 25 Cal.App.5th 666, review granted November 14, 2018, S251056, and to understand the practical ramifications of the Fifth District Court of Appeal’s underlying decision in this proceeding. The documents are, therefore, necessary and appropriate for consideration by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

This Court may properly take judicial notice of Exhibits A and B. Evidence Code section 452, subdivision (b) allows a court to take judicial notice of “regulations and legislative enactments issued by or under the

authority of the United States or any public entity in the United States.” A “[p]ublic entity” includes a nation, state, county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic.” (Evid. Code, § 200.)

A court may properly notice a public agency’s actions under Section 452, subdivision (b). (*Edna Valley Assn. v. San Luis Obispo Co.* (1977) 67 Cal.App.3d 444 [136 Cal.Rptr. 665].) Exhibit A is a declaration by a county official providing information regarding SLO County’s implementation of its well construction ordinance. Exhibit B is an ordinance approved and adopted by a public entity, SLO County. Thus, this Court may take judicial notice of Exhibits A and B under section 452, subdivision (b).

Furthermore, Evidence Code section 452, subdivision (c) allows the Court to judicially notice “[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States.” An “official act” includes records, reports and orders of governmental agencies. (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518 [104 Cal.Rptr.2d 439].) The Court may take judicial notice of Exhibits A and B as official acts of SLO County under section 452, subdivision (c).

Finally, Evidence Code section 452, subdivision (h) allows a court to take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate determination by resort to sources of reasonably indisputable accuracy.

Amici curiae did not have an opportunity to request judicial notice of the documents presented in Exhibits A and B in the trial court, and thus understand that the trial court did not take judicial notice of any of these documents. (Cal. Rules of Court, rule 8.252(a)(2)(B).) This Court has taken judicial notice of materials submitted by amicus curiae in other matters. (See, e.g., *Ste Marie v. Riverside County Regional Park and*

Open-Space District (2009) 46 Cal.4th 282, 293, fn. 7 [93 Cal.Rptr.3d 369]
[taking judicial notice of county board resolutions submitted by amicus
curiae].)


Judicial notice of these documents is necessary to adequately and
appropriately consider the merits of this appeal.

CONCLUSION

For the foregoing reasons, SLO County and Real Parties request the
Court take judicial notice of the foregoing documents in support of their
Amicus Curiae Brief.


Respectfully submitted,
May 10, 2019

COUNTY OF SAN LUIS OBISPO

By: 
ERICA STUCKEY
Deputy County Counsel
Attorney for Respondents


May 10, 2019

ROLL LAW GROUP PC

By: 
COURTNEY VAUDREUIL
Attorney for Real Party In Interest
JUSTIN Vineyards & Winery LLC

May 10, 2019

ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP

By: 
THOMAS D. GREEN
MICHELLE L. GEARHART
Attorneys for Real Parties in Interest,
Paso Robles Vineyards Inc. and
Moondance Partners, LP
(erroneously named and served R.
O'Neal Gray)

May 10, 2019

STOEL RIVES LLP


By: 
TIMOTHY M. TAYLOR
ALLISON C. SMITH
Attorneys for Real Parties in Interest
Lapis Land Company, LLC

EXHIBIT A

Case No. S251709

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**DECLARATION OF ELIZABETH A. POZZEBON IN SUPPORT OF
COUNTY OF SAN LUIS OBISPO, JUSTIN VINEYARDS AND
WINERY, LLC, LAPIS LAND COMPANY, LLC, PASO ROBLES
VINEYARDS, INC. AND MOONDANCE PARTNERS, LP'S
AMICUS CURIAE BRIEF**

Rita L. Neal (SBN 151156)
Erica A. Stuckey (SBN 266341)
COUNTY COUNSEL, COUNTY
OF SAN LUIS OBISPO
1055 Monterey Street, Suite D320
San Luis Obispo, CA 93408
Telephone: (805) 781-5400
Facsimile: (805) 781-4221
Email: estuckey@co.slo.ca.us

*Attorneys for County of San Luis
Obispo, et al.*

Courtney Vaudreuil (SBN 223439)
ROLL LAW GROUP PC
11444 W. Olympic Blvd.
Los Angeles, CA 90064-1557
Telephone: (310) 966-8400
Facsimile: (310) 966-4781
Email: courtney.vaudreuil@roll.com

*Attorneys for JUSTIN Vineyards and
Winery LLC*

Timothy M. Taylor (SBN 144335)
Allison C. Smith (SBN 242663)
STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: (916) 447-0700
Facsimile: (916) 447-4781
Email: tim.taylor@stoel.com

*Attorneys for
Lapis Land Company, LLC*

Thomas D. Green (SBN 93908)
Michelle L. Gearhart (SBN 263575)
ADAMSKI MOROSKI MADDEN CUMBERLAND & GREEN LLP
Post Office Box 3835
San Luis Obispo, CA 93403-3835
Telephone: (805) 543-0990
Facsimile: (805) 543-0980
Email: green@ammcglaw.com
Email: gearhart@ammcglaw.com

Attorneys for Paso Robles Vineyards, Inc. and Moondance Partners, LP

1. I, Elizabeth A. Pozzebon, am the Director of the Environmental Health Services Division (“EHS”) of the San Luis Obispo County Health Agency and am employed by the County of San Luis Obispo (“County”).
2. I offer this Declaration in support of the amicus brief filed by the County, jointly with JUSTIN Vineyards and Winery, LLC, Lapis Land Company, LLC, Paso Robles Vineyards, Inc. and Moondance Partners, LP. I have personal knowledge of each fact stated in this Declaration and if called upon to do so, I could competently testify thereto in a court of law.
3. EHS implements the County’s well construction ordinance (County Code Chapter 8.40) by and through the well permitting program administered by its environmental health officers under the authority of the County Health Officer.
4. In its administration of the well permitting program, EHS maintains an electronic database and paper files in which it stores information related to each well construction permit that it issues, including information supplied by each permit applicant on the well application form.
5. During 2018, EHS issued 232 well construction permits for production wells located within the County, 164 (or approximately 70%) of which were for private domestic wells, as identified by applicants on the well permit applications submitted to EHS.
6. During the period January 1, 2014 through April 30, 2017, EHS estimates, based on voluntary reports, that it issued 133 well construction permits to replace private domestic wells that had gone dry.
7. On average, EHS currently processes well construction permits within five days of receipt of a complete application.
8. During 2018, EHS did not require any well construction permit applicant to exceed the defined minimum horizontal separation distances between a well and a known or potential source of pollution or

contamination, as specified in the chart set forth in Section 8 of Department of Water Resources Bulletin No. 74-90 (p. 12) before issuing the permit.

9. With respect to the four well permits issued by EHS and challenged in *California Water Impact Network v. County of San Luis Obispo* (2018) 25 Cal.App.5th 666, none of the plot plans submitted as part of the well permit applications identify any sources of pollution or contamination.

10. In addition to administering the well permitting program, EHS administers permitting programs in connection with food facilities, tattoo parlors, public swimming pools and facilities that handle hazardous materials / wastes within the County. EHS issues permits pursuant to these programs without review under the California Environmental Quality Act (Public Resource Code § 21000 et seq.).

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

Executed this 9th day of May 2019 at San Luis Obispo, California



Elizabeth A. Pozzebon

EXHIBIT B

Chapter 8.40 - CONSTRUCTION, REPAIR, MODIFICATION AND DESTRUCTION OF WELLS

8.40.010 - Purpose.

It is the purpose of this chapter to provide for the construction, repair, modification and destruction of wells in such a manner that the ground water of this county will not be contaminated or polluted and that water obtained from wells will be suitable for beneficial use and will not jeopardize the health, safety or welfare of the people of this county.

(Ord. 1271 § 1 (part), 1973)

8.40.020 - Definitions.

The following words and phrases shall, for the purpose of this chapter, have the meanings ascribed to them in this section:

"Abandoned" or "abandonment" shall apply to a well which has not been used for a period of one year, unless the owner declares in writing to the health officer, his intention to use the well again for supplying water or other associated purpose (such as an observation well or injection well) and received approval of such declaration. All such declarations shall be renewed annually. Test holes and exploratory holes shall be considered abandoned twenty-four hours after construction work has been completed, unless otherwise approved by the health officer;

"Agricultural wells" mean water wells used to supply water for irrigation or other agricultural purposes, including stock wells;

"Cathodic protection well" means any artificial excavation in an aquifer or in excess of fifty feet, constructed by any method for the purpose of installing equipment or facilities for the protection electrically of metallic equipment in contact with the ground commonly referred to as cathodic protection;

"Community water supply well" means a water well for domestic purposes in systems subject to Chapter 7 of Part 1 of Division 5 of the California Health and Safety Code (commencing with Section 4010);

"Completion or completion operation" means any work conducted after artificial excavation to include:

- (1) Placement of well casing,

- (2) Gravel packing,
- (3) Sealing,
- (4) Casing perforation, or
- (5) Other operations deemed necessary by the health officer;

"Contamination" means an impairment of the quality of water to a degree which creates a hazard to the public health through poisoning or through spread of disease;

"Destruction or destroy" means the complete filling of a well in such a manner that it will not produce water or act as a conduit for the interchange of water, when such interchange will result in deterioration of the quality of water in any water-bearing formations penetrated;

"Electrical grounding well" means any artificial excavation in an aquifer or in excess of fifty feet, constructed by any method for the purpose of establishing an electrical ground;

"Health officer" means the health officer of San Luis Obispo County, his medical deputies, his environmental health officers, or his duly authorized representatives;

"Individual domestic well" means a water well used to supply water for domestic needs of an individual residence or commercial establishment;

"Industrial wells" mean water wells used to supply industry on an individual basis;

"Modification or repair" means the deepening of a well, reperforation, sealing or replacement of a well casing;

"Observation well" means a well used for monitoring or sampling the condition of a water-bearing aquifer, such as water pressure, depth, movement or quality;

"Person" includes any person, firm, association, corporation, organization, partnership, business trust, company, or special district formed under the laws of the State of California;

"Pollution" means an alteration of the quality of water to a degree which unreasonably affects:

- (1) Such waters for beneficial uses, or
- (2) Facilities which serve such beneficial uses. Pollution may include contamination;

"Public nuisance," when applied to a well, means any well which threatens to impair the quality of ground water or otherwise jeopardize the health and safety of the public;

"Salt water (hydraulic) barrier wells" mean wells constructed to extract or introduce water into the ground as a means of preventing intrusion of salt water into a fresh water-bearing aquifer;

"Test or exploratory hole" means an excavation used for determining the nature of underground geological or hydrological conditions, whether by seismic investigation, direct observation, or any other means;

"Well" means any artificial excavation constructed by any method for the purpose of extracting water from or injecting water into, the underground, or for providing cathodic protection or electrical grounding of equipment, or for making tests or observations of underground conditions, or for any other similar purpose. Wells include, but shall not be limited to, community water supply wells, individual domestic wells, industrial wells, agricultural wells, cathodic protection wells electrical grounding wells, test and exploratory holes, observation wells and salt water (hydraulic) barrier wells, as defined herein, and other wells whose regulation is necessary to fulfill the purpose of this chapter. This definition shall not include:

- (1) Oil and gas wells, or geothermal wells constructed under the jurisdiction of the State Department of Conservation, except those wells converted to use as water wells, or
- (2) Wells used for the purpose of:
 - a. Dewatering excavation during construction,
 - b. Stabilizing hillsides or earth embankments,
- (3) And the following artificial excavations:
 - a. Drill holes for soil testing purposes where such holes are less than twenty-five feet in depth,
 - b. Holes or excavations for soil percolation tests,
 - c. Drill holes for seismic exploration where such drill holes are less than twenty-five feet in depth,
 - d. Excavations for drainage percolation ponds or spreading basins.

"Well drilling contractor" means a contractor licensed in accordance with the provisions of the Contractors License Law, Chapter 9 of Division 3 of the Business and Professions Code (commencing with Section 7000) and who shall possess a valid C-57 water well contractors license.

(Ord. 2400 § 1 (part), 1989; Ord. 1271 § 1 (part), 1973)

8.40.030 - Acts prohibited, permit required.

- (a) No person shall, within the unincorporated area of San Luis Obispo County, construct, repair, modify or destroy any well unless such person possesses a valid permit issued by the health officer as provided in this chapter.
- (b) No person shall construct, repair, modify or destroy any well unless such construction, repair, modification or destruction is in conformance with the terms, conditions, and standards specified in this chapter and in the written permit issued by the health officer.
- (c) No person shall construct, repair, modify or destroy any well bore hole, well casing, or well packing or conduct any site grading or fill activities in conjunction with the construction, repair, modification or destruction of any well bore hole, well casing, or well packing without first satisfying all applicable provisions of Section 22.30.204 of this code (New or Expanded Irrigated Crop Production Overlying the Paso Robles Groundwater Basin, excluding the Atascadero Sub-basin), where applicable, and Sections 22.05.030 et seq. or Sections 23.05.020 et seq. of this code (grading), which may include the necessity of obtaining an Agricultural Offset Clearance or a grading permit from the county department of planning and building in addition to the permit required by this chapter.

(Ord. 2343 § 1, 1988; Ord. 2274 § 3, 1986; Ord. 1271 § 1 (part), 1973)

(Ord. No. 3306, § 1, 10-27-15)

8.40.040 - Permits.

- (a) Applications. Applications for permits shall be made to the health officer and shall include the following:
 - (1) A plot plan indicating the exact location of the well with respect to the following items within a radius of two hundred feet of the well:

- a. Property lines,
 - b. Sewage disposal systems or works carrying or containing sewage or industrial wastes,
 - c. All intermittent or perennial, natural or artificial water bodies or water courses,
 - d. Drainage pattern of the property,
 - e. Existing wells,
 - f. Access roads;
- (2) Location of the property (include township, range, section, and assessor's parcel number);
 - (3) Name of the person who will construct the well;
 - (4) Estimated or proposed depth of well;
 - (5) Use of well;
 - (6) Other information as may be necessary to determine if underground waters will be protected;
 - (7) Evidence of compliance with Section 22.30.204 of this code (New or Expanded Irrigated Agriculture Overlying the Paso Robles Groundwater Basin, excluding the Atascadero Sub-basin), where applicable;
- (b) Fees.
- (1) Permit Application Fees. All applications for permits shall be on a form supplied by the county health department and, except for those made by a public agency, shall be accompanied by payment of the fee as established by resolution of the board of supervisors, none of which shall be refundable;
 - (2) Expiration of Permit. Each permit issued pursuant to this chapter shall expire within six months following the issuance of the permit. Upon expiration of any permit issued pursuant hereto, no further work may be done in connection with construction, repair, modification, or destruction of a well unless and until a new permit for such purpose is secured in accordance with the provisions of this chapter;
- (c) Prohibition. No permit shall be issued to any person who is not a well drilling contractor in possession of a valid C-57 (Water Code Section 13750.5).
- (d)

Bonds. As a condition precedent to the issuance of a permit, every applicant for a permit shall file or have on file with the health officer, a corporate surety bond in the sum of twenty-five thousand dollars issued by a surety company licensed to do business in this state, or in lieu thereof, a cash deposit in the sum of twenty-five thousand dollars.

As used in this subsection, the term "cash deposit" includes, without limitation, certificates of deposit payable to the county issued by banks doing business in this state, investment certificates or share accounts assigned to the county and issued by savings and loan associations doing business in this state, or bearer bonds issued by the United States government or by this state.

The surety bond shall be conditioned to secure the compliance and faithful performance by the permittee of the terms, conditions and standards imposed by this chapter, or by any permit issued hereunder.

If cash is deposited in lieu of such bond, the cash deposit shall secure the compliance and faithful performance by the permittee of the terms, conditions and standards imposed by this chapter, or by any permit issued hereunder.

- (e) Conditions. Permits shall be issued subject to compliance with the standards provided in Sections 8.40.060 and 8.40.065
- (f) Term, Completion of Work. The permittee shall complete the work authorized by the permit prior to the expiration date set forth in the permit. The permittee shall conspicuously post the property where the well construction will occur with a sign noting property owner name, assessor's parcel number, and well construction permit number. The permittee shall notify the health officer in writing upon completion of the work and such work shall not be deemed to have been completed until such written notification has been received.
- (g) Reports. A copy of the well driller report required under Section 13751 of the California Water Code shall be submitted to the health officer upon completion of construction of each well.
- (h) Appeal Procedure. Any person aggrieved by the refusal of the health officer to issue a permit or by the terms of a permit may appeal from the action of the health officer to the board of supervisors by filing a written notice of appeal with the clerk of the board. The clerk shall set the matter for hearing before the board and shall give reasonable notice of the time and place thereof to the applicant and

to the health officer. The board of supervisors shall hear the evidence offered by the applicant or permittee and the health officer, and shall forthwith decide the issue. Unless the board of supervisors rescinds the health officer's action by a majority vote, his decision shall be deemed affirmed.

(Ord. 2414 § 1, 1989; Ord. 2400 § 1 (part), 1989; Ord. 2343 § 2, 1988; Ord. 1912 § 1, 1978; Ord. 1514 § 1, 1975; Ord. 1271 § 1 (part), 1973)

(Ord. No. 3306, § 2, 10-27-15)

8.40.050 - Inspection.

The health officer and his inspectors may at any and all reasonable times enter any and all places, property, enclosures and structures for the purpose of making examinations and investigations to determine whether any provision of this chapter is being violated. The health officer may require that each completion, modification, repair or destruction operation be inspected prior to any further work.

(Ord. 1271 § 1 (part), 1973)

8.40.060 - Standards.

- (a) State Standards. Standards for the construction, repair, modification or destruction of wells shall be as set forth in Chapter II of the California Department of Water Resources Bulletin No. 74-81 entitled "Water Well Standards: State of California" and its Appendices B, C, and D; and those pertaining to Zones II and III as delineated in Figure 1 of the Department of Water Resources Bulletin No. 74-7 entitled "Water Well Standards, Arroyo Grande Basin, San Luis Obispo County," and as set forth in Chapter II of the same, in Department of Water Resources Bulletin No. 74-1, entitled "Cathodic Protection Well Standards, State of California."

- (b) County Standards. The depth of water well seals (annular seals) shall be as follows:

Types of Wells	Minimum Depth of Seal
i. Community Water Wells	50 feet
ii. Individual Domestic Wells	50 feet

iii. Industrial Wells	50 feet
iv. Agricultural Wells	50 feet
v. Monitoring Wells	20 feet

The above minimum depths shall not apply to shallow wells where the water to be developed is at a depth less than fifty feet. However, in no case shall the seal be less than ten feet in depth. The well driller shall notify the health department the day prior to sealing with a notice of intent to seal. All well seals shall be subject to inspection by health department personnel, or registered geologists and registered engineers approved by the health department for monitoring well inspections, however, if an inspector is not available or present, at the appointed time, the driller shall be allowed to proceed.

(Ord. 2400 § 1 (part), 1989; Ord. 1271 § 1 (part), 1973)

8.40.062 - Location of well installation.

A new water well shall be located no closer than ten feet from any property line.

(Ord. 2274 § 4, 1986)

8.40.065 - Water wells within the coastal zone.

In some areas of the coastal zone established by the California Coastal Act of 1976, groundwater is limited and extraction must be monitored to satisfy the requirements of the Coastal Act. All water well permit applications within the coastal zone shall be reviewed by the county engineer to determine if participation in a water monitoring program is necessary to assure records are available for use in the resource management system. The manner in which a permit applicant shall participate in the monitoring program, including the frequency and type of reporting shall be determined by the county engineer.

(Ord. 2343 § 3, 1988)

8.40.070 - Public nuisance.

In the event the health officer determines that a well constitutes a public nuisance, the health officer shall abate the nuisance in accordance with the provisions of Chapter 22.10 of the San Luis Obispo County Code.

(Ord. 2400 § 1 (part), 1989: Ord. 2274 § 5, 1986: Ord. 1271 § 1 (part), 1973)

8.40.080 - Immediate abatement.

If the health officer finds that immediate action is necessary to prevent impairment of the ground water or a threat to the health or safety of the public, the health officer may immediately abate the nuisance without complying with the provisions of Sections 22.10.100 et seq. of the San Luis Obispo County Code.

(Ord. 2400 § 1 (part), 1989: Ord. 1271 § 1 (part), 1973)

PROPOSED ORDER

Amici curiae County of San Luis Obispo and Real Parties in Interest JUSTIN Vineyards and Winery LLC, Lapis Land Company, LLC, Paso Robles Vineyards, Inc. and Moondance Partners, LP's motion for judicial notice is granted. The Court takes judicial notice of Exhibits A and B attached to the request.

Date: _____

Presiding Judge

DECLARATION OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of Sacramento and my business address is 500 Capitol Mall, Suite 1600, Sacramento, California 95814.

On May 13, 2019, at Sacramento, California, I served the attached document(s):

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF
AMICUS CURIAE BRIEF OF COUNTY OF SAN LUIS
OBISPO, JUSTIN VINEYARDS AND WINERY LLC,
LAPIS LAND COMPANY, LLC, PASO ROBLES
VINEYARDS, INC. AND MOONDANCE PARTNERS, LP**

on the following parties:

Protecting Our Water & Environmental Resources: Plaintiff and Appellant	Thomas N. Lippe Law Offices of Thomas N. Lippe, APC 201 Mission Street, 12th Floor San Francisco, CA 94105
California Sportfishing Protection Alliance: Plaintiff and Appellant	
Stanislaus County: Defendant and Respondent	Matthew D. Zinn Sarah H. Sigman Peter J. Broderick Lauren M. Tarpey Shute Mihaly & Weinberger LLP
Jami Aggers: Defendant and Respondent	396 Hayes Street San Francisco, CA 94102
Department of Environmental Resources: Defendant and Respondent	Thomas E. Boze Office of the County Counsel 1010 10th Street, Suite 6400 Modesto, CA 95354-0074
Janis Mein: Defendant and Respondent	
Association of California Water Agencies: Amicus curiae	Steven A. Herum HERUM\CRABTREE\SUNTAG 5757 Pacific Avenue, Suite 222 Stockton, CA 95207
California Special Districts Association: Amicus curiae	Jeanne Marie Zolezzi Herum Crabtree Dyer et al 2291 W March Ln #B100

Stockton, CA 95207

League of California Cities: Amicus curiae

Arthur F. Coon
Miller Starr & Regalia
1331 N California Boulevard, 5th Floor
Walnut Creek, CA 94596

California Water Impact Network:
Amicus curiae

California Wildlife Foundation: Amicus curiae

Mark Raymond Wolfe
M. R. Wolfe & Associates
1 Sutter Street, Suite 300
San Francisco, CA 94104

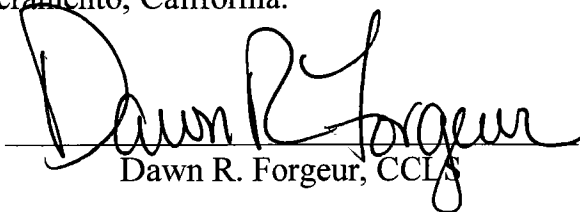
Landwatch Monterey County: Amicus curiae

Honorable Roger M. Beauchesne
Stanislaus Superior Court
City Towers
801 10th St., 4th Floor
Modesto, CA 95354

Fifth District Court of Appeal
Clerk of the Court
2424 Ventura Street
Fresno, CA 93721

BY FIRST CLASS MAIL: I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and mailing at the offices of Stoel Rives LLP, 500 Capitol Mall, Suite 1600, Sacramento, California 95814, a copy of the attached document in a sealed envelope, with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on May 13, 2019, at Sacramento, California.


Dawn R. Forgeur, CCLS