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CITY OF SAN BUENAVENTURA

EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER, a California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL BOARD, et al,

Respondents.

CITY OF SAN BUENAVENTURA, et al.,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger

CITY OF SAN BUENAVENTURA'S OBJECTIONS TO CROSS-DEFENDANTS TREVOR QUIRK AND ALETHEIA GOODEN'S REQUEST FOR JUDICIAL NOTICE

Date: March 11, 2022
Time: 9:00 a.m.
Dept.: 10

Action Filed: Sept. 19, 2014
Trial Date: March 16, 2022

Defendant and Cross-Complainant the City of San Buenaventura (Ventura) submits the following evidentiary objections to Cross-Defendants Trevor Quirk and Aletheia Gooden's (Cross-Defendants) request for judicial notice, filed in support of their pre-trial statement filed on March 2, 2022. The Court should deny Cross-Defendants' request for judicial notice of the following exhibits for the reasons set forth herein:

- Exhibit 1 – Code of Federal Regulations § 328.3;
- Exhibit 2 – Ventura Legal Report, Agenda Item No. 8E, dated November 20, 2018;
- Exhibit 3 – Ventura response to Public Records Act request, dated February 22, 2022;
- Exhibit 4 – United States Department of Commerce Letter dated August 29, 2007 and accompanying draft biological opinion;
- Exhibit 5 – definition of material in Black's Law Dictionary, Seventh [E]dition;
- Exhibit 6 – definition of substantial in Meriam Webster's Collegiate Dictionary, Tenth Edition.

I. JUDICIAL NOTICE GENERALLY

Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) The matter to be given judicial notice must be relevant to the case. (*Ochoa v. Anaheim City School Dist.* (2017) 11 Cal.App.5th 209, 222-223.) Judicial notice of relevant matters may be denied under Evidence Code section 352. (*Mozetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578 [declining judicial notice of proclamation published in Federal Register declaring a disaster area].)

A matter ordinarily is subject to judicial notice only if the matter is reasonably beyond dispute. (*Post v. Prati* (1979) 90 Cal.App.3d 626, 633.) Before a court may take judicial notice of a fact or proposition pursuant to Evidence Code section 452, the court "shall afford each party

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reasonable opportunity . . . to present to the court information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed." (Evid. Code, § 455, subd. (a).)

Here, the Court should decline to take judicial notice of Exhibit 1 (Code of Federal Regulations § 328.3 [defining "waters of the United States"]) because it is not relevant to the issues in this case, and its validity and enforceability is reasonably subject to dispute. Exhibit 1 is not even the currently operative regulation concerning the definition of "waters of the United States." In August 2021, an Arizona federal court vacated the rule, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers announced that they had halted implementation of the rule until further notice, and currently, EPA is repealing and replacing it. (See *Pascua Yaqui Tribe v. United States Environmental Protection Agency* (D.Az. Aug. 30, 2021), 2021 WL 3855977, *3 ["Consistent with Executive Order 13,990, the EPA and Corps of Engineers have provided notice of their intent to restore the pre-2015 regulatory definition of "waters of the United States" while working to develop a new regulatory definition"]; EPA, "Current Implementation of Waters of the United States," *available at* https://www.epa.gov/wotus/current-implementation-waters-united-states.) Thus, Cross-Defendants seek judicial notice of an irrelevant, vacated regulation that is not being implemented and is in the process of being withdrawn. The regulation is also irrelevant to this case because the Clean Water Act definition of "waters of the United States" bears no relevance here. This Court's resolution of the interconnectivity of surface water and groundwater concerns California water rights cases, statutes, and regulations, not the federal Clean Water Act. Consideration of a rule—even a valid one—regarding "waters of the United States" that is not consistent with California case law is highly prejudicial and confusing. Cross-Defendants fail to articulate any relevance of the defunct federal regulation. The request for judicial notice of Exhibit 1 should be denied.

II. HEARSAY STATEMENTS MADE IN DOCUMENTS ARE NOT JUDICIALLY NOTICEABLE

While judicial notice is taken of a document, the truthfulness and proper interpretation of the document is disputable. (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374

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["Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning."].) This is true even if the document is an official act or report prepared by a governmental agency. (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-65 ("*Mangini*"), overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1262, 1276 ("*In re Tobacco Cases II*"); *Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881, 902.)

Informal reports and communications from public officials are not automatically subject to judicial notice, and Cross-Defendants bear the burden to provide sufficient information regarding "the source, purpose or official ratification" of agency documents to allow the court to take judicial notice. (*Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 744; see also *Employment Development Dept. v. California Unemployment Ins. Appeals Bd.* (2010) 190 Cal.App.4th 178, 188, fn. 4 [denying request for judicial notice of "informal documents offered as general information to the public" by governmental agency].)

Here, Cross-Defendants fail to demonstrate the relevance of judicial notice of Exhibits 2-6 to the Phase One trial. Cross-Defendants apparently intend judicial notice of Ventura's reports (Exs. 2-3) solely for highlighting and attacking the amount of attorneys' fees Ventura has paid in this comprehensive adjudication case. But the amount of attorneys' fees is irrelevant to the determination of the Phase One trial issue of interconnection. The evidence is irrelevant and unfairly prejudicial as it is intended merely to inflame. Similarly, Exhibit 4 is not relevant for purposes of judicial notice because it is a draft document for a project that did not happen. Further, Exhibits 5-6 are apparently irrelevant because neither the request for judicial notice and supporting declaration, nor Cross-Defendants' "pre-trial statement" articulate the relevance of the definitions of "material" and "substantial." Because Exhibits 2-6 are not relevant to the issues in the Phase One trial, the Court should decline to take judicial notice of the documents.

Finally, hearsay evidence is inadmissible, and the courts "cannot take judicial notice of the truth of hearsay statements" in otherwise judicially noticeable documents. (Evid. Code § 1200, subd. (b); *People v. Woodell* (1998) 17 Cal.4th 448, 455 [quoting *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, fn. 7]; accord, *Mangini*, *supra*, 7 Cal.4th at pp. 1063-64.) Courts are

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especially reluctant to take judicial notice of conclusory statements in official reports. (*Mangini*, *supra*, 7 Cal.4th at pp. 1063-65 [court could not take judicial notice of the truth of conclusions within a report from the U.S. Surgeon General regarding the health effects of smoking or the truth of matters reported in a newspaper article], overruled on other grounds in *In re Tobacco Cases II*, *supra*, 41 Cal.4th at 1262, 1276; *Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881, 902 [judicial notice may be taken of the fact that United States Bureau of Labor Statistics published a report, "but not the truth of the facts relayed through that official act"].) Consequently, while this Court may take judicial notice that Ventura prepared Exhibits 2 (Legal Report) and 3 (response to PRA Request) and that the United States Department of Commerce, National Oceanic and Atmosphere Administration prepared Exhibit 4 (8/29/07 letter and accompanying draft biological opinion), the Court cannot take judicial notice of the contents of these exhibits.

III. CONCLUSION

For the reasons stated herein, Ventura requests that the Court deny Cross-Defendants' request for judicial notice.

Dated: March 8, 2022

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By: _____

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