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CITY OF SAN BUENAVENTURA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER, a California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL BOARD, etc., et al.,

Respondents.

CITY OF SAN BUENAVENTURA, etc.,

Cross-Complainant

v.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

CITY OF SAN BUENAVENTURA'S OPPOSITION TO THE GARRISON GROUP'S MOTION FOR JUDGMENT ON THE PLEADINGS

Date: January 18, 2022
Time: 1:30 p.m.
Dept: 10

Action Filed: Sept. 19, 2014
Trial Date: Feb. 14, 2022

Defendant and Cross-Complainant the City of San Buenaventura (Ventura) submits this opposition to the motion for judgment on the pleadings (Motion) filed by Gregg Scott Garrison on behalf of himself and approximately16 other parties (Garrison Group).

I. INTRODUCTION

The Court must deny the Garrison Group's Motion. It is not based on the material allegations in Ventura's Third Amended Cross-Complaint (TACC). Rather, it improperly seeks to introduce unsupported factual allegations that do not appear on the face of the TACC and which are not the subject of a proper and timely request for judicial notice. The Court must therefore disregard, and Ventura objects to, almost all of the Motion because it violates the applicable standards for a motion for judgment on the pleadings.

To the extent the Motion raises any proper issues for the Court's consideration, those issues are contrary to law. At best, the Motion appears to raise two issues, both of which must be rejected based on settled case and statutory law. First, the Garrison Group appears to assert that the Court somehow lacks jurisdiction because neither the Court nor Ventura has conducted environmental review under the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*) (CEQA), and that CEQA should have been used instead of the TACC. CEQA does not apply to judicial proceedings and CEQA review is not a prerequisite to the commencement of the TACC. And even if the Garrison Group had a CEQA claim, which they do not, that claim would have been time-barred years ago. Thus, CEQA provides no basis for the Motion.

Second, the Garrison Group appears to assert that the Court somehow lacks jurisdiction because Ventura should have commenced an eminent domain action rather than seeking a physical solution and, if necessary, a determination of existing rights through the TACC. However, Ventura is not seeking to acquire any private property rights for public use. Rather, by its TACC, Ventura seeks the Court's determination of existing rights of all parties, including Ventura, to the water in the Ventura River Watershed (Watershed) or, alternatively and preferably, a physical solution for the Watershed that need not determine water rights. A determination of existing rights of the parties does not transfer property rights—it merely declares what rights parties already possess to use the water in the Watershed under applicable California

water law. Thus, the Garrison Group's mere reference to the power of eminent domain provides no basis for the Motion.

Finally, the Motion purports to incorporate by reference the "additional" motions for judgment on the pleadings filed by "other Cross-Defendants." This vague attempt to incorporate other motions is not appropriate, does not provide appropriate notice or due process, and does not permit Ventura a fair opportunity to respond. The Court should reject this attempt to incorporate arguments not fairly set forth in the Motion. To the extent the Court considers this attempt to incorporate unspecified arguments into the Motion, the Motion must be denied under the law of the case and for the reasons stated in Ventura's oppositions to all other motions.

The Court must not accept the invitation by the Garrison Group to repeat the reversible error that the Court of Appeal had to correct in *Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176 (*Santa Barbara Channelkeeper*). The Motion should be denied, and the parties should be allowed to proceed with the Phase One Trial.[1] Any contrary ruling would be reversible error.

II. STANDARD OF REVIEW

The rules governing a motion for judgment on the pleadings are the same as a demurrer, which tests the sufficiency of the pleadings. (Code Civ. Proc., § 438; *Southern Calif. Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.)[2] In reviewing the Motion, the Court is limited to the contents of the TACC and those matters of which it can take judicial notice. (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.) "As on demurrer, the defendant's motion cannot be aided by reference to the answer or to matters outside the complaint." (*Welshans v. City of Santa Barbara* (1962) 205 Cal.App.2d 304, 305.)

[1] To the extent there are any minor technical defects in the TACC, the Court should permit Ventura to amend the TACC to correct them and to conform the pleadings to the evidence presented in the Phase One Trial.

[2] Whether the Motion is proper under the timelines required by Code of Civil Procedure section 438 or whether it is intended to be a non-statutory motion is unclear. In either case, given that the Phase One Trial is imminent, the Motion should be denied, and the Court should decide any legal questions based on a full factual record, if for no other reason than to avoid the need for multiple additional appeals in a case that has been pending since 2014, that has already resulted in one published decision, but has yet to proceed to even an initial phase of trial.

Because a motion for judgment on the pleadings is the functional equivalent of a general demurrer, it ordinarily does not lie with respect to only part of a cause of action. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167.) Thus, where a claim may be based on alternative grounds, one of which is properly pleaded, the motion will ordinarily be denied. (See *Fire Ins. Exch. v. Superior Court* (*Altman*) (2004) 116 Cal.App.4th 446, 451.) The Motion violates this rule because it only addresses parts of causes of action, specifically those parts related to the Ojai Basin and the Upper Ojai Basin (See Motion, generally). The Motion can be denied on this basis alone.

In ruling on a motion for judgment on the pleadings, the Court "must assume that all the facts alleged in the complaint are true" and must interpret all allegations liberally. (*Sheehan v. San Francisco 49ers, LTD*. (2009) 45 Cal.4th 992, 998, citing *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) "The trial court is obligated to look past the form of a pleading to its substance. Erroneous or confusing labels attached . . . are to be ignored if a complaint pleads facts which would entitle the plaintiff to relief." (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) The motion must be denied if there are material factual issues that require evidentiary resolution. (*Schabarum v. California Legislature* (1998) 60 Cal. App. 4th 1205, 1216.) Where the motion for judgment on the pleadings is granted, leave to amend must also be granted unless the defect cannot be cured by amendment. (*Baughman v. State of California* (1995) 38 Cal.App.4th 182, 187.) Under these standards, each of the causes of action in the TACC states a valid cause of action, and Ventura is entitled to proceed to the Phase One Trial to prove certain of its allegations, specifically the interconnectedness of the Watershed.

III. FAILURE OF THE MOTION TO COMPLY WITH THE STANDARD OF REVIEW AND VENTURA'S OBJECTIONS

The Garrison Group's Motion fails entirely to comply with the applicable standard of review and fails to provide appropriate grounds for a motion for judgment on the pleadings. The Motion does not fairly cite even a paragraph of the TACC. The Motion does not contain a proper and timely request for judicial notice as is required by Code of Civil Procedure section 438,

subdivision (d). Rather, the Motion seeks to introduce unsupported factual allegations that do not appear on the face of the TACC and which are not the subject of a proper and timely request for judicial notice. This is improper. The Court cannot consider any allegations that are not apparent on the face of the TACC. For the purposes of the Motion, Ventura objects to the Court's consideration of all such allegations, including, but not limited to: (1) all of Motion Section I of the Memorandum of Points and Authorities, pp. 7-13; (2) all assertions in Motion Section III of the Memorandum of Points and Authorities, pp. 13-21, which are not supported by proper cites to the TACC; and (3) all other assertions in the moving papers that are not supported by proper cites to the TACC.

IV. MATERIAL ALLEGATIONS THAT MUST BE ACCEPTED AS TRUE

The Court is well aware of the procedural history of this case and the general factual background of the dispute. For purposes of this Motion, the Court must assume that the following factual allegations from the TACC are true.

The Ventura River Watershed is located in western Ventura County, with a small section located in eastern Santa Barbara County, is fan-shaped, and covers 226 square miles. (TACC, ¶ 98.) The Ventura River runs through the center of the Watershed along a 33.5-mile stretch from its headwaters in the Transverse Ranges to the Pacific Ocean. (TACC, ¶ 99.) The Ventura River is fed by several major tributaries, including Matilija Creek, North Fork Matilija Creek, San Antonio Creek, Canada Larga Creek, and Coyote Creek. (TACC, ¶ 100.) There are four significant groundwater basins in the Watershed—the Lower Ventura Groundwater Basin, the Upper Ventura River Groundwater Basin, the Ojai Valley Groundwater Basin, and the Upper Ojai Valley Groundwater Basin. (TACC, ¶ 103.) The Ventura River and its tributaries and the four groundwater basins in the Watershed are hydrologically interconnected. (TACC, ¶ 103.)

Ventura holds pueblo, prescriptive, and/or appropriative rights to the waters in the Watershed. (TACC, ¶ 107.) Ventura is a successor to the Mission San Buenaventura pueblo water right, which gives it a priority right to use sufficient water from the Ventura River Watershed, which by definition includes the Ojai Basin, to meet its needs. (TACC, ¶¶ 107, 124-

126.) Ventura also holds pre-1914 appropriative water rights. (TACC, ¶¶ 107, 135.) Ventura's use of water in the Watershed has also resulted in Ventura obtaining prescriptive water rights. (TACC, ¶ 107, 130.) Ventura's water rights in the Watershed are senior to and have priority over the rights of all Cross-Defendants. (TACC, ¶¶ 126, 131, 135-136, 143, 149-150.)

Cross-Defendants' claims to the Watershed threaten Ventura's superior rights, and the pumping and/or diversion activities of Cross-Defendants reduce Watershed groundwater tables and surface flows and contribute to the deficiency of the Watershed water supply as a whole. (TACC, ¶ 108.) Cross-Defendants' use of water, or claims of rights to the use of water, reduces the surface and/or subsurface water flow of the Ventura River and impairs Ventura's water rights. (TACC, ¶¶ 105, 108-110.) This continued and increasing extraction and/or diversion of Watershed waters has and will deprive Ventura of its rights to provide water for the public health, welfare, and benefit. (TACC, ¶ 110.) Ventura's use of Watershed water is reasonable and consistent with the public trust as compared to the use of Watershed water by the Cross-Defendants. (TACC, ¶ 115, 120-121, 154.)

V. LEGAL ARGUMENT

Because the Motion is based entirely on matters outside the TACC, and which are not subject to a proper and timely request for judicial notice, the bulk of the Motion must be rejected outright. To the extent the Motion attempts to raise any cognizable legal issues, they appear to be that the Court lacks jurisdiction over the TACC because neither the Court nor Ventura conducted CEQA review and because Ventura did not file an eminent domain action. Neither argument has any legal support.

A. CEQA Does Not Apply to the Court or to the TACC, and Any CEQA Claim is Time-Barred

CEQA requires a public agency that is considering the approval of a discretionary project that is not otherwise exempt from CEQA review to conduct a review of the effects of the decision on the environment. (Pub. Res. Code §§ 21991.1, 21063, 21080(a).) By definition, "public

agency" does not "include the courts of the state." (14 Cal. Code Reg. § 15379.) Therefore, by definition, CEQA does not apply to the Court's jurisdiction to hear the TACC and does not limit the Court's ability to determine the matters asserted in the TACC.

This result is the only valid one because the Court's jurisdiction to hear the TACC is fundamentally rooted in Article X, section 2 of the California Constitution, which cannot be superseded by legislation such as CEQA. This specific point is confirmed in *Hillside Memorial Park & Mortuary v. Golden State Water Company* (2012) 205 Cal.App.4th 534 (*Hillside Memorial Park*). In *Hillside Memorial Park*, the Court of Appeal rejected a trial court's decision that a party was required to prepare an Environmental Impact Report under CEQA before filing a motion to amend a judgment and physical solution in an adjudication. (*Id.* at 550.) The Court of Appeal reasoned that CEQA did not apply to the adjudication. It held that "[t]o the extent there is a conflict between the statutory provision of CEQA and article X, section 2 of the California Constitution establishing a public policy of fostering the reasonable and beneficial use of water, the constitutional provision must prevail and the court must hold an evidentiary hearing to resolve the issues presented by the motion to amend the judgment." (*Ibid.*)

The Court of Appeal reached a similar result in *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 481-482 (*Seaside*). In *Seaside*, the court held that parties to a judgment and physical solution in an adjudication cannot use or require CEQA review in ways that conflict with the court's judgment and continuing jurisdiction. (*Ibid.*) The same holding was reached in *Central Basin Municipal Water District v. Water Replenishment District of Southern California* (2012) 211 Cal.App.4th 943, 948-951 (*Central Basin*). In *Central Basin*, the Court of Appeal addressed whether the Water Replenishment District of Southern California was required to conduct CEQA review before declaring a water emergency that would modify the schedule during which over-extracted water could be replaced within an adjudicated basin. (*Id.* at 945-946.) The Court of Appeal rejected this argument, holding that requiring CEQA review would frustrate the judgment and physical solution in the adjudicated basin and would in fact be improper. (*Id.* at 951.) In sum, CEQA simply has no application here.

Ventura's decision to file a cross-complaint in response to the underlying complaint is also not subject to CEQA. CEQA only applies to discretionary projects undertaken by a public agency that may have a significant and adverse physical effect on the environment. (*Hillside Memorial Park, supra,* 205 Cal.App.4th at 550.) Where, as here, the Court holds the power to act, CEQA does not apply. (*Ibid.*) Agency action that merely establishes the agency's ability to take a later action that may affect the environment, but does not commit the agency to a definite course of action that is under its control, is not an "approval" under CEQA. (*Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School Dist.* (1992) 9 Cal.App.4th 464, 474-476.) Ventura's decision to file the TACC and subject itself to the Court's jurisdiction on the issues in the TACC does not constitute the discretionary approval of a project that is subject to CEQA review. (*See, e.g., Central Basin, supra,* 211 Cal.App.4th at 949.)

The Motion cites no case or CEQA provision that CEQA review is required before initiation of litigation, and no such case or provision exists to Ventura's knowledge. This is true because initiation of litigation is not a discretionary project, particularly the initiation of a cross-complaint. It would also be entirely infeasible to apply CEQA to the initiation of litigation, especially the initiation of a cross-complaint, given the short time limits to file litigation and the significant time requirements for CEQA compliance. Such a requirement would also be nonsensical because only a court has the final power to make the decision in litigation and CEQA does not apply to the courts. (14 Cal. Code Reg. § 15379.)

Finally, and fatally, even if the Garrison Group did have some claim under CEQA (which they do not), such a claim would be time-barred. The Supreme Court has held that CEQA challenges are time barred if not brought within the applicable Public Resources Code section 21167 statute of limitations. (*Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2011) 48 Cal.4th 32, 47-48.) Courts must strictly enforce the CEQA limitations periods. (*Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 500.)

Here, the longest applicable statute of limitation for a CEQA challenge would be the 180-day limitation under Public Resources Code section 21167, subdivision (a). Since the original cross-complaint was filed in 2015, and the TACC was filed in January of 2020, any CEQA claim

by the Garrison Group has been time-barred for several years, and the Court must reject it.

It is true that an adjudication and physical solution will not preclude compliance with CEQA as to *future projects* to the extent such projects do not conflict with the physical solution. (*Seaside, supra,* 183 Cal.App.4th at 482.) However, there is no legal authority to support the proposition that CEQA compliance is required before the Court considers the TACC, and even if such a claim existed, which is does not, it would be time-barred. The Motion must therefore be denied.

B. The TACC is Not an Eminent Domain Action, Such an Action is Not Required for the Court to have Jurisdiction and Ventura Cannot be Forced to Bring Such an Action

An adjudication of groundwater and surface water rights, whether brought as an action for declaratory relief, quiet title, injunction, or through a statutory process, is simply a request for a court or administrative agency to determine existing rights to the use of water, and, as necessary to protect those rights from injury. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 298 (*Santa Maria*); *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489; *Pasadena v. Alhambra* (1949) 33 Cal.2d 908.) In such an adjudication, existing rights must be fixed in light of paramount concepts of reasonable use and public trust because there is "no property right in an unreasonable use" of water. (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 101.) Existing rights may include prescriptive water rights, which are acquired by operation of law when essential elements for adverse use have been established. (*Santa Maria, supra,* 211 Cal.App.4th at 294.) In all of these circumstances, however, the Court is merely determining existing rights of the parties—no one is taking rights or acquiring rights they do not otherwise possess.

Therefore, eminent domain does not apply to this case, and nothing in the TACC alleges that Ventura is seeking to acquire the private property (water rights) of any Cross-Defendant for public use. In fact, the opposite is true—Ventura is seeking a physical solution to protect existing water rights held by all parties. (TACC, ¶¶ 1,139 ["The physical solution doctrine imposes a duty on this Court to resolve competing claims to water by cooperatively satisfying the reasonable and

beneficial needs of each user while protecting the substantial enjoyment of their prior rights."].) In *Central Basin Municipal Water Dist. v. Fossette* (1965) 235 Cal.App.2d 689, 698, the Court of Appeal rejected the contention that such a physical solution in an adjudication violated rights without the proper exercise of the power of eminent domain. To the contrary, the Court of Appeal held that the stipulation and proposed judgment at issue in that case "do not purport to deprive any individual of a property right, but on the contrary, disclose a careful and concerted effort on the part of the litigants to conserve and protect the individual rights to the use of water within the watershed, where the need for such water is growing and the supply is limited." (*Ibid.*)

Even where governmental action limits water rights, courts have held that there is no "taking" within the meaning of the federal and California constitutions. (*Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261.) When water use is reallocated under the reasonable use doctrine, the public trust doctrine, or other statutory or common law bases, courts have found no interference with a property right at all because water rights are held subject to these doctrines and a vested water right cannot be obtained in a use that conflicts with them. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443-445.) Where, as here, a party is merely seeking a physical solution or, as needed, a declaration of existing rights under California water law, there is no credible basis for an argument that eminent domain concepts apply.

Water rights can of course be acquired through the power of eminent domain, when such an action is properly initiated, as Article X, section 5 of the California Constitution specifically contemplates. However, neither the Court nor the parties can force Ventura to pursue such an eminent domain action in lieu of seeking a physical solution or, if necessary, an adjudication of existing rights, whatever they may be. And the Court's jurisdiction to hear these issues under the Constitution, common law, and statutes is entirely unrelated to the presence or absence of an action in eminent domain. The Motion must therefore be denied.

C. Any Other Cognizable Argument in the Motion or Through Incorporation is Barred by the Law of the Case and Arguments in Ventura's Other Oppositions

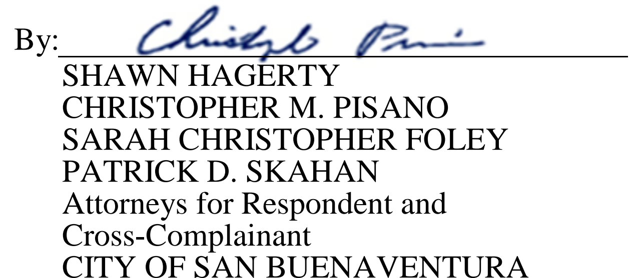
To the extent the Motion raises or incorporates any other valid arguments, which Ventura asserts it does not, those arguments are either barred by the law of the case or fail because of the authority provided in Ventura's other oppositions. The doctrine of the "law of the case" addresses the effect of a first appellate decision on the subsequent retrial or appeal of that case. The law of the case doctrine provides that "a decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." (*Morohoshi v. Pacific Homes* (2004) 34 Cal.4th 482, 491.) Here, the Court of Appeal has already determined that Ventura is *entitled* to have its cross-complaint heard on the merits, and that the Court *must* consider the water uses of others in the Watershed. (*Santa Barbara Channelkeeper, supra,* 19 Cal.App.5th at 1181.) The Motion must be denied in light of the law of the case, and because of the authority provided in Ventura's other oppositions.

VI. CONCLUSION

For all the reasons set forth above, the Motion must be denied.

Dated: January 4, 2022

BEST BEST & KRIEGER LLP

By: 

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PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main Street, Suite 390, Walnut Creek, CA 94596. On January 4, 2022, I served the following document(s):

CITY OF SAN BUENAVENTURA'S OPPOSITION TO THE GARRISON GROUP'S MOTION FOR JUDGMENT ON THE PLEADINGS

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I declare 1under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 4, 2022at Walnut Creek, California

Irene Islas