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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,
 a California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL
 BOARD, a California State Agency;
 CITY OF SAN BUENA VENTURA, a
 California municipal corporation, incorrectly
 named as CITY OF BUENA VENTURA,

Respondents.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

**CITY OF OJAI'S OBJECTION TO
 VENTURA'S REQUEST FOR JUDICIAL
 NOTICE ISO STATUS CONFERENCE
 LEGAL BRIEF**

Date: December 9, 2021

Time: 2:00 pm

**Dept: 10
 310 North Spring Street
 Los Angeles, CA 90012**

Action Filed: September 19, 2014

First Amended Complaint Filed:
 September 7, 2018

CITY OF SAN BUENA VENTURA, a
 California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT;
 AGR BREEDING, INC; et al.

{00259834.2}

CITY OF OJAI'S OBJECTION TO VENTURA'S REQUEST FOR JUDICIAL NOTICE ISO STATUS
 CONFERENCE LEGAL BRIEF

1 Cross Defendant City of Ojai hereby objects to the Request for Judicial Notice (RJN)
2 filed by the City of Ventura in support of its status conference legal brief on the scope of the
3 Phase 1 trial in this matter. As an initial matter, there is no pending motion to which the RJN
4 would otherwise support. Typically, a request for judicial notice is filed in support of a motion,
5 and there are established timelines and procedures for objecting to the inclusion of improper
6 materials in the RJN. Here, though, the RJN was filed with a legal brief related to a status
7 conference report that resulted from the court's request for information relating to what legal
8 issues should be subject to the first phase of trial. Moreover, the RJN is procedurally and
9 substantively defective. For all these reasons, the RJN should be denied.

10 **THE RJN FAILS TO MEET THE REQUIREMENTS OF THE EVIDENCE CODE**

11 Ventura's request states that this court "may take judicial notice of the attached Exhibit
12 Nos. 1-3 as judgments adopting physical solutions **that are relevant to this Court's**
13 **consideration of this Ventura River Watershed adjudication.** (*E.g. Lockley v. Law Office of*
14 *Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875 [court may in its discretion
15 take judicial notice of any court record in the United States, including any orders, **findings of**
16 **facts and conclusions of law**, and judgments within court records].)" (See Ventura's RJN at
17 2:20-25 [emphasis added].) Ventura claims the Court must grant the request pursuant to Evidence
18 Code section 453.

19 This RJN is procedurally defective because Ventura has failed to demonstrate that the
20 request provided proper notice under Evidence Code section 452 and failed to provide sufficient
21 notice for parties to object, given that the RJN was not attached to a noticed motion. (See
22 Evidence Code §§ 453, 455.) These procedural steps must be followed in order to ensure that
23 the other parties have an adequate opportunity to challenge the facts of which the Court is
24 requested to take notice. Thus, before this RJN can be considered by the Court on the merits, a
25 hearing date should be set and briefing schedule established for the parties to present their legal
26 arguments in support of, and opposition to, the RJN. Ojai also respectfully submits that it would
27 be useful for the parties to meet and confer on this RJN before Ventura files the motion, so that
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1 the parties can determine, and hopefully narrow, the aspects of the RJN that are in dispute.

2 The stand-alone request for judicial notice is also substantively defective under the
3 Evidence Code. First, the RJN fails to identify whether it is asking this Court to take judicial
4 notice of the simple fact that judgments were rendered in these unrelated cases, or whether it
5 seeks judicial notice of any finding of fact or conclusion of law within these judgments. To the
6 extent Ventura seeks the later, it has failed to furnish any information as to how these findings of
7 fact or conclusions of law – rendered more than forty years before the enactment of the
8 comprehensive groundwater adjudication statute under which this case was brought – are
9 relevant to this case, or why this Court should otherwise take notice of the same. (See Evidence
10 Code §350.) Another court's adjudication of issues under different laws than are presented here
11 does not appear to be relevant to how this Court should interpret the provisions of the
12 comprehensive groundwater adjudication statute under which Ventura brought this case.

13 Ventura cites *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001)
14 91 Cal. App. 4th 875, to support its claim that this Court must take judicial notice of the factual
15 findings and conclusions of law reached by prior courts in other matters brought under other laws
16 before the 2003 update of Bulletin 118 defined the boundaries of California's groundwater basins.
17 This reliance is misplaced. First, *Lockley* ruled "the trial court erred in taking judicial notice of
18 the truth asserted in the Court of Appeal's modified concurring opinion." (*Id.* at 887.) Second,
19 *Lockley* confirms, as Ojai notes above, that it is "improper for courts to take judicial notice of
20 any facts that are not the product of an adversary hearing which involved the question of their
21 existence or nonexistence. (2 Jefferson, Cal. Evidence Benchbook, supra, Judicial Notice, §
22 47.13, at p. 1069.) 'A litigant should not be bound by the court's inclusion in a court order of an
23 assertion of fact that the litigant has not had the opportunity to contest or dispute.' (*Ibid.*)"
24 *Lockley, supra*, 91 Cal. App. 4th 875 at 882. This is the case because "[t]he underlying theory
25 of judicial notice is that the matter being judicially noticed is a law or fact *not reasonably subject*
26 *to dispute*. (Evid. Code, § 451, subd. (f); *Post v. Prati* (1979) 90 Cal. App. 3d 626, 633 [153 Cal.
27 Rptr. 511].)" *Id.* [emphasis in original].

1 Here, Ventura seems to be asking this Court to take judicial notice of findings of fact and
2 conclusions of law reached in other cases brought under different laws. Ventura seems to imply
3 that these cases should serve as precedent for this Court to interpret the provisions of the
4 comprehensive groundwater adjudication statute to authorize the combination of multiple
5 groundwater basins into one adjudication. But whether multiple basins could be adjudicated
6 together in a claim brought under the common law before the 2003 update of Bulletin 118 defined
7 the boundaries of all of California's groundwater basins has no bearing on the legal issue of
8 whether the comprehensive groundwater adjudication statute permits this Court to combine four
9 Bulletin 118 groundwater basins into one adjudication in this case brought under that statute.
10 None of those cases was brought under the comprehensive groundwater adjudication statute and
11 none of them offers any court interpretation of the terms of that statute. Moreover, those cases
12 were brought before the 2003 Bulletin 118 update defined the boundaries of California's
13 groundwater basins. Since the comprehensive groundwater adjudication statute relies on the
14 Bulletin-118 defined boundaries to define the limits of the court's jurisdiction (*see* Code Civ.
15 Proc. § 832(a) ["Basin" has the same meaning as defined in Section 10721 of the Water Code];
16 Water Code § 10721(b) [defining "basin" as "a groundwater basin or subbasin identified and
17 defined in Bulletin 118 or as modified pursuant to Chapter 3 (commencing with Section 10722)]),
18 those other cases that were brought before Bulletin 118 established the current set of boundaries
19 are simply not relevant to the legal issues currently pending before this court.

20 In sum, the RJN of facts found in other, distinguishable, cases cannot be used to evade
21 Ventura's burden of proof on the matters that are subject to its claims in the Cross- Complaint,
22 including but not limited to the Sixth Cause of Action.

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For all the reasons stated above, Ojai requests that this Court deny Ventura’s RJN.

Dated: December 8, 2021

Respectfully submitted,
Bartkiewicz, Kronick & Shanahan, PC

By: 
JENNIFER T. BUCKMAN
HOLLY J. JACOBSON
Attorneys for CITY OF OJAI