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Supreme Court of California
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No. S290840

IN THE SUPREME COURT OF CALIFORNIA

BRING BACK THE KERN, et al.,
Plaintiffs and Respondents,
v.
CITY OF BAKERSFIELD,
Defendant and Respondent.

After a Decision by the Court of Appeal, Fifth Appellate District
Case No. F087487 (and consolidated cases)

Appeals from Orders Granting a Preliminary Injunction
in Favor of Plaintiffs
Kern County Superior Court Case No. BCV-22-103220
The Honorable Gregory A. Pulskamp, Judge Presiding

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF AMICUS BRIEF OF NORTHERN CALIFORNIA WATER ASSOCIATION AND REGIONAL WATER AUTHORITY IN SUPPORT OF REAL PARTIES IN INTEREST NORTH KERN WATER STORAGE DISTRICT ET AL.

Filed concurrently with Exhibits and Amicus Curiae Brief and Application

* RYAN S. BEZERRA, SBN 178048
rsb@bkslawfirm.com
ZACHARY C. CASTAGNOLA-JOHNSON, SBN 360139
zcj@bkslawfirm.com
BKS LAW FIRM, PC
1600 K Street, Suite 4A
Sacramento, CA 95814
Telephone: 916-446-4254

Counsel for Amici Curiae
Northern California Water Association and
Regional Water Authority

REQUEST FOR JUDICIAL NOTICE

Amici curiae Northern California Water Association ("NCWA") and Regional Water Authority ("RWA") hereby move the Supreme Court of California to take judicial notice, under Evidence Code sections 452 and 459, of a complete copy of the Statement of Decision in *Environ. Defense Fund. v. East Bay Mun. Utility Dist.* (Cal. Super Ct. Jan. 2, 1990) No. 425955 (the "Hodge Decision") and relevant excerpts of the State Water Resources Control Board's ("State Water Board") Corrected Order WR 2008-0014 ("2008 Order") and State Water Board Order WR 2026-0001 ("2026 Order") (together, the "State Water Board Orders").[1] This motion is made in accordance with California Rules of Court, Rules 8.252(a), 8.520, 8.54(a), and 8.74.

I. MEMORANDUM OF POINTS AND AUTHORITIES

This Court may take judicial notice of the official acts of the executive and judicial departments of the State of California; the records of any court of the State of California; facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute; and facts 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. (Evid. Code, §§ 452, subds. (c), (d), (g), and (h), 459, subd. (a).) Under Evidence Code sections 452 and 459, this Court should take judicial notice of the Hodge Decision and the State Water Board Orders.

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[1] The 2008 Order is available in its entirety on the State Water Board's website at https://waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2008/wro2008_0014corrected.pdf. The 2026 Order is available in its entirety on the State Water Board's website at https://waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2026/wro2026-0001.pdf.

A. This Court Should Take Judicial Notice of the Hodge Decision

To the knowledge of *amici curiae*, the Hodge Decision was not presented at the trial court, and it does not relate to proceedings occurring after the judgment that is the subject of Appellants' petition. The Hodge Decision is properly subject to judicial notice under Evidence Code section 452 and is relevant to this case.

A statement of decision issued by a Superior Court of the State of California and endorsed by the clerk is a record of that court and is an official writing of that court. (Evid. Code, §§ 452, subd. (d), 664, 1532, subd. (a); Gov. Code, §§ 69844, 69844.5, 69846.5, 69848; *Fergus v. Songer* (2007) 150 Cal.App.4th 552, 565.) Here, the Hodge Decision, attached as Exhibit B, is an endorsed copy of that statement of decision signed by the deputy clerk. (Exh. A, p. R003.) Presumptively, this signed copy is thus an official record of the Superior Court for the County of Alameda of the State of California. Therefore, the attached Hodge Decision is a court record and may properly be judicially noticed by this Court. In addition, the Hodge Decision is available via LEXIS at the citation 1990 Cal. Super. LEXIS 7.

The Hodge Decision is relevant to this case because there is essentially no appellate law to explain how courts are to go about reconciling competing human and environmental uses of water under Article X, section 2, other than in the Court of Appeal's decision on appeal here. (See Amicus Brief of NCWA and RWA, § 4**.**) It is necessary to fill this lacuna in the law both because reconciling human and environmental water uses is increasingly critical and because Article X, section 2 imposes on the court a duty to seek to maximize the overall benefits that California's waters can produce. (See *City of Lodi v. East Bay Mun. Utility Dist.* (1936) 7 Cal.2d 316, 341.) It therefore is necessary to look beyond published appellate decisions to see how this can be done.

The Hodge Decision thus is relevant because it developed a methodology to resolve a dispute between competing environmental and human uses, with facts similar to those in the present case. There, the plaintiffs similarly alleged that diversions from the river in question would have a negative impact on environmental resources, relying on the California and federal Wild and Scenic Rivers Acts for that proposition. (Exh. A, at p. R043.) In particular, the case that the Hodge Decision decided involved a statute that *explicitly* stated a priority for a single water use that Appellants can only argue that Fish & Game Code section 5937 *implies.* (Exh. A, at pp. R043-R044; Appellants' Joint Opening Brief, pp. 39-52.) Specifically, because the lower American River at issue in the Hodge Decision is designated under the California Wild and Scenic Rivers Act, Public Resources Code section 5093.50's explicit priority for maintaining designated rivers was at issue in that decision. (See Pub. Res. Code, § 5093.54, subd. (e) (designating the lower American River below Nimbus Dam).)

As a result, the means by which the Hodge Decision addressed this dispute, and the holistic physical solution that it devised and that was not appealed, should be instructive to this Court in analyzing the present case. Accordingly, *amici curiae* NCWA and RWA request that this Court take judicial notice of the Hodge Decision.

B. This Court Should Take Judicial Notice of the State Water Board Orders

To the knowledge of *amici curiae*, the State Water Board Orders were not presented at the trial court, and do not relate to proceedings occurring after the judgement that is the subject of Appellants' petition. The State Water Board Orders are properly subject to judicial notice under Evidence Code section 452 and are relevant to this case.

The issuance of an order by an administrative agency, such as a decision or order by the State Water Board, is an official act of the executive branch that may be judicially noticed. (Evid. Code, § 452, subd. (c); *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 752-753; *Rodas v. Speigel* (2001) 87 Cal.App.4th 513, 518.) As such the State Water Board Orders may be judicially noticed by this Court.

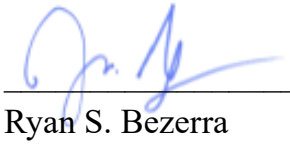
The State Water Board Orders are relevant to this case because they demonstrate how negotiated water management solutions can reconcile and advance competing human and environmental uses. (See Exhs. B and C.) They specifically show a long-running dispute over the human and environmental uses of the Yuba River's water was resolved through nuanced terms involving many parties, not a blunt decision favoring a single beneficial use. Like the Hodge Decision, the State Water Board Orders show how elevating fishery uses under Fish & Game Code section 5937 above reasonable use requirements, and thus other beneficial water uses, would put at risk cooperative solutions that implement Article X, section 2's fundamental policy of maximizing all beneficial use through on-the-ground terms in specific watersheds like that of the Yuba River. Therefore, the discussion of the State Water Board Orders is relevant.

Accordingly, *amici curiae* NCWA and RWA request that this Court take judicial notice of the State Water Board Orders.

Dated: May 1, 2026

Respectfully submitted,

BKS LAW FIRM, PC



Ryan S. Bezerra
Zachary C. Castagnola-Johnson

Attorneys for Amici Curiae Northern California Water Association and Regional Water Authority

INDEX OF EXHIBITS

Exh.	Description	Page/Bates No.
A	*Environ. Defense Fund. v. East Bay Mun. Utility Dist.* (Cal. Super Ct. Jan. 2, 1990) No. 425955	R002 – R115
B	State Water Board Corrected Order WR 2008-0014	R116 – R133
C	State Water Board Order WR 2026-0001	R134 – R147

[PROPOSED] ORDER

GOOD CAUSE APPEARING, the Court having reviewed and considered *amici curiae*'s Motion and Request for Judicial Notice, the Request for Judicial Notice is **GRANTED**.

IT IS SO ORDERED.

Dated: _____, 2026 _____

CHIEF JUSTICE GUERRERO

Supreme Court of California
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STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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Case Number: **S290840**
Lower Court Case Number: **F087487**

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REQUEST FOR JUDICIAL NOTICE	2026-05-01 - RWA & NCWA - Request for Judicial Notice ISO Amicus Brief
ADDITIONAL DOCUMENTS	2026-05-01 - RWA & NCWA - Exhibits to Request for Judicial Notice ISO Amicus Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Ashley Barton Duane Morris LLP	abarton@duanemorris.com	e-Serve	5/1/2026 9:20:29 AM
Jillian Ames Hanson Bridgett LLP 340657	JAmes@hansonbridgett.com	e-Serve	5/1/2026 9:20:29 AM
Douglas Evertz Murphy & Evertz LLP 123066	devertz@murphyevertz.com	e-Serve	5/1/2026 9:20:29 AM
Virginia Gennaro Office of the City Attorney 138877	Vgennaro@bakersfieldcity.us	e-Serve	5/1/2026 9:20:29 AM
Nicholas Jacobs SOMACH SIMMONS & DUNN 210091	njacobs@somachlaw.com	e-Serve	5/1/2026 9:20:29 AM
Daniel Raytis Belden Blaine Raytis, LLP 218374	dan@bbr.law	e-Serve	5/1/2026 9:20:29 AM
Jennifer Spaletta Stoel Rives LLP 200032	jennifer.spaletta@stoel.com	e-Serve	5/1/2026 9:20:29 AM
Nathan Metcalf Hanson Bridgett 240752	nmetcalf@hansonbridgett.com	e-Serve	5/1/2026 9:20:29 AM
Kevin Bursey	kbursey@wjhattorneys.com	e-	5/1/2026 9:20:29

Wanger Jones Helsley PC		Serve	AM
Christopher Sproul Environmental Advocates 126398	csproul@enviroadvocates.com	e-Serve	5/1/2026 9:20:29 AM
Roger Moore Law Office of Roger B. Moore 159992	rbm@landwater.com	e-Serve	5/1/2026 9:20:29 AM
Maximilian Bricker Somach Simmons & Dunn 350150	mbricker@somachlaw.com	e-Serve	5/1/2026 9:20:29 AM
Scott Kuney Young Wooldridge 111115	skuney@youngwooldridge.com	e-Serve	5/1/2026 9:20:29 AM
Tuloa Sanchez Shute Mihaly Weinberger	tsanchez@smwlaw.com	e-Serve	5/1/2026 9:20:29 AM
Benjamin Covington Horvitz & Levy LLP 340180	bcovington@horvitzlevy.com	e-Serve	5/1/2026 9:20:29 AM
Patrick Soluri Soluri Meserve, A Law Corporation 210036	mae@semlawyers.com	e-Serve	5/1/2026 9:20:29 AM
Mae Ryan Empleo Soluri Meserve, A Law Corporation	legal@semlawyers.com	e-Serve	5/1/2026 9:20:29 AM
Mary Loum Brownstein Hyatt Farber Schreck, LLP 300542	MLoum@bhfs.com	e-Serve	5/1/2026 9:20:29 AM
Dean Wallraff Attorney at Law 275908	dw@aenv.org	e-Serve	5/1/2026 9:20:29 AM
David Weibel Shute, Mihaly & Weinberger LLP	weibel@smwlaw.com	e-Serve	5/1/2026 9:20:29 AM
Jolie-Anne Ansley Duane Morris LLP 221526	JSAnsley@duanemorris.com	e-Serve	5/1/2026 9:20:29 AM
Valerie Stephan Water Audit California	vstephan@waterauditca.org	e-Serve	5/1/2026 9:20:29 AM
Louinda Lacey SOMACH SIMMONS & DUNN 275888	llacey@somachlaw.com	e-Serve	5/1/2026 9:20:29 AM
Zachary Amaya-Philbrook Horvitz & Levy, LLP	zamayaphilbrook@horvitzlevy.com	e-Serve	5/1/2026 9:20:29 AM
Blanca Herrera Duane Morris	BAHerrera@duanemorris.com	e-Serve	5/1/2026 9:20:29 AM
Ali Constant Murphy & Evertz, LLP	aconstant@murphyevertz.com	e-Serve	5/1/2026 9:20:29 AM
Robert Donlan Ellison Schneider Harris & Donlan LLP	rdonlan@wjhattorneys.com	e-Serve	5/1/2026 9:20:29 AM
Colin Pearce Duane Morris 137252	CLPearce@duanemorris.com	e-Serve	5/1/2026 9:20:29 AM

Gary Watt HANSON BRIDGETT LLP 191265	gwatt@hansonbridgett.com	e-Serve	5/1/2026 9:20:29 AM
Richard Iger Kern Delta Water District 263412	richard@kerndelta.org	e-Serve	5/1/2026 9:20:29 AM
Holly Martinez Murphy & Evertz LLP	hmartinez@murphyevertz.com	e-Serve	5/1/2026 9:20:29 AM
Jennifer Estabrook Somach Simmons & Dunn	jestabrook@somachlaw.com	e-Serve	5/1/2026 9:20:29 AM
Craig Carnes Wanger Jones Helsley PC	ccarnes@wjhattorneys.com	e-Serve	5/1/2026 9:20:29 AM
Patrick Soluri Soluri Meserve, A Law Corporation 210036	patrick@semlawyers.com	e-Serve	5/1/2026 9:20:29 AM
Anissa Chitour Morrison & Foerster LLP 341926	achitour@mofo.com	e-Serve	5/1/2026 9:20:29 AM
Bradley Herrema Brownstein Hyatt Farber Schreck, LLP 228976	bherrema@bhfs.com	e-Serve	5/1/2026 9:20:29 AM
Brett Stroud Young Wooldridge, LLP 301777	bstroud@youngwooldridge.com	e-Serve	5/1/2026 9:20:29 AM
Pennie Macpherson Somach Simmons & Dunn	pmacpherson@somachlaw.com	e-Serve	5/1/2026 9:20:29 AM
Sean Herman Hanson Bridgett LLP 302261	sherman@hansonbridgett.com	e-Serve	5/1/2026 9:20:29 AM
Patrick Burns Hanson Bridgett LLP 300219	pburns@hansonbridgett.com	e-Serve	5/1/2026 9:20:29 AM
Christopher Hu Office of the Attorney General 293052	christopher.hu@doj.ca.gov	e-Serve	5/1/2026 9:20:29 AM
william mckinnon Law Office 129329	legal@waterauditca.org	e-Serve	5/1/2026 9:20:29 AM
Michelle Chester Somach Simmons & Dunn 300632	mchester@somachlaw.com	e-Serve	5/1/2026 9:20:29 AM
Ian Fein California Department of Justice 281394	ian.fein@doj.ca.gov	e-Serve	5/1/2026 9:20:29 AM
Kevin Bundy Shute, Mihaly & Weinberger LLP 231686	bundy@smwlaw.com	e-Serve	5/1/2026 9:20:29 AM
Matthew Collom City Attorney's Office	mcollom@bakersfieldcity.us	e-Serve	5/1/2026 9:20:29 AM
Daniel Root	droot@bbr.law	e-	5/1/2026 9:20:29

Belden, Blaine, & Raytis		Serve	AM
Adam Keats Law Office of Adam Keats, PC 191157	adam@keatslaw.org	e-Serve	5/1/2026 9:20:29 AM
Jeremy Rosen Horvitz & Levy LLP 192473	jrosen@horvitzlevy.com	e-Serve	5/1/2026 9:20:29 AM
Scott Slater Brownstein Hyatt Farber Schreck, LLP 117317	sslater@bhfs.com	e-Serve	5/1/2026 9:20:29 AM
Shawnda Grady Wagner Jones Helsley PC 289060	sgrady@wjhattorneys.com	e-Serve	5/1/2026 9:20:29 AM
Zach Castagnola-Johnson BKS Law Firm PC 360139	zcj@bkslawfirm.com	e-Serve	5/1/2026 9:20:29 AM
Ryan Bezerra Bartkiewicz Kronick & Shanahan 178048	rsb@bkslawfirm.com	e-Serve	5/1/2026 9:20:29 AM

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Date

/s/Zach Castagnola-Johnson

Signature

Castagnola-Johnson, Zach (360139)

Last Name, First Name (PNum)

BKS Law Firm PC

Law Firm