

No. S224779

Exempt from Filing Fees
Government Code § 6103

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Citizens for Fair REU Rates, et al.
Plaintiffs and Appellants,

vs.

City of Redding, et al.
Defendants and Respondents

SUPREME COURT
FILED

JUL - 9 2015

Frank A. McGuire Clerk

Deputy

**RESPONDENTS' OPPOSITION TO
MOTION FOR JUDICIAL NOTICE SUBMITTED
IN SUPPORT OF APPELLANTS' ANSWER BRIEF**

Review of a Published Decision of the
Third Appellate District, Case No. C071906

Reversing a Judgment of the Superior Court of
the State of California for the County of Shasta,
Case No. 171377 (Consolidated with Case No. 172960)
Honorable William D. Gallagher, Judge Presiding

*MICHAEL G. COLANTUONO (143551)
MColantuono@chwlaw.us
MICHAEL R. COBDEN (262087)
MCobden@chwlaw.us
JON R. DICRISTINA (282278)
JdiCristina@chwlaw.us

COLANTUONO, HIGHSMITH & WHATLEY, PC
11364 Pleasant Valley Road
Penn Valley, California 95946-9000
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

Attorneys for Defendant and Respondent City of Redding

TABLE OF CONTENTS

I.	APPELLANTS' EXTRA-RECORD EVIDENCE SHOULD BE REJECTED.....	1
II.	APPELLANTS SEEK NOTICE OF IRRELEVANT MATERIAL.....	3
III.	CONCLUSION.....	4

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Gbur v. Cohen</i> (1979) 93 Cal.App.3d 296.....	3
<i>Mangini v. R. J. Reynolds Tobacco Co.</i> (1994) 7 Cal.4th 1057.....	3
<i>Mozetti v. City of Brisbane</i> (1977) 67 Cal.App.3d 565.....	3
<i>People v. Stoll</i> (1989) 49 Cal.3d 1136.....	3
<i>In re Tobacco Cases II</i> (2007) 41 Cal.4th 1257.....	3
<i>Western States Petroleum Assn. v. Superior Court</i> (1995) 9 Cal.4th 559.....	2, 3
Statutes	
Evidence Code	
§ 210.....	4
§ 350.....	4
§ 450.....	3
Rules	
California Rules of Court, rule 8.54(a)(3).....	1

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Respondent City of Redding ("City") hereby submits this Opposition to the Motion for Judicial Notice filed in support of Appellants' Answer Brief (the "Motion"), pursuant to California Rules of Court, rule 8.54(a)(3). In their Motion, Appellants ask this Court to notice the following document:

- A. City of Redding Resolution No. 2013-05, A Resolution of the City Council of the City of Redding Establishing the Electric Utility Rates for Service to Customers Within the Corporate Limits of the City of Redding Effective March 5, 2013, and March 5, 2014 (adopted Feb. 5, 2013).

This document is not subject to judicial notice because it is extra-record evidence introduced to contradict the Administrative Record, and because it is irrelevant. This Court should therefore deny Appellants' Motion to take notice of it.

I. APPELLANTS' EXTRA-RECORD EVIDENCE SHOULD BE REJECTED

This case challenges a Payment In Lieu of Taxes (PILOT), which Appellants allege the City impermissibly funded through electric rates the City adopted December 7, 2010. While Appellants also challenge the City's budget for Fiscal Years 2011–2012 and 2012–2013, they do so only to come at their central allegation from another angle: They claim this budget was a "re-affirmation and approval"

of the alleged decision to fund the PILOT through the rates adopted in December 2010. (See Appellants' Motion, p. 2.) Appellants brought two lawsuits on these points, which the trial court consolidated. (See 1 CT 2 [first lawsuit], 2 CT 498 [second lawsuit], 3 CT 719 [consolidation].) The trial court issued judgment for the City in both suits on July 13, 2012. (3 CT 750.)

Exhibit A to Appellants' Motion is a City resolution adopted the following year, on February 5, 2013. As Appellants admit, this is extra-record material that post-dates not only the legislative actions at issue here, but the filing of the two suits seeking review of those actions, and even the judgment in those cases. (See Appellants' Motion, p. 2.) Exhibit A is therefore inadmissible as outside the Administrative Record considered by the Redding City Council when it took the actions Appellants challenge. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576 [judicial review of legislative action is limited to the record before the legislative body].)

While extra-record evidence may be admitted in limited circumstances, it may never be admitted merely to contradict the evidence an agency relied on in making a quasi-legislative decision or to question the wisdom of that decision. (*Id.* at p. 579.) The burden is on the proponent of extra-record evidence to demonstrate an exception to the general rule of

inadmissibility. (*Id.* at pp. 576–577.) Appellants make no effort to do so.

Appellants’ opportunity to make a record in this matter was during the City Council’s hearings. They may not “supplement” that record with material produced years after the City action they challenge. Accordingly, this Court should not take judicial notice of Appellants’ Exhibit A.

II. APPELLANTS SEEK NOTICE OF IRRELEVANT MATERIAL

“Although a court may judicially notice a variety of matters (Evid. Code, § 450 et seq.), only relevant material may be noticed.” (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063, overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257; see also *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301; *Mozetti v. City of Brisbane* (1977) 67 Cal.App.3d 565, 578.) The Court should therefore decline to notice material that “has no bearing on the limited legal question at hand.” (*People v. Stoll* (1989) 49 Cal.3d 1136, 1144, fn. 5.)

This case challenges a PILOT allegedly funded by electric rates adopted in December 2010. The resolution Appellants submit as Exhibit A established rates that became effective in March 2013. Those rates are not challenged here, nor is there any other evidence relating to their adoption before this Court. Consideration of Exhibit A will be at least useless and, in the absence of other record


information before the City Council when it adopted rates in 2013, it is perhaps misleading too. Even if Exhibit A demonstrates that the March 2013 rates were needed to fund the PILOT — something the City does not concede — it says nothing about what was funded by the rates adopted in December 2010. It therefore presents nothing “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, §§ 210, 350.) Because Exhibit A sheds no light on legislative action before this Court, Appellants’ Motion should be denied.

III. CONCLUSION

The City respectfully requests this Court deny Appellants’ Motion for the reasons stated above.

DATED: July 7, 2015

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**



MICHAEL G. COLANTUONO
MICHAEL R. COBDEN
JON R. DI CRISTINA
Attorneys for Respondent,
City of Redding

PROOF OF SERVICE

Citizens for Fair REU Rates v. City Of Redding
Third District Court of Appeal Case No. C071906
California Supreme Court Case No. S224779

I, Ashley A. Lloyd, declare:

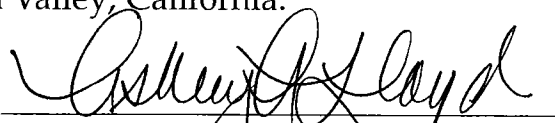
I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 11364 Pleasant Valley Road, Penn Valley, California 95946. On July 7, 2015 I served the document(s) described as **RESPONDENTS' OPPOSITION TO MOTION FOR JUDICIAL NOTICE SUBMITTED IN SUPPORT OF APPELLANTS' ANSWER BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

BY MAIL: The envelope was mailed with postage thereon fully prepaid. 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 at Penn Valley, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service 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 July 7, 2015 at Penn Valley, California.



Ashley A. Lloyd

SERVICE LIST

Citizens for Fair REU Rates v. City of Redding
Third District Court of Appeal Case No. C071906
California Supreme Court Case No. S224779

William P. McNeill
McNeill Law Offices
280 Hemsted Drive, Suite E
Redding, CA 96002
Telephone: (530) 222-8992
Facsimile: (530) 222-8892
Email: waltmcn@aol.com
*Attorneys for Plaintiff and
Appellant Citizens for Fair REU
Rates*

Barry DeWalt, City Attorney
City Of Redding
777 Cypress Avenue
P.O. Box 49601
Redding, CA 96099
Telephone: (530) 225-4050
Facsimile: (530) 225-4362
Email: lwingate@ci.redding.ca.us
*Attorneys for Defendant and Respondent
City of Redding*

Rick W. Jarvis
Jarvis Fay Doporto & Gibson
492 9th Street, Suite 310
Oakland, CA 94607
*Attorneys for League of California
Cities, Pub/Depublication
Requestor*

Daniel E. Griffiths
Braun Blaising McLaughlin & Smith
915 L Street, Suite 1270
Sacramento, CA 95814
*Attorneys for California Municipal
Utilities Association, Pub/Depublication
Requestor*

James R. Cogdill
Howard Jarvis Taxpayers Assn.
921 11th Street, Suite 1201
Sacramento, CA 95814
*Attorneys for Howard Jarvis
Taxpayers Association,
Pub/Depublication Requestor*

Clerk of the Court
Shasta County Superior Court
1500 Court Street
Redding, CA 96001-1686

Court of Appeal
Third Appellate District
914 Capitol Mall
Sacramento, CA 95814