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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF RIVERSIDE

12 CITY OF BARSTOW, et al.,

13 Plaintiffs,

14 v.

15 CITY OF ADELANTO, et al.,

16 Defendants.  
17  
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20

Lead Case No. CIV208568  
JCCP5265 MOJAVE BASIN WATER  
CASES

Judge: Harold W. Hopp, Department 1

**SPECIALLY-APPEARING  
PETITIONER SHADOW MOUNTAIN  
RANCH, LLC'S OBJECTION TO  
REQUEST FOR JUDICIAL NOTICE TO  
MOJAVE WATER AGENCY'S  
OPPOSITION TO SHADOW  
MOUNTAIN RANCH LLC'S MOTION  
TO INTERPRET AND CLARIFY THE  
JUDGMENT**

*[Filed concurrently with:  
1. Reply ISO SMR Motion;  
2. Supplemental Declaration of Tony  
Morgan; and,  
3. Objection to Wagner Declaration.]*

Date: February 7, 2024  
Time: 8:30 a.m.  
Dept: 1

**[Reservation ID: 001680774956]**

Action Filed: May 30, 1990

1 **I. INTRODUCTION**

2 MWA misuses the request for judicial notice process. Instead of requesting indisputable  
3 facts, MWA makes further legal argument in support of its position. Moreover, the Statement of  
4 Decision itself is independently objectionable—it is not subject to judicial notice because it is  
5 reasonably subject to dispute, irrelevant, results in the undue consumption of time, and contains  
6 inadmissible hearsay. In sum, the Statement of Decision—and, more importantly, MWA’s  
7 improper legal argument interpreting that document—are not judicially noticeable.

8 **II. LEGAL STANDARD**

9 Judicial notice is the recognition and acceptance by a court of the existence of a matter of  
10 law or fact that is relevant to an issue in the action without requiring formal proof of the matter.  
11 (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875,  
12 882.) Judicial notice may only be taken where authorized or required by law. (Evid. Code § 450.)

13 **III. LEGAL ARGUMENT**

14 **A. MWA’s Legal Briefing and Argument Contained in its Request is Improper,**  
15 **and any Portion of the Request Seeking Notice of Such Argument Should be**  
16 **Denied.**

17 A request for judicial notice is a limited request to a court requesting that court to  
18 recognize certain materials that fall under statutorily-specified categories that, as a matter of  
19 public policy, are found to not reasonably be subject to dispute. (*See, e.g.*, Evid. Code § 452,  
20 subds. (g), (h).)

21 MWA’s request does not identify such materials. Rather, it presents legal argument to the  
22 Court about how the Court should interpret the Statement of Decision. First, MWA both (1)  
23 applies textual emphasis through the use of bold and italic fonts, and (2) selectively omits content  
24 by using ellipses and brackets to the excerpts identified on pages 2-3 of its request. (MWA  
25 Request for Judicial Notice (“RJN”) at pp. 2-3.) In so doing, MWA misrepresents the full text  
26 included in the Statement of Decision and, therefore, presents a biased, argumentative, and non-  
27 factual presentation of the Statement of Decision. Second, MWA makes legal argument as to  
28 these select excerpts. For example, MWA explicitly argues that certain of these excerpts must,  
*ipso facto*, mean that conclusions in MWA’s favor *must* “follow[] by necessary implication”

1 based on the Statement of Decision’s selectively-quoted language. (MWA RJN at p. 3.) Not so.  
2 The purpose of a request for judicial notice is to recognize and accept undisputed facts,  
3 universally known and of generalized knowledge. (*See* Evid. Code §§ 450, 451.) Legal argument  
4 about what the noticed document means, or what it implies, is not a fact, is not universally  
5 known, is not of generalized knowledge, and is not a permissible use of a request for judicial  
6 notice.

7 In sum, MWA’s unilateral interpretation of the Statement of Decision is not a proper  
8 grounds for judicial notice because truthfulness and proper interpretation of a document is  
9 disputable. (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 [“Taking judicial  
10 notice of a document is not the same as accepting the truth of its contents or accepting a particular  
11 interpretation of its meaning.”].) For this reason, MWA’s request should be denied.

12 **B. The Statement of Decision is Reasonably Subject to Dispute.**

13 A matter ordinarily is subject to judicial notice only if it is reasonably beyond dispute.  
14 (*Post v. Prati* (1979) 90 Cal.App. 3d 626, 633.) Judicial notice under Section 452<sup>1</sup> is intended to  
15 cover facts that are not reasonably subject to dispute and can be easily verified. For example,  
16 “geographical divisions and political history of the world” may be a matter judicially noticeable  
17 under Section 452. (Evid. Code § 452, 1965 Law Revision Commission Comments.)

18 The Court must be reasonably certain of everything of which it takes judicial notice and, if  
19 there is any doubt about the facts within a document (or the scientific foundation for those facts),  
20 then evidence of the facts (or the foundation for the facts) should be required. (*South Shore Land*  
21 *Co. v. Peterson* (1964) 226 Cal.App.2d 725, 745.)

22 The parties here clearly disagree about the contents of the Statement of Decision. MWA  
23 argues that the Statement of Decision supports its position—that SMR’s aquifers are not  
24 “Supplemental Water”—and SMR in turn provides factual argument that is inconsistent or  
25 different from the facts contained in the Statement of Decision. (*See* SMR Reply at pp. 5-6.)  
26 Specifically, the parties disagree about the level of hydrological disconnection within the Mojave  
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<sup>1</sup> All “Section” references are to the Evidence Code unless otherwise specified.

1 Basin. Because of this dispute, the Statement of Decision’s assertions are reasonably subject to  
2 dispute, and MWA’s request should be denied.

3 **C. The Statement of Decision is Not Relevant.**

4 Judicially noticeable materials must be relevant. (*Mangini v. R. J. Reynolds Tobacco Co.*  
5 (1994) 7 Cal.4th 1057, 1063, overruled on other grounds in *In re Tobacco Cases II* (2007) 41  
6 Cal.4th 1257, 1262, 1276; *Khodayari v. Mashburn* (2011) 200 Cal.App.4th 1184, 1195.)

7 Evidence is relevant if it has “any tendency in reason to prove or disprove any disputed fact that  
8 is of consequence to the determination of the action.” (Evid. Code § 210.)

9 The Statement of Decision has no tendency to prove or disprove a disputed “fact” here.  
10 The “facts” at issue here pertain to the hydrologic connectivity between the water underlying  
11 SMR’s Property and the water underneath the rest of the Mojave Basin. The Statement of  
12 Decision is a legal opinion that does not cite to evidence specific to the SMR Property. Indeed,  
13 MWA does not cite to a single provision in that Statement of Decision that is directly applicable  
14 to the SMR Property. Therefore, the Statement of Decision neither proves nor disproves the issues  
15 raised here. It is therefore irrelevant and, on that ground, not subject to a request for judicial  
16 notice.

17 Moreover, it is the Judgment—and not the Statement of Decision—that is the legally  
18 operative document here. It is the Judgment that defines “Supplemental Water” and regulates  
19 water use and extraction within the Mojave Basin. It is the Judgment that has set boundaries and  
20 discrete Subareas within the Mojave Basin. And it is the Judgment that provides this Court with  
21 its continuing jurisdiction in order to hear this very briefing. The Statement of Decision has no  
22 relevance to the applicable law and for this reason, too, MWA’s request should be denied.

23 **D. Balancing Under Section 352 Merits Denial.**

24 A court in its discretion may exclude evidence if its probative value is substantially  
25 outweighed by the probability that its admission will (a) necessitate undue consumption of time,  
26 or (b) create substantial danger of undue prejudice or confusing the issues. (Evid. Code § 352.)  
27 “[Section] 453, which states that the court shall take judicial notice of matters properly presented,  
28

1 does not compel the court to admit irrelevant matters that would result in the undue consumption  
2 of time.” (*Mitroff v. United Services Automobile Assn.* (1999) 72 Cal. App. 4th 1230, 1243.)

3 Here, the likelihood that the Court will waste judicial and party resources in interpreting  
4 the Statement of Decision, when it is in fact simply the Judgment that bears on this issue, further  
5 merits against the granting of MWA’s request. Indeed, the Court would ultimately need to make  
6 a detailed inquiry in the underlying facts, posture, and substance of the Statement of Decision in  
7 order to assess its impact or import on the current issues. Such an exercise would unduly  
8 consume time and is not necessary, nor even relevant, to resolution of SMR’s Motion. As noted  
9 above, it is only the Judgment that directly informs, and answers, the sole, narrow question raised  
10 by SMR.

11 For this reason, too, MWA’s request should be denied.

12 **E. Taking Judicial Notice is Not the Same as Accepting the Truth of a**  
13 **Document’s Contents.**

14 “Taking judicial notice of a document is not the same as accepting the truth of its contents  
15 or accepting a particular interpretation of its meaning. While courts take judicial notice of public  
16 records, they do not take notice of the truth of matters stated therein. When judicial notice is taken  
17 of a document ... the truthfulness and proper interpretation of the document are disputable.”  
18 (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 [citations  
19 omitted]; *see also Joslin, supra*, 184 Cal.App.3d at 374.) As applicable here, judicial notice is not  
20 properly taken of the truth of factual findings by a trial judge in a case. (*Sosinsky v. Grant* (1992)  
21 6 Cal.App.4th 1548, 1563 “[W]e hold that judicial notice could not properly be taken of the truth  
22 of the factual findings of the trial judge in case No. 204488”.) Even findings of fact made after  
23 an adversarial hearing cannot “be indisputably deemed to have been a correct finding” of fact  
24 proper for judicial notice. (*Id.* at 1568.) Ultimately, “[t]aking judicial notice of the truth of a  
25 judge’s factual finding would appear to us to be tantamount to taking judicial notice that the  
26 judge’s factual finding must necessarily have been correct and that the judge is therefore  
27 infallible. We resist the temptation to do so.” (*Id.* at 1568.)

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1           Importantly, MWA does not just seek judicial notice of the Statement of Decision’s  
2 existence—it seeks judicial notice of certain statements and assertions made therein. In this  
3 sense, the Statement of Decision, while it contains certain findings by Judge Kaiser, is not  
4 tantamount to an unassailable or indisputable truth. And yet MWA asks the Court to take judicial  
5 notice of the Statement of Decision for the truth of the matters stated therein. (*See* MWA RJN at  
6 pp. 2-3.) That is an impermissible purpose of judicial notice and, accordingly, MWA’s request  
7 should be denied for this separate and independent reason.

8           **F.       Hearsay Contained in the Statement of Decision Is Not Admissible.**

9           Any hearsay statements contained in the Statement of Decision are also inadmissible.  
10 Courts “cannot take judicial notice of the truth of hearsay statements” in otherwise judicially  
11 noticeable documents. (Evid. Code § 1200, subd. (b); *People v. Woodell* (1998) 17 Cal.4th 448,  
12 455 [quoting *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, n. 7.]) The potential for  
13 hearsay is implicated each and every time the Statement of Decision references out of court  
14 materials identified for the truth of the matters asserted therein. (*See* Evid. Code § 1200.) For  
15 example, numerous exhibits are listed throughout the Statement of Decision in support of the  
16 statement’s assertions of truth. (*See, e.g.*, Statement of Decision at pp. 2-7.) To the extent  
17 MWA’s request seeks judicial notice of hearsay statements, the request should be denied.

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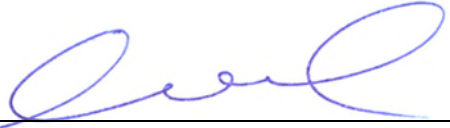
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**IV. CONCLUSION**

For the reasons set forth above, MWA’s request for judicial notice should be denied. The request raises improper legal argument, and the Statement of Decision is reasonably subject to dispute, is not relevant, would cause an undue consumption of time, and contains inadmissible hearsay. Further, even if the Court were to grant MWA’s request, that does not mean that the Court can merely accept the contents of the Statement of Decision as true—indeed, for the reasons expressed herein, the Court should not. For all of these reasons, MWA’s request for judicial notice should be denied.

Dated: January 31, 2024

BEST BEST & KRIEGER LLP

By: 

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**PROOF OF SERVICE**

I, Vanessa Guillen-Becerra, declare:

I am a citizen of the United States and employed in San Bernardino County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2855 E. Guasti Road, Suite 400, Ontario, California 91761. On January 31, 2024, I served a copy of the within document(s):

**SPECIALLY-APPEARING PETITIONER SHADOW MOUNTAIN RANCH, LLC'S OBJECTION REQUEST FOR JUDICIAL NOTICE TO MOJAVE WATER AGENCY'S OPPOSITION TO SHADOW MOUNTAIN RANCH LLC'S MOTION TO INTERPRET AND CLARIFY THE JUDGMENT**


- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Ontario, California addressed as set forth below.
- by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

*Please see attached Service List.*

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on January 31, 2024, at Ontario, California.

  
\_\_\_\_\_  
Vanessa Guillen-Becerra



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**Service List**  
***In re City of Barstow, et al v. City of Adelanto, et al***  
***Riverside Superior Court Case No. CIV208568***

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STATE OF CALIFORNIA     }  
COUNTY OF SAN BERNARDINO}

I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 13846 Conference Center Drive, Apple Valley, California 92307.

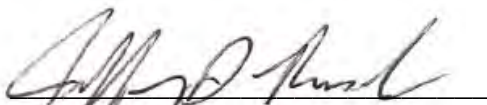
On February 1, 2024, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing each document being served, to each Party or its designee according to the official service list, a copy of which is attached hereto, and which shall be maintained by the Mojave Basin Area Watermaster pursuant to Paragraph 37 of the Judgment. Served documents will be posted to and maintained on the Mojave Water Agency's internet website for printing and/or download by Parties wishing to do so.

Document(s) filed with the court and served herein are described as follows:

**SPECIALY-APPEARING PETITIONER SHADOW MOUNTAIN RANCH, LLC'S  
OBJECTION TO REQUEST FOR JUDICIAL NOTICE TO MOJAVE WATER AGENCY'S  
OPPOSITION TO SHADOW MOUNTAIN RANCH LLC'S MOTION TO INTERPRET AND  
CLARIFY THE JUDGMENT**

  X   (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 1, 2024 at Apple Valley, California.

  
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## Mojave Basin Area Watermaster Service List as of February 01, 2024

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## Mojave Basin Area Watermaster Service List as of February 01, 2024

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## Mojave Basin Area Watermaster Service List as of February 01, 2024

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## Mojave Basin Area Watermaster Service List as of February 01, 2024

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Attn: Donna Miller  
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Attn: Dennis Hills  
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Attn: Joe Trombino  
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Attn: Stephen H. Douglas  
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Attn: Doug Heinrichs  
Thunderbird County Water District  
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Attn: Jim Hoover  
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## Mojave Basin Area Watermaster Service List as of February 01, 2024

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Vernola Trust, Pat and Mary Ann  
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Attn: Deidra Hitt  
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