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**IN THE SUPREME COURT
OF CALIFORNIA**

SUPREME COURT
FILED

MAY 13 2015

CITY OF SAN BUENAVENTURA,
Respondent and Cross-Appellant,

Frank A. McGuire Clerk

Deputy

vs.

UNITED WATER CONSERVATION DISTRICT AND BOARD OF
DIRECTORS OF UNITED WATER CONSERVATION DISTRICT,
Appellants and Cross-Respondents,

On Appeal of Published Decision of the
Second Appellate District, Division 6, Case No. B251810

Reversing a Judgment of the Superior Court of Santa Barbara County
Case Nos. VENCI-00401714 and 1414739
Honorable Thomas P. Anderle

**APPELLANTS AND CROSS-RESPONDENTS'
OPPOSITION TO MOTION FOR JUDICIAL NOTICE
IN SUPPORT OF PETITION FOR REVIEW**

MUSICK, PEELER & GARRETT LLP
ANTHONY H. TREMBLEY (STATE BAR NO. 110029)
JANE ELLISON USHER (STATE BAR NO. 93783)
CHERYL A. ORR (STATE BAR NO. 132379)
2801 TOWNSGATE ROAD, SUITE 200
WESTLAKE VILLAGE, CALIFORNIA 91361
TELEPHONE: 805-418-3100
FACSIMILE: 805-418-3101

Attorneys for Appellants and Cross-Respondents
UNITED WATER CONSERVATION DISTRICT and BOARD OF
DIRECTORS OF UNITED WATER CONSERVATION DISTRICT

Pursuant to Rule of Court 8.54, subd. (3), Appellants and Cross-Respondents United Water Conservation District and Board of Directors of United Water Conservation District (collectively, the "District") oppose the Motion for Judicial Notice made by Petitioner City of San Buenaventura (the "City").

This Court may take judicial notice of the official records of any court of this state, pursuant to Evidence Code sections 459 and 452. However, judicial notice of the materials offered by the City should be denied in this case.

An appellate court normally will not grant a motion for judicial notice "unless the matter has been presented to the court below, the substantive issues to which the document(s) relate are adequately raised, the originals remain on file and certified copies are forwarded to the appellate court." (*People v. Meza* (1984) 162 Cal.App.3d 25, 33.)

As the City acknowledges, the Court of Appeal denied the District's motion for judicial notice of one of these records (Exhibit A), and no request for judicial notice was made regarding the other documents. The City fails to explain in its Motion how the substantive issues in the trial courts are the same or similar to the issues decided by the Court of Appeal. They are not. Furthermore, based on the copies of the documents attached to the service copy of the Motion, the District does not believe that the City has provided certified copies of the documents to the Court.

The City does not claim that the records it offers are relevant to the disposition of the issues presented in this case. Instead, the City proposes, without examination or explanation, that its proffered documents show that lower courts are "grappling with these questions." (Motion, p. 3.) There simply is no reason then for the Court to take judicial notice of the records. (See *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063[matters subject to judicial notice must be relevant to issues raised on

appeal], overruled on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276; *Cassidy v. Cal. Board of Accountancy* (2013) 220 Cal.App.4th 620, 625-626 [denying motion for judicial notice of documents that were irrelevant to the issues on appeal]; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 [judicial notice is recognition of the existence of a matter of law or fact *that is relevant to an issue in the action* without requiring proof of the matter]). If the records are not relevant, judicial notice should be denied.

The City asserts that the records “are helpful to demonstrate the implications of the Court of Appeal’s opinion.” (Motion, p. 3.) In the Petition for Review, the City seeks to rely upon the court records which are the subject of the Motion for Judicial Notice to argue that Proposition 218 and 26 issues are under consideration in several trial courts. (Petition for Review, pp. 35-37.) The suggestion is that the Proposition 218 and 26 issues addressed by the Court of Appeal’s Opinion will somehow dictate or inform the decision-making in those cases. Not so.

As discussed in further detail in the Answer to the Petition for Review, one of the cases, *North San Joaquin Water Conservation District v. All Persons Interested in the Matter of the Resolution Imposing Groundwater Charge*, was decided in July, 2008 and the case is moot because the groundwater charge at issue was repealed.

The *City of Cerritos, et al. v. Water Replenishment District of Southern California* case involves a water replenishment district created under a different statutory scheme than the groundwater conservation district in this case and relates to a charge for water delivery, not a groundwater pumping charge. The Proposition 218 analysis will be very different than the analysis contained in the Court of Appeal’s Opinion in this case. Furthermore, the outcome of the Proposition 26 issue will be entirely dependent on the record


evidence in that case regarding the total fees collected by the district and the uses to which they are put.

The remaining three cases involve tiered water rate charges by municipalities or public water agencies which provide water to residential and business customers within their service areas. Those cases are clearly governed by the holding in *City of Palmdale v. Palmdale Water Dist.* (2011) 198 Cal.App.4th 926. The Court of Appeal's Opinion in this case will not come to bear in deciding any of those cases.

For all these reasons, the Motion for Judicial Notice should be denied.

DATED: May 11, 2015

MUSICK, PEELER & GARRETT LLP

By: 
Cheryl A. Orr
Attorneys for Appellants and Cross-
Respondents UNITED WATER
CONSERVATION DISTRICT and
BOARD OF DIRECTORS OF
UNITED WATER
CONSERVATION DISTRICT

PROOF OF SERVICE

**STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is One Wilshire Boulevard, Suite 2000, Los Angeles, California 90017.

On May 12, 2015, I served true copies of the following document(s) described as **APPELLANTS AND CROSS-DEFENDANTS' OPPOSITION TO MOTION FOR JUDICIAL NOTICE IN SUPPORT OF PETITION FOR REVIEW** on the interested parties in this action as follows:

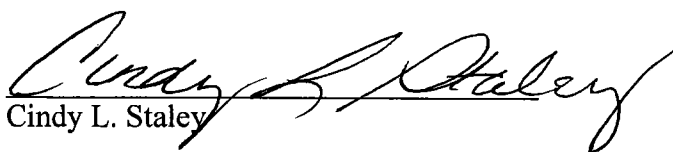
SEE ATTACHED SERVICE LIST

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

Executed on May 12, 2015, at Los Angeles, California.


Cindy L. Staley

SERVICE LIST

United Water Conservation District, et al. v. City of San Buenaventura
Santa Barbara County Superior Court
Case Nos. VENCI 00401714 and 1414739
Court of Appeal Case No. B251810

Counsel

Representing

Gregory G. Diaz, Esq.
Assistant City Attorney
City of San Buenaventura
P.O. Box 99
Ventura, CA 93002-0099
Telephone: (805) 654-7818
Facsimile: (805) 641-0253
Email: gdiaz@ci.ventura.ca.us
gdiaz@cityofventura.net

Attorney for Respondent and
Cross-Appellant City of San
Buenaventura

Michael G. Colantuono, Esq.
David J. Ruderman, Esq.
Michael R. Cobden, Esq.
Colantuono, Highsmith
& Whatley, PC
300 South Grand Ave., Suite 2700
Los Angeles, CA 90071-3137
Telephone: (213) 542-5700
Facsimile: (213) 542-5710
Email: mcolantuono@chwlaw.us
druderman@chwlaw.us
mcobden@chwlaw.us
alloyd@chwlaw.us

Attorneys for Respondent and
Cross-Appellant City of San
Buenaventura

Dennis LaRochelle, Esq.
Susan McCarthy, Esq.
Arnold, Bleuel, LaRochelle, Mathews &
Zirbel, LLP
300 Esplanade Drive, Suite 2100
Oxnard, CA 93036
Telephone: (805) 988-9886
Facsimile: (805) 988-1937
Email: dlarochelle@atozlaw.com
smccarthy@atozlaw.com
jmathews@atozlaw.com
jmahan@atozlaw.com

Attorneys for Intervener
Pleasant Valley County Water
District

Nancy N. McDonough, Esq.
Christian C. Scheuring, Esq.
Associate Counsel
California Farm Bureau Federation
2300 River Plaza Drive
Sacramento, CA 95833
Telephone: (916) 561-5500
Facsimile: (916) 561-5699
Email: nmcdonough@cfbf.com
cscheuring@cfbf.com
dchasteen@cfbf.com

Attorneys for Interveners
California Farm Bureau
Federation and Farm Bureau of
Ventura County

Paul N. Singarella, Esq.
Kathryn M. Wagner, Esq.
Latham & Watkins LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626-1925
Telephone: (714) 540-1235
Facsimile: (714) 755-8290
E-mail: paul.singarella@lw.com
kate.wagner@lw.com

Attorneys for *Amicus Curiae*
Water Replenishment District
of Southern California

Patricia J. Quilizapa, Esq.
Aleshire & Wynder, LLP
18881 Von Karman Avenue
Suite 1700
Irvine, CA 92612
Telephone: (949) 223-1170
Facsimile: (848) 223-1180
E-mail: pquilizapa@awattorneys.com

Attorneys for *Amici Curiae*
City of Cerritos, City of
Downey and City of Signal Hill

Clerk of the Court of Appeal
Division 6
200 E. Santa Clara Street
Ventura, CA 93001

1 copy

Clerk of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102-7303

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Office of the Attorney General
Consumer Law Section
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

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