

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

4-11-17
04:59 PM

In the Matter of Application of Odd Fellows
Sierra Recreation Association, a California
corporation, and Sierra Park Water Company,
Inc., a California corporation, for Certificate of
Public Convenience and Necessity to Operate a
Public Utility Water System near Long Barn,
Tuolumne County, California and to Establish
Rates for Service and For Sierra Park Water
Company, Inc. to Issue Stock.

Application 13-09-023
(Filed September 20, 2013)

And Related Matter.

Case 12-03-017
(Filed March 14, 2012)
(CONSOLIDATED)

**SIERRA PARK WATER COMPANY'S
REQUEST FOR OFFICIAL NOTICE IN SUPPORT OF
RESPONSE OF SIERRA PARK WATER COMPANY
TO ADMINISTRATIVE LAW JUDGE'S RULING
TO SUPPLEMENT THE RECORD**

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April 11, 2017

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of Application of Odd Fellows Sierra Recreation Association, a California corporation, and Sierra Park Water Company, Inc., a California corporation, for Certificate of Public Convenience and Necessity to Operate a Public Utility Water System near Long Barn, Tuolumne County, California and to Establish Rates for Service and For Sierra Park Water Company, Inc. to Issue Stock.

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Pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, Sierra Park Water Company ("Water Company") hereby requests official notice of three recorded documents attached as Attachments C, D, and E to the accompanying Declaration of William Ordwein in Support of Response of Sierra Park Water Company to Administrative Law Judge's Ruling to Supplement the Record ("Ordwein Decl"), filed and served at the same time as this Request for Official Notice in Support of Response of Sierra Park Water Company to Administrative Law Judge's Ruling to Supplement the Record.

1. Applicable Law Regarding Official Notice.

Rule 13.9 provides: "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq." Evidence Code section 452(c) permits judicial notice of "[o]fficial acts ... of any state of the United States." Evidence Code section 452(h) permits judicial notice of "[f]acts and

propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”¹

“[C]ourts have taken judicial notice of the existence and recordation of real property records, including deeds of trust, when the authenticity of the documents is not challenged.” *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264, disapproved on other grounds in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919.² The court in *Fontenot* further stated that “a court may take judicial notice of the fact of a document’s recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document’s legally operative language, assuming there is no genuine dispute regarding the document’s authenticity. From this, the court may deduce and rely upon the legal effect of the recorded document, when that effect is clear from its face.” *Fontenot*, 198 Cal.App.4th at 265.

2. Official Notice of the Documents is Proper.

The documents of which official notice is requested are:

Attachment C to the Ordwein Decl: Conformed Copy of the Grant Deed conveying the Block Building/Shop and Corp. Yard from the Association to the Water Company, with a stamp showing it was filed and recorded in Official Records of the County of Tuolumne on March 21, 2017.

Attachments D and E to the Ordwein Decl: Conformed Copies of two Modifications to two deeds of trust dated May 12, 2016, and August 25, 2016.

Each of these three documents is a duly recorded document subject to judicial notice under Evidence Code sections 452(c) and (h) as discussed in *Fontenot*, and thus to official notice by the Commission under Rule 13.9.

Thus, the Commission may and should take official notice that each of these attachments has been recorded on March 21, 2017 by the parties to them, and that under the legally operative language: (a) the real property on which the Block Building/Shop and Corp. Yard are located

¹ Evidence Code § 453 *requires* judicial notice where adverse parties are given notice of the request and the party requesting judicial notice furnishes sufficient information to enable judicial notice to be taken.

² The California Supreme Court disapproved *Fontenot* with respect to its holding that borrowers lack standing to challenge assignment of a deed of trust as void. *Yvanova*, 62 Cal.4th at 939, n. 13. This had nothing to do with the judicial noticeability of recorded documents. In fact, citing to *Fontenot*, the Supreme Court in *Yvanova* found proper the trial court’s judicial notice of various recorded documents, including a deed of trust and its assignment. *Id.* at 924, n. 1.

has been conveyed to Water Company,³ and (b) the encumbrances on that real property have been released. *Fontenot*, 198 Cal.App.4th at 265.

These documents are relevant to this proceeding, and specifically to the Administrative Law Judge's Ruling to Supplement the Record issued on February 10, 2017. The documents tend to prove that there is no longer any issue as to or need to request modification of the Commission's Decision No. 16-01-047 with respect to transfer in any fashion other than a fee transfer of the Block Building/Shop and the Corp. Yard, since fee title to the real property has now been transferred free and clear of encumbrances.

3. Conclusion

Official notice of the three documents in question is legally proper and the documents are relevant. The Water Company therefore respectfully requests the Commission to grant this request for official notice.

Dated: April 11, 2017

Respectfully Submitted,
Downey Brand LLP

/s/ Dan L. Carroll
By Dan L. Carroll
Attorneys for Sierra Park Water Company

³ The Ordwein Decl explains that in Exhibit A to the Grant Deed and each of the Modifications, the Corp. Yard is called the "Storage Yard Parcel" and the Block Building/Shop is called the "Repair Shop Parcel."