



1 Jennifer T. Buckman, SBN 179143
 2 Holly J. Jacobson, SBN 281839
 3 Bartkiewicz Kronick & Shanahan, PC
 4 1011 Twenty-Second Street
 5 Sacramento, California 95816-4907
 6 Telephone: (916) 446-4254
 7 Facsimile: (916) 446-4018
 8 E-Mail: jtb@bkslawfirm.com

9 Attorneys for City of Ojai

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 FOR THE COUNTY OF LOS ANGELES

12 SANTA BARBARA CHANNELKEEPER,
 13 a California non-profit corporation,

14 Petitioner,

15 v.

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

21 Respondents.

22 CITY OF SAN BUENA VENTURA, a
 23 California municipal corporation,

24 Cross-Complainant,

25 v.

26 DUNCAN ABBOTT; et al.
 27
 28

Case No. 19STCP01176

Hon. William F. Highberger

MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF CITY OF
 OJAI'S MOTION FOR JUDGMENT ON
 THE PLEADINGS

Date: January 18, 2021

Time: 1:30pm

Dept: 10

**310 North Spring Street
 Los Angeles, CA 90012**

Action Filed: September 19, 2014

First Amended Complaint Filed:
 September 7, 2018

BARTKIEWICZ, KRONICK & SHANAHAN, PC

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION AND SUMMARY OF ARGUMENT 1

II. PROCEDURAL HISTORY OF THE CASE AND SUMMARY OF RELEVANT
FACTS 2

III. ARGUMENT 4

 A. Comprehensive Groundwater Adjudications Initiated After 2015, Such as
 Ventura Has Pled in the TACC, Must Be Brought Under the Comprehensive
 Groundwater Adjudication Statute. 4

 B. Because Adjudications Under the Comprehensive Groundwater Adjudication
 Statute Are Limited to a Single Basin, CGAS Does Not Provide the Court with
 Jurisdiction to Conduct a Comprehensive Adjudication of the Ventura River and
 Four Separate Bulletin 118-Designated Groundwater Basins. 6

 C. The Imposition of a Single Judgment Imposing a Physical Solution on the Entire
 Watershed Would Violate the Statutory Scheme..... 10

 1. The Court Cannot Properly Apply the Correlative Rights Doctrine
 Across Multiple Basins in One Judgment..... 10

 2. The Court Cannot Impose a Physical Solution That Would Interfere with
 the Exclusive Authority That the Legislature Has Given the Ojai Basin
 Groundwater Management Agency to Manage Groundwater within the
 Ojai Basin..... 12

 3. The Court Cannot Impose a Physical Solution Before OBGMA Adopts,
 and DWR Approves, the Groundwater Sustainability Plan for the Ojai
 Basin. 14

 D. Ventura Lacks Standing to Bring Any Claims Concerning the Ojai Basin. 15

 E. Lacking Authority to Proceed Under CGAS, Ventura Cannot State a Claim for
 Declaratory or Injunctive Relief. 16

IV. CONCLUSION..... 17

TABLE OF AUTHORITIES

Cases

1

2

3 **Cases**

4 *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809 10

5 *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471..... 13

6 *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224..... 9

7 *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593 5

8 *Dixon v. Gries* (1895) 106 Cal. 506..... 15

9 *Gantman v. United Pac. Ins. Co.*, (1991) 232 Cal.App.3d 1560 15

10 *Gikas v. Zolin* (1993) 6 Cal.4th 841, 852..... 7

11 *Katz v. Walkinshaw* (1903) 141 Cal. 116..... 10, 11

12 *KFC Western, Inc. v. Meghrig* (2d Dist., 1994) 23 Cal.App.4th 1167 5

13 *Klopstock v. Superior Court* (1941) 17 Cal.2d 13 15

14 *Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263 5

15 *Merkley v. Merkley* (1939) 12 Cal.2d 543 16

16 *Messenger Courier Assn. of Americas v. California Unemployment Ins. Appeals Bd.* 9

17 *Oakland Municipal Improv. League v. City of Oakland* (1972) 23 Cal.App.3d 165..... 15

18 *San Bernardino v. Riverside* (1921) 186 Cal. 7 10

19 *San Martin Vineyards v. R. & W. Floor Coverings, Inc.* (1962) 204 Cal.App.2d 677..... 16

20 *Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176 2

21 *Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361 9

22 *State Farm Gen. Ins. Co. v. Lara* (2021) 71 Cal.App.5th 148..... 8

23 *Trejo v. County of Los Angeles* (2d. Dist., 2020) 50 Cal.App.5th 129 5

24 *Woosley v. State of California* (1992) 3 Cal.4th 758 9

25

26 \\
 27 \\
 28 \\
 \

1 **Statutes**

2 Code Civ. Proc. § 17, subd. (a) 8

3 Code Civ. Proc. § 367 15

4 Code Civ. Proc. § 438 17

5 Code Civ. Proc §§ 830, et. seq. 1, 4, 6, 15

6 Code Civ. Proc. § 830 5

7 Code Civ. Proc. § 830, subd. (a) 4

8 Code Civ. Proc. § 830, subd. (a)(2) 4

9 Code Civ. Proc. § 830, subd. (a)(4) 4

10 Code Civ. Proc. § 830, subds. (b)(4) 8

11 Code Civ. Proc. § 830, subd. (b)(5) 7

12 Code Civ. Proc. § 830, subd. (b)(7) 8

13 Code Civ. Proc. § 832 1, 5

14 Code Civ. Proc. § 832, subd. (a) 6, 7

15 Code Civ. Proc. § 832, subd. (b) 4

16 Code Civ. Proc. § 832, subd. (c) 4, 6, 7

17 Code Civ. Proc. § 833 5, 9

18 Code Civ. Proc. § 833, subd. (a) 5

19 Code Civ. Proc. § 833, subd. (b) 5

20 Code Civ. Proc. § 834, subd. (a) 7

21 Code Civ. Proc. § 841, subd. (a) 6

22 Code Civ. Proc. § 847, subd. (a) 7

23 Code Civ. Proc. § 849 14

24 Code Civ. Proc. § 849, subd. (b) 14

25 Code Civ. Proc. § 852 14

26 Code Civ. Proc. § 1061 16

27 Water Code § 2500 11

28 Water Code § 10720.7 14

1 Water Code § 10720.8 5, 6

2 Water Code § 10721 1

3 Water Code § 10721, subd. (a) 7

4 Water Code § 10721, subd. (c) 7

5 Water Code § 10733.4, subd. (d) 14

6 Water Code § 10737.2 14

7 Water Code § 10737.8 14

8 West's Water App., Ch. 131 12

9 West's Water App., Ch. 131, §§ 101-102 12

10 West's Water App., Ch. 131, §§ 201-202 12

11 West's Water App., Ch. 131, § 404 12

12 West's Water App., Ch. 131, § 408 12

13 West's Water App., Ch. 131, §§ 701-708 12

14 West's Water App., Ch. 131, § 701 12

15 West's Water App., Ch. 131, § 701, subd. (b) 13

16 West's Water App., Ch. 131, § 702 12

17 West's Water App., Ch. 131, § 706 12

18 West's Water App., Ch. 131, § 901 13

19 West's Water App., Ch. 131, § 1107, subd. (a) 13

20 West's Water App., Ch. 131, § 1107, subd. (b)(2) 13

21
22
23
24
25
26
27
28

Other Authorities

Slater, California Water Law and Policy at §11.10[3] 12

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Third Amended Cross-Complaint ("TACC") filed by the City of Buena Ventura ("Ventura") impermissibly attempts to combine four separate Bulletin 118-designated groundwater basins, *and* the waters of the Ventura River *and* its tributaries, into one comprehensive adjudication brought under the Comprehensive Groundwater Adjudication Statute ("CGAS", Code Civ. Proc §§ 830, et. seq.). Ojai agrees that, since it was enacted in 2015, CGAS has provided the exclusive means of initiating a comprehensive groundwater adjudication. But, as demonstrated by the plain language of the statute, CGAS does not authorize a comprehensive adjudication of the rights to extract groundwater in a river, its tributaries, and multiple groundwater basins (*see* Code Civ. Proc. § 832; Water Code § 10721), and it cannot be stretched to confer jurisdiction for the court to conduct a comprehensive adjudication to determine all the rights to all the water sources Ventura has raised in the TACC. Rather, a comprehensive adjudication brought under CGAS is restricted to determining the rights to groundwater within a singular Bulletin 118-designated groundwater basin. Ventura's attempts to expand the jurisdiction beyond what the statute allows must fail as a matter of law.

The TACC's attempt to invoke CGAS to impose a single judgment and physical solution on the Ventura River, its tributaries, and all four groundwater basins is likewise fatally deficient. First, the court cannot properly combine four different groundwater basins because the correlative rights doctrine must be applied amongst the owners in each basin, and correlative rights and priorities cannot be determined when the owners are taking from different sources. Second, the proposed judgment and physical solution would impermissibly interfere with the authority over the management of the Ojai Basin that the Legislature has vested exclusively in the Ojai Basin Groundwater Management Agency. Third, since OBGMA has not completed, and the Department of Water Resources has not approved, the Groundwater Sustainability Plan for the Ojai Basin, SGMA and CGAS do not allow the court to preempt this ongoing process with its own judgment and physical solution.

\\

1 Furthermore, Ventura lacks standing to bring its Cross-Complaint against the Cross-
2 Defendants in the Ojai Basin because Ventura does not have any groundwater rights in the Ojai
3 Basin. And because all of the TACC's claims fail against Ojai (and the other Cross-Defendants
4 in the Ojai Basin) as a matter of law, for all the reasons set forth above, the derivative claims
5 for declaratory and injunctive relief likewise fail.

6 **II. PROCEDURAL HISTORY OF THE CASE AND SUMMARY OF RELEVANT**
7 **FACTS**

8 In January 2018, the Second District Court of Appeal issued its decision in *Santa*
9 *Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, which
10 overturned the trial court's order granting Channelkeeper's motion to strike Ventura's first
11 Cross-Complaint under Code of Civil Procedure section 428.10(b). The trial court had found
12 that the joinder of other parties was improper and the allegations didn't "arise out of the same
13 transaction or occurrence" raised in the complaint. (*Id.* at p. 1182; RJN Nos. 2-5, Exhibits B-
14 E.)

15 The Court of Appeal rejected these findings, holding that "the City is authorized to file a
16 cross-complaint against other water users in the Ventura River watershed, where it alleges that
17 other users are partially responsible for the reduced waterflow in reaches 3 and 4 during
18 summer months." (*Id.* at 1190.) Given the procedural posture of the case – an appeal from a
19 ruling on a motion to strike the Cross-Complaint – the Court of Appeal did not rule on the
20 merits of any of Ventura's allegations. (*See, generally, id.*) Likewise, the Court of Appeal did
21 not address how the Cross-Complaint should be pled. (*See, generally, id.*)

22 Two years after the Court of Appeal issued this decision, in January 2020, Ventura filed
23 the Third Amended Cross-Complaint or TACC, which remains the operative pleading in this
24 action. The TACC "seeks a judicial determination of rights to all water within the Ventura
25 River Watershed ("Watershed"), including a comprehensive adjudication of the waters of the
26 Ventura River and the groundwater basins located within the Watershed and their
27 interconnected surface waters and for the imposition of a physical solution." (TACC, ¶ 1.) The
28 TACC acknowledges that it encompasses four separate Bulletin 118-designated groundwater

1 basins: (1) Upper Ventura River Groundwater Basin (DWR Bulletin 118, Groundwater Basin
2 Number 4-3.01), (2) Lower Ventura River Groundwater Basin (DWR Bulletin 118,
3 Groundwater Basin Number 4-3.02); (3) Ojai Valley Groundwater Basin (DWR Bulletin 118,
4 Groundwater Basin Number 4-2), and (4) Upper Ojai Valley Groundwater Basin (DWR
5 Bulletin 118, Groundwater Basin 4-1). (TACC, ¶ 103 & Exh. A.)

6 Despite this fact, the TACC groups all of the "riparian and overlying landowners" in all
7 four separate basins together, and broadly alleges that "they claim riparian rights to divert
8 and/or extract surface and/or subsurface water from the Ventura River and/or its tributaries,
9 whether or not they have exercised such riparian rights, and/or they claim overlying rights to
10 extract groundwater from one or more of the Watershed's Groundwater Basins, whether or not
11 they have exercised such overlying rights." (TACC, ¶ 93, 48:13-17.) Even though the TACC
12 seeks a comprehensive adjudication of the rights to the waters of the Ventura River (TACC,
13 ¶ 1), including its tributaries (TACC, Prayer, ¶ 5), the TACC does *not* plead a surface water
14 adjudication under Water Code section 2500.

15 Rather, the TACC relies upon the Comprehensive Groundwater Adjudication Statute
16 ("CGAS") to provide the Court with jurisdiction to undertake this comprehensive adjudication
17 of the waters of the Ventura River, its tributaries, and four separate Bulletin 118- designated
18 groundwater basins, despite the facts that: (1) the Legislature has vested authority for
19 management of the Ojai basin in the Ojai Basin Groundwater Management Agency (OBGMA)
20 (West's Water Code App., Ch. 131), (2) OBGMA has not yet completed the Groundwater
21 Sustainability Plan for the Ojai basin, and the "physical solution" remedy Ventura seeks to
22 impose would preempt the ongoing SGMA process, and (3) Ventura admits one of the basins,
23 the Upper Ojai Basin, is only partially located within the Ventura River Watershed. (TACC,
24 Exh. A, Figure 3-8.) Nowhere in the TACC does Ventura allege that it holds overlying or
25 appropriative groundwater rights in the Ojai Valley Basin or the Upper Ojai Basin. (*See,*
26 *generally,* TACC.)

27 To obtain jurisdiction over the Cross-Defendants named in Paragraph 93 of the TACC,
28 including the City of Ojai, Ventura invoked, and this Court approved the use of, Code of Civil

1 Procedure section 836. (TACC, ¶ 94) Thus, CGAS provided the basis upon which this Court
 2 obtained jurisdiction over each and every one of the hundreds of Cross-Defendants listed in
 3 Paragraph 93 of the TACC. (*See* TACC, ¶ 93, pp. 48 – 61.) While only the Sixth Cause of
 4 Action explicitly pleads for a "Comprehensive Adjudication and Physical Solution" under
 5 CGAS (TACC, ¶¶ 138 – 141, 70:17 – 71:8), these Cross-Defendants are named in each of the
 6 TACC's nine causes of action. (*See, generally*, TACC, 66:9 – 73:21.) The TACC seeks "a
 7 physical solution allocating [Ventura's] and Cross-Defendants' reasonable and beneficial use of
 8 water affecting the Ventura River Watershed" and seeks a judgment specifying that "all persons
 9 who own an interest in real property overlying the Ventura River Watershed's Groundwater
 10 Basins" are bound by the judgment and physical solution. (TACC, Prayer, ¶¶ 2 - 6.)

11 III. ARGUMENT

12 A. **Comprehensive Groundwater Adjudications Initiated After 2015, Such as 13 Ventura Has Pled in the TACC, Must Be Brought Under the 14 Comprehensive Groundwater Adjudication Statute.**

15 Since 2015, CGAS, Code of Civil Procedure sections 830, et seq., has provided the
 16 exclusive authority under which courts may conduct a comprehensive adjudication to
 17 determine all of the rights to groundwater in a basin. The initial provision of CGAS declares
 18 that "This chapter establishes methods and procedures for a comprehensive adjudication" of
 19 groundwater rights. (Code Civ. Proc., § 830, subd. (a).) The Legislature declared the intent of
 20 enacting this statute was to create a process that promotes "efficiency, reduces unnecessary
 21 delays, and provides due process" and works "in a manner that is consistent with the
 22 achievement of groundwater sustainability within the timeframes of the Sustainable
 23 Groundwater Management Act" ("SGMA"). (Code of Civ. Proc. § 830, subs. (a)(2), (a)(4).)

24 CGAS defines "comprehensive adjudication" as "an action filed in superior court to
 25 comprehensively determine rights to extract groundwater in a basin," including any action that
 26 is initiated by a cross-complaint. (Code Civ. Proc., § 832, subs. (c), (b) ["Complaint" . . .
 27 includes any cross-complaint that initiates a comprehensive adjudication in response to a
 28 plaintiff's complaint or other cross-complaint."]) Under Code of Civil Procedure section 833,
 the scope of CGAS' application is broadly defined as follows: "Except as provided in

1 subdivision (b), this chapter applies to actions that would comprehensively determine rights to
2 extract groundwater in a basin, whether based on appropriation, overlying right, or other basis
3 of right." (Code Civ. Proc. § 833, subd. (a).)

4 Only four types of action are exempted from the CGAS framework under carve-outs
5 created by subdivision (b):

- 6 (1) "An action that concerns only allegations that a groundwater extraction
7 facility, or group of facilities, is interfering with another groundwater
8 extraction facility or facilities and does not involve a comprehensive
9 allocation of the basin's groundwater supply."
- 10 (2) "An action that concerns only claims to extract, or to prevent interference
11 with extractions of, a specific source of groundwater recharge and does
12 not involve a comprehensive allocation of the basin's groundwater
13 supply."
- 14 (3) "An action that can be resolved among a limited number of parties and
15 does not involve a comprehensive determination of rights to extract
16 groundwater within the basin."
- 17 (4) "An adjudicated area described in subdivisions (a) to (d), inclusive, of
18 Section 10720.8 of the Water Code, unless a court with jurisdiction over
19 a proposed expansion of the adjudicated area orders that the proceeding
20 be conducted in accordance with this chapter."

21 (Code Civ. Proc., § 833, subd. (b).)

22 "If there is no ambiguity in the language of the statute, 'then the Legislature is presumed
23 to have meant what it said, and the plain meaning of the language governs.' [Citation]."

24 (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268; *Trejo v. County of Los Angeles* (2d.
25 Dist., 2020) 50 Cal.App.5th 129, 144-45.) If the plain meaning is apparent, the court need not
26 go further. (*KFC Western, Inc. v. Meghrig* (2d Dist., 1994) 23 Cal.App.4th 1167, 1174.)

27 Indeed, when "statutory language is . . . clear and unambiguous[,] there is no need for
28 construction, and courts should not indulge in it." (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th
593, 601.)

The plain language of Code of Civil Procedure sections 830, 832, and 833 demonstrates
that the Legislature intended for CGAS to provide the exclusive framework for all
comprehensive groundwater adjudications brought in California after its enactment (other than
actions that involve adjudicated areas as specified in Water Code section 10720.8). The
Legislature carved out only four types of actions; all other actions that seek a judicial

\\

1 determination of rights, priorities and equitable relief among the parties within a groundwater
2 basin must now be brought under CGAS.

3 Here, the TACC explicitly seeks a comprehensive adjudication of the rights to
4 groundwater in four separate groundwater basins. (TACC, ¶¶ 1, 103 & Exh. A, Prayer.) Thus,
5 exceptions 1, 2, and 3 to CGAS do not apply. Likewise, exception 4 to CGAS does not apply
6 because this case does not implicate "an adjudicated area described in . . . Section 10720.8 of
7 the Water Code." (RJN No. 8.) Consequently, for Ventura to obtain a comprehensive
8 determination of the rights of the parties to a groundwater basin, Ventura must comply with
9 CGAS. Indeed, the TACC implicitly acknowledges as much by relying on CGAS to establish
10 jurisdiction over all the Cross-Defendants who have groundwater rights. (*See* TACC, ¶ 94.)

11 **B. Because Adjudications Under the Comprehensive Groundwater**
12 **Adjudication Statute Are Limited to a Single Basin, CGAS Does Not**
13 **Provide the Court with Jurisdiction to Conduct a Comprehensive**
14 **Adjudication of the Ventura River and Four Separate Bulletin 118-**
15 **Designated Groundwater Basins.**

16 By the plain language of CGAS (and its companion statute, SGMA), comprehensive
17 adjudications of the rights to groundwater are limited to a single Bulletin 118-defined
18 groundwater basin. CGAS sets forth the procedural requirements for instituting and managing
19 groundwater adjudication actions. (Code Civ. Proc. §§ 830, et seq.) These requirements are
20 jurisdictional in nature and specifically limit the boundaries that are subject to a comprehensive
21 adjudication to a singular basin as defined in the Department of Water Resource's official
22 publication, Bulletin 118. (Code Civ. Proc. §§ 841(a), 832(a).)

23 Specifically, as noted above in Section III.A., CGAS provides "'Comprehensive
24 adjudication' means an action filed in superior court to comprehensively determine rights to
25 extract groundwater *in a basin*." (Code Civ. Proc. § 832, subd. (c) [emphasis added].) CGAS
26 also requires "the boundaries of the area subject to a comprehensive adjudication shall be
27 consistent with *the boundaries of a basin*." (Code Civ. Proc. § 841, subd. (a) [emphasis
28 added].) Likewise, under CGAS, the scope of an adjudication is limited to a determination of
"all groundwater rights of a basin, whether based on appropriation, overlying right, or other

\\

1 basis of right, and use of storage space in the basin." (Code Civ. Proc. § 834, subd. (a)
2 [emphasis added].)

3 In defining "basin" for purposes of CGAS, the Legislature incorporated the definition of
4 "basin" used in SGMA, which is "a groundwater basin or subbasin identified and defined in
5 Bulletin 118" published by the California Department of Water Resources. (Code Civ. Proc.
6 § 832, subd. (a); Water Code § 10721, subd. (a).) SGMA specifies that "Bulletin 118" "refers
7 to the Department of Water Resources' report entitled 'California's Groundwater: Bulletin 118'
8 updated in 2003, as it may be subsequently updated or revised. . . ." (Water Code § 10721,
9 subd. (c).)

10 Consistently throughout CGAS, the Legislature refers to "basin" in the singular. (*See*,
11 *e.g.*, Code Civ. Proc., § 832, subd. (c) [defining "comprehensive adjudication" as "an action
12 filed in superior court to comprehensively determine rights to extract groundwater in *a basin*"
13 (emphasis added)]; § 830, subd. (b)(5) [a purpose of CGAS is to "establish[] procedures by
14 which courts may conduct comprehensive determinations of all rights and priorities to
15 groundwater in *a basin*" (emphasis added)]; § 847, subd. (a) [defining injunctive relief that can
16 be imposed on "the basin" being adjudicated].) Read in harmony with the provisions of SGMA
17 defining "basin," the plain text of the statute confirms that CGAS authorizes a comprehensive
18 adjudication of a single basin as that basin has been defined under Bulletin 118.

19 Nowhere does CGAS or SGMA authorize the adjudication of a "watershed" or of
20 multiple Bulletin 118-defined "basins." "*Expressio unius est exclusio alterius*. The expression
21 of some things in a statute necessarily means the exclusion of other things not expressed."
22 (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852.) Since CGAS does not contain any language
23 authorizing the adjudication of all of the basins within one watershed in one action, and the
24 Legislature has stated that CGAS is the exclusive means of bringing a comprehensive
25 groundwater adjudication, it follows that the court may not adjudicate the groundwater rights of
26 a "watershed" containing multiple basins in a comprehensive adjudication action. The
27 Legislature is not presumed to be ambiguous in its intention to limit groundwater adjudications

28 \\\

1 to a singular basin as defined by Bulletin 118, especially where the plain language repeats that
2 intention in multiple sections of CGAS and is cross-referenced in SGMA.

3 Ventura has cited the general rule, which applies to interpretation of words used within
4 the Code of Civil Procedure, that "the singular number includes the plural and the plural
5 number includes the singular." (Code Civ. Proc., § 17, subd. (a).) However, where the
6 "'language and structure' of [the] statute at issue indicate this general rule was "not intended to
7 apply," the court should, instead, give effect to the plain language of the statute as written.
8 (*State Farm Gen. Ins. Co. v. Lara* (2021) 71 Cal.App.5th 148, 173.)

9 Here, the plain "language and structure" of CGAS dictates that the use of the singular
10 "basin" not be expanded to include plural basins because doing so would violate the
11 Legislature's stated intent of "Providing notice and due process sufficient to enable a court in a
12 comprehensive adjudication conducted pursuant to this chapter to determine and establish the
13 priority for unexercised water rights" and establishing a procedure that allows for "Conducting
14 a comprehensive adjudication in a manner that is consistent with the achievement of
15 groundwater sustainability within the timeframes of the Sustainable Groundwater Management
16 Act." (Code Civ. Proc., § 830, subs. (b)(4), (b)(7).) The Bulletin 118-defined basin is the
17 building block upon which SGMA is founded. If the Court were to combine multiple basins
18 into one adjudication, its interpretation of CGAS would conflict with SGMA. Nor would such
19 a process honor the statutory requirement that the comprehensive adjudication "determine and
20 establish the priority" of water rights, as groundwater rights derive from the basin that is their
21 source and priority cannot be established among water rights holders *in different basins*. And
22 of course combining multiple basins into one mega-adjudication would directly undermine the
23 Legislature's stated goal that CGAS facilitate "Conducting a comprehensive adjudication in a
24 manner that promotes efficiency, reduces unnecessary delays, and provides due process" (Code
25 Civ. Proc., § 830, subd. (b)(7)) – as the lengthy service of process in this case has already
26 demonstrated.

27 \\\

28 \\\

1 Here, as admitted in the TACC (§ 103 & Exh. A), and confirmed in the Order on the
2 OSC regarding basin boundaries, Bulletin 118 classifies the Ojai Basin, the Upper Ojai Basin,
3 the Lower Ventura River Basin, and the Upper Ventura River Basin as four separate
4 groundwater basins. Nonetheless, Ventura seeks to combine all *four* of these Bulletin 118
5 groundwater basins into *one* comprehensive adjudication action.

6 Ventura contends that, notwithstanding the plain statutory language to the contrary,
7 CGAS provides this court with jurisdiction to conduct a comprehensive adjudication of the
8 groundwater rights of all the Cross Defendants listed in Paragraph 93 merely because these
9 Cross Defendants own land that is located within the same "watershed" and, thus, according to
10 Ventura, all four basins are part of a "common water source". This is directly contrary to the
11 language of CGAS, which specifies that each Bulletin 118-designated groundwater basin is the
12 "source" that can be adjudicated in a comprehensive groundwater adjudication.

13 In interpreting a statute, the court cannot ignore "the words themselves." (*Woosley v.*
14 *State of California* (1992) 3 Cal.4th 758, 775-776.) Courts are without power to "rewrite the
15 statute so as to make it conform to a presumed intention which is not expressed." (*E.g.,*
16 *Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361, 365.) Thus, the courts may not
17 rewrite CGAS to create a right to bring a comprehensive adjudication of an entire "watershed"
18 including multiple groundwater basins.

19 Ventura has relied heavily on cases, such as *City of Barstow v. Mojave Water Agency*
20 (2000) 23 Cal.4th 1224, which predate enactment of CGAS, for the proposition that prior
21 courts have adjudicated multiple groundwater basins in a single proceeding under common-law
22 principles. Even if Ventura were accurately reciting the facts of these cases, the cases
23 themselves are irrelevant because the enactment of CGAS supersedes them. Through the plain
24 language of Code of Civil Procedure section 833, the Legislature has now specified that CGAS
25 is the exclusive means of bringing an action for comprehensive adjudication of the rights to
26 groundwater. Common-law doctrines no longer apply when they are modified by a statutory
27 enactment. (*See Messenger Courier Assn. of Americas v. California Unemployment Ins.*
28 *Appeals Bd.* (2009) 175 Cal.App.4th 1074, 1090 [commonlaw establishing rights and liabilities

1 in agency relationships was supplanted by statute].) When a statute conflicts with historical
 2 practice or commonlaw, the statute prevails and the "settled commonlaw principles must yield."
 3 (*E.g., Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 818.) While commonlaw may have
 4 guided the courts in groundwater adjudications brought before 2015, the California Legislature
 5 decided to speak upon the matter, and all comprehensive groundwater adjudications such as
 6 this one are now governed by CGAS' statutory scheme. Ventura has *de facto* acknowledged
 7 this principle by invoking CGAS to bring the Cross-Defendants within the jurisdiction of the
 8 Court.¹ (*See* TACC, ¶ 94.) And since CGAS does not permit the comprehensive adjudication
 9 to be expanded to encompass an entire watershed, including four separate Bulletin 118-
 10 designated groundwater basins, all of Ventura's claims in its TACC against the Cross-
 11 Defendants listed in Paragraph 93 fail as a matter of law.

12 **C. The Imposition of a Single Judgment Imposing a Physical Solution on the**
 13 **Entire Watershed Would Violate the Statutory Scheme.**

14 **1. The Court Cannot Properly Apply the Correlative Rights Doctrine**
 15 **Across Multiple Basins in One Judgment.**

16 The correlative rights doctrine is a fundamental tenet of groundwater law providing that
 17 the respective groundwater rights of each owner of land overlying the same general supply of
 18 water of percolating groundwater are reciprocal and correlative as to each other. (*San*
 19 *Bernardino v. Riverside* (1921) 186 Cal. 7, 15.) "Disputes between overlying landowners, . . .
 20 to which they have an equal right, in cases where the supply is insufficient for all, are to be
 21 settled by giving to each a fair and just proportion." (*Katz v. Walkinshaw* (1903) 141 Cal. 116,

22 \\\

23 \\\

24
 25 ¹ Ventura has argued that the Sixth Cause of Action is the only claim brought under CGAS, and it can
 26 proceed with commonlaw claims under the first through fifth and seventh through ninth causes of action. The
 27 fundamental problem with this argument is that it ignores the fact that the court's jurisdiction over all the
 28 groundwater users derives entirely from CGAS. (TACC ¶ 94.) If claims 1 – 5 and 7 – 9 are permitted to proceed
 as commonlaw claims, they cannot be brought against any of the Cross Defendants listed in paragraph 93,
 including the City of Ojai, since the court has no jurisdiction over those Cross-Defendants outside of CGAS.
 Ventura cannot rely upon the procedures of CGAS as the exclusive means for bringing these Cross-Defendants
 before the court and at the same time expand the claims against them to include claims that are well outside the
 scope of the statute that provides that jurisdiction.

1 136.) Thus, the starting point for every comprehensive groundwater adjudication is necessarily
2 the determination of the boundaries of the basin.

3 Because the overlying rights are correlative for all landowners *within one groundwater*
4 *basin*, the boundaries of the basin define who is a proper party to a groundwater adjudication
5 case. A court cannot combine multiple groundwater basins and then purport to determine the
6 correlative rights of pumpers in *one basin* to other pumpers *in other basins*; this concept is
7 fundamentally at odds with the well-established correlative rights doctrine. Likewise, a court
8 cannot determine priority among water rights holders who divert from the Ventura River
9 relative to groundwater rights holders in a basin, as these constitute two separate sources. This
10 is, in fact, why the Legislature created a separate statute to provide for the comprehensive
11 adjudication of surface water sources. (*See* Water Code § 2500 ["As used in this chapter,
12 'stream system' includes stream, lake, or other body of water, and tributaries and contributory
13 sources, but does not include an underground water supply other than a subterranean stream
14 flowing through known and definite channels."].)

15 Furthermore, to the extent there is surplus groundwater available in a basin, it may be
16 pumped and used on non-overlying properties, but the rule of prior appropriation applies and
17 the "first taker who with diligence puts the water in use will have the better right." (*Katz*,
18 *supra*, 141 Cal. at 135-36.) But the starting point for determining whether appropriative rights
19 can be exercised depends on the amount of water available *in that particular groundwater*
20 *basin*. These appropriative rights, obviously, cannot be determined with reference to multiple
21 basins; whether there is surplus water available depends on the status of the groundwater basin
22 that serves as the source. Appropriative groundwater rights, just like overlying groundwater
23 rights, are all derived from and tied to the basin that serves as their source.

24 By seeking one judgment imposing one physical solution on four different groundwater
25 basins as well as the Ventura River and its tributaries, the TACC hopelessly violates the
26 correlative rights doctrine. The Court simply cannot determine whether Ventura's surface
27 water rights, or groundwater rights in a separate basin, have priority over overlying owners who
28 are pumping water from the aquifer in the Ojai basin. There is no logical way of applying the

1 correlative rights to *different water sources*. Because the relief Ventura seeks would combine
 2 multiple distinct basins and limit pumping without regard to the status of the basin
 3 (overdrafted, not overdrafted, or surplus) or the correlative rights of water users within that
 4 basin, it would violate the fundamental precepts of groundwater law. Consequently, the TACC
 5 fails as a matter of law.

6 **2. The Court Cannot Impose a Physical Solution That Would Interfere**
 7 **with the Exclusive Authority That the Legislature Has Given the**
 8 **Ojai Basin Groundwater Management Agency to Manage**
 9 **Groundwater within the Ojai Basin.**

9 By special act passed in 1991, the Legislature created Ojai Basin Groundwater
 10 Management Agency (OBGMA) to address the "unique and special groundwater management
 11 problems in the area" known as the Ojai Basin. (West's Water App., Ch. 131.) That Act vested
 12 OBGMA with exclusive authority to manage the groundwater within the statutorily-defined
 13 Ojai Basin. (*Id.* at §§ 101-102; *see also id.* at §§ 201-202 [expressly making groundwater
 14 within the Ojai basin subject to OBGMA's exclusive management and authority]; 2 Slater,
 15 California Water Law and Policy at §11.10[3] [identifying OBGMA as one of two special act
 16 agencies that hold the greatest promise with the express authority to manage and regulate the
 17 groundwater resource].)

18 The Act invests OBGMA with broad legislative authority to manage groundwater in the
 19 Ojai Basin (*id.* at §§ 701-708), including the authority to determine what activities are
 20 necessary to improve or protect the groundwater supplies in the basin (*id.* at § 701), to regulate,
 21 limit, or suspend extractions in the basin (*id.* at § 706), and to commence and prosecute legal
 22 actions to enjoin unreasonable uses of water (*id.* at § 702). OBGMA also has statutory
 23 jurisdiction to "adopt ordinances for the purpose of monitoring, regulating, conserving,
 24 managing, and controlling the use and extraction of groundwater within the boundaries of the
 25 agency" (*id.* at § 404), to participate in "actions and proceedings involving groundwater,
 26 including, but not limited to, groundwater rights" (*id.* at § 408), and to "[c]ommence and
 27 prosecute legal actions to enjoin unreasonable uses or methods of use of water within the
 28 agency or outside the agency to the extent those uses or methods of use adversely affect the

1 groundwater supply within the agency." (*Id.* at § 701, subd. (b).) In addition, OBGMA has
2 authority to impose management fees on those within its service area to pay the "costs of
3 initiating, carrying on, and completing any of the . . . groundwater management activities" (*id.*
4 at § 901), but "the groundwater extraction charge shall not exceed seven dollars and fifty cents
5 (\$7.50) per acre-foot pumped per year" (*id.* at § 1107, subd. (a)) unless OBGMA's board of
6 directors makes certain findings, and the groundwater extraction charge is capped by statute at
7 a maximum of twenty-five dollars per acre-foot pumped per year (*id.* at § 1107, subd. (b)(2)).

8 If the court adopts a physical solution and assumes continuing jurisdiction over
9 management and control of groundwater use in the Ojai Basin, it will impinge upon OBGMA's
10 existing and exclusive authority to regulate, limit or suspend extractions, and otherwise control,
11 the groundwater within the Ojai Basin. Additionally, the proposed physical solution would
12 establish a new "management committee" which would have conflicting jurisdiction over
13 management of the groundwater consigned to OBGMA, and it would impose a mechanism for
14 funding the management committee despite the express provisions of the OBGMA Act limiting
15 both the total amount that can be charged to fund groundwater management in the Ojai Basin
16 and the means by which those fees can be imposed. The powers that this physical solution, or
17 any physical solution, grants to this new agency and the Court invite duplication and
18 interference with OBGMA's management of the Ojai Basin's groundwater supplies, in direct
19 contradiction of the Legislature's express intent to vest those authorities exclusively in
20 OBGMA.

21 Ventura mistakenly relies on *California American Water v. City of Seaside* (2010) 183
22 Cal.App.4th 471 (*Seaside*) for the proposition that this Court may supplant OBGMA's authority
23 over the Ojai Basin. However, as previously explained in Ojai's Response to Ventura's
24 Supplemental Legal Brief, incorporated herein by reference, *Seaside* is inapposite. *Seaside* did
25 not interpret the terms of either the Ojai Basin Groundwater Management Agency Act or
26 CGAS, which *Seaside* predated. Moreover, OBGMA is not a party to this case and it has not
27 requested a physical solution or otherwise conceded that the court has authority to regulate the
28 use of the Ojai Basin. Therefore, *Seaside* is inapposite.

1 Here, as shown above, imposing a physical solution such as Ventura has proposed on
2 the Ojai Basin would directly interfere with and undermine the authorities that the Legislature
3 has provided to the OBGMA to manage the groundwater of the Ojai Basin. A physical solution
4 cannot be imposed under Code of Civil Procedure section 849, nor can the court assume
5 continuing jurisdiction over the basin as contemplated in Code of Civil Procedure section 852,
6 without interfering with the existing statutory groundwater management scheme. Moreover,
7 Water Code section 10737.8 prohibits the Court from approving entry of a judgment in an
8 adjudication action "unless the court finds that the judgment will not substantially impair the
9 ability of a groundwater sustainability agency" to comply with SGMA. Given the obvious
10 conflict between the proposed physical solution and OBGMA's ability to continue to manage
11 the groundwater of the Ojai Basin, the court could not properly make this finding. Thus, these
12 remedies will not lie against the Ojai Basin as a matter of law.

13 **3. The Court Cannot Impose a Physical Solution Before OBGMA**
14 **Adopts, and DWR Approves, the Groundwater Sustainability Plan**
for the Ojai Basin.

15 SGMA requires that each high- or medium-priority basin have one or more groundwater
16 sustainability agencies ("GSA") to develop a Groundwater Sustainability Plan (or "GSP") and
17 manage the basin. (Water Code, § 10720.7.) Once a Groundwater Sustainability Plan is
18 submitted, DWR has two years to evaluate it under Water Code section 10733.4, subdivision
19 (d).

20 SGMA, through Water Code section 10737.2, mandates that the court minimize
21 "interference with the timely completion and implementation of a groundwater sustainability
22 plan," redundancy, and additional costs when conducting a groundwater adjudication of a
23 Bulletin 118 basin. In line with the direction from SGMA, Code of Civil Procedure section
24 849, subdivision (b) states that the court cannot adopt a physical solution before considering an
25 existing groundwater sustainability plan or program. CGAS was expressly drafted to limit the
26 courts' jurisdiction and reduce intrusion upon and conflict with the local agency's
27 implementation of SGMA.

28 \\\n

1 The local agency responsible for the implementation of SGMA as it relates to the Ojai
 2 Basin is OBGMA. (Water Code § 10723, subd. (c)(1)(L) [designating OBGMA as the
 3 "exclusive local agency" within the Ojai basin boundaries to form a Groundwater Sustainability
 4 Agency and implement a Groundwater Sustainability Plan or "GSP"].) Under its statutory
 5 authority and the requirements of SGMA, OBGMA is currently developing a Groundwater
 6 Sustainability Plan for the Ojai Basin for submission to the Department of Water Resources.
 7 (RJN No. 9.) Thus, while this SGMA process is underway, the court must not consider a
 8 physical solution, require the parties to present duplicative and contradictory technical
 9 information, or take other steps in this litigation that would interfere with the OBGMA's
 10 statutorily-exclusive status for managing the Ojai Basin and developing the required
 11 Groundwater Sustainability Plan. Completion and approval of the Ojai Basin Groundwater
 12 Sustainability Plan is more than two years away. Consequently, Ventura's request to impose a
 13 physical solution on the Ojai Basin at this time conflicts with Code of Civil Procedure section
 14 849 and fails as a matter of law.

15 **D. Ventura Lacks Standing to Bring Any Claims Concerning the Ojai Basin.**

16 "It is not sufficient that the complaint states facts showing a cause of action in
 17 somebody; it must show a cause of action in the plaintiff, or a general demurrer will lie."
 18 (*Dixon v. Gries* (1895) 106 Cal. 506, 507.) In other words, the person bringing the suit must
 19 possess the right upon which the suit is brought. (*See, e.g., Gantman v. United Pac. Ins. Co.*,
 20 (1991) 232 Cal.App.3d 1560, 1566 [explaining that "[s]omeone who is not a party to [a]
 21 contract has no standing to enforce the contract..."]; Code Civ. Proc. § 367 [suit must be
 22 prosecuted by the real party interest].)

23 The lack of standing is a lack of a right to relief. (*See Klopstock v. Superior Court*
 24 (1941) 17 Cal.2d 13, 19.) "The right to relief... goes to the existence of a cause of action."
 25 (*Oakland Municipal Improv. League v. City of Oakland* (1972) 23 Cal.App.3d 165, 170.)

26 Here, Ventura seeks a comprehensive groundwater adjudication of the Ojai Basin.
 27 (TACC, ¶¶ 1, 138-141.) However, Ventura has no rights to the groundwater in the Ojai Basin.
 28 (*See, generally*, TACC.) Nor has the Legislature invested Ventura with statutory authority, as

1 it did with OBGMA, to commence a groundwater adjudication on behalf of the Ojai Basin or
 2 landowners overlying it. Further, nothing in CGAS authorizes a party located *outside* of a
 3 Bulletin 118-defined basin to bring a comprehensive groundwater adjudication action against
 4 parties located *within* that basin. (Code Civ. Proc. §§ 830, et seq.) Ventura seeks to escape this
 5 fatal defect by relying heavily on the "common source" theory that applied to the unique facts
 6 of the Mojave River basin and others. Ignoring the crucial detail that those cases all predate the
 7 passage of CGAS, Ventura simply points to the courts' findings in those cases regarding Article
 8 2 of Section X of the California Constitution and the equitable remedy of a physical solution
 9 and alleges that these authorities somehow supplant the specific statutory provisions and
 10 remedies articulated in CGAS.

11 But for all of the reasons above, Ventura, as an outsider with no rights to the basin, has
 12 no standing to ask this Court to adjudicate the groundwater rights of parties in the Ojai Basin.
 13 Ventura therefore is not entitled to the relief requested in each of its claims (declaratory relief
 14 as to the rights of landowners in separate basins and priority of rights in the separate basins,
 15 injunctive relieve as to the landowners' current and future use of groundwater while increasing
 16 Ventura's rights, and imposition of a physical solution.). (*See* TACC, 66:9-74:21.)
 17 Accordingly, the first through ninth causes of action cannot be brought by Ventura against the
 18 Cross-Defendants in the Ojai Basin with regard to their groundwater rights.

19 **E. Lacking Authority to Proceed Under CGAS, Ventura Cannot State a Claim**
 20 **for Declaratory or Injunctive Relief.**

21 As demonstrated above, Ventura lacks standing to adjudicate the groundwater rights of
 22 the Ojai basin. Moreover, it would be inappropriate for the Court to determine the legal rights
 23 of parties in the Ojai Basin to extract groundwater where those rights are subject to: (1) the
 24 legislatively defined groundwater management authority of OBGMA, and (2) the ongoing
 25 statutorily defined SGMA process to develop and approve the Ojai Basin GSP. As a result,
 26 Ventura is not entitled to the relief requested and therefore cannot maintain an action to have
 27 the court impose a judgment reducing or limiting the rights of parties in the Ojai basin to pump
 28 groundwater under the third, fourth, fifth, seventh, eighth and ninth causes of action.

1 "The court may refuse to exercise the power granted by this chapter in any case where
 2 its declaration or determination is not necessary or proper at the time under all the
 3 circumstances." (Code Civ. Proc. § 1061.) If a complaint fails to state a cause of action for
 4 declaratory relief, the court may exercise its discretion under Code of Civil Procedure section
 5 1061. (*San Martin Vineyards v. R. & W. Floor Coverings, Inc.* (1962) 204 Cal.App.2d 677,
 6 679; *see also Merkle v. Merkle* (1939) 12 Cal.2d 543.)

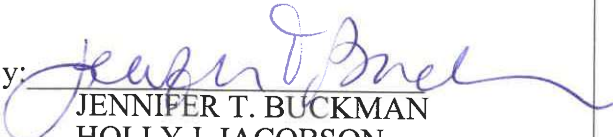
7 For the same reason, Ventura's claims for preliminary and permanent injunction
 8 reducing all Cross-Defendants' use of groundwater likewise fail. (*See TACC*, ¶¶ 116, 122). As
 9 explained above, in order to reduce or limit Cross-Defendants' groundwater rights, the court
 10 would have to conduct a comprehensive adjudication of groundwater rights under CGAS.
 11 Because CGAS does not authorize the court to conduct a comprehensive adjudication of a
 12 watershed, the court cannot impose a preliminary or permanent injunction to reduce Cross-
 13 Defendants' use of groundwater by virtue of being located within the watershed. Likewise,
 14 because Ventura does not have standing to adjudicate groundwater rights in a basin in which it
 15 is a foreigner, it cannot obtain an injunction to enforce rights it does not hold. As a matter of
 16 law, then, Ventura is not entitled to the relief requested in the first or second claim for relief as
 17 to the Ojai Basin. (*Cf.*, Code Civ. Proc. § 438.)

18 **IV. CONCLUSION**

19 Because Ventura's TACC seeks to adjudicate groundwater rights in an entire watershed,
 20 including four separate Bulletin 118-designated basins, it exceeds the specific jurisdictional and
 21 procedural authority of CGAS and fails as a matter of law. Ojai therefore respectfully requests
 22 that this Court GRANT its motion for judgment on the pleadings on all of the claims raised in
 23 the TACC.

24 Dated: December 20, 2021

Respectfully submitted,
 Bartkiewicz, Kronick & Shanahan, PC

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