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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, a California State Agency; CITY OF SAN BUENAVENTURA, a California municipal corporation, incorrectly named as CITY OF BUENAVENTURA,

Respondents.

CITY OF SAN BUENAVENTURA, a California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger
Dept. 10 (South Spring Courthouse)

CROSS-DEFENDANT THE WOOD CLAEYSSENS FOUNDATION'S JOINDER IN CITY OF SAN BUENAVENTURA'S OPPOSITION AND SUPPLEMENTAL OPPOSITION TO THE CITY OF OJAI'S MOTION FOR JUDGMENT ON THE PLEADINGS

Date: January 18, 2021
Time: 1:30 p.m.
Dept.: SS10

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

[Filed concurrently herewith: Request for Judicial Notice]

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The Wood-Claeyssens Foundation ("Foundation"), the largest agricultural producer of groundwater in the Ventura watershed, hereby joins in the City of San Buenaventura's ("Ventura") Opposition and Supplemental Opposition to the City of Ojai's ("Ojai") Motion for Judgment on the Pleadings ("Motion"). The Foundation also argues separately to address Ojai's contentions regarding its allegation that this Court lacks subject matter jurisdiction to address inter-basin issues within a common watershed as well as the role of the Ojai Basin Groundwater Management Authority ("OBGMA"), including its potential adoption of a Groundwater Sustainability Plan ("GSP") for the Ojai Groundwater Basin ("Basin") under the Sustainable Groundwater Management Act (See Ojai Memorandum of Points & Authorities ("Memo."), pp. 12-15.) Finally, the Foundation challenges the procedural integrity of the Motion on various grounds.

I. INTRODUCTION

Ojai argues that Ventura's Third Amended Cross-Complaint ("TACC") and its nine causes of action, including the imposition of a physical solution, *must be* dismissed because: (i) the Comprehensive Adjudication Statute ("CAS") (Code Civil Proc., §830 et seq.) established an exclusive procedure that precludes an inter-basin determination of rights and remedies within a common watershed and (ii) the TACC is otherwise preempted by the legislature's creation of the OBGMA (Water Code Appendix § 401 et seq.) and its subsequent designation of OBGMA as a Groundwater Sustainability Agency under the Sustainable Groundwater Management Act. ("SGMA")

The dispositive response is that there is no judicial authority for these propositions. Determining the rights and remedies among basins within a common watershed is a feature of California common law, expressly preserved by the CAS and by the constitutional origin and purpose of the physical solution remedy. A "physical solution" remedy is available to concurrently address all water rights within the watershed, provided that they connected by the common res. This court's constitutionally derived authority and duties may not be limited by statute.

Ojai further contends the relief sought through the TACC (1) "would impermissibly interfere" with OBGMA's "exclusive authority" over the Basin; and, (2) the Court cannot enter a

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judgment and physical solution in this case until OBGMA adopts, and the Department of Water Resources ("DWR") approves, the GSP for the Basin. (Memo., p. 1.) These arguments dramatically overstate OBGMA's legislative charter as a special purpose agency with none of the preemptive effect ascribed to it by Ojai. Nothing in the OBGMA enabling legislation (Wat. Code. App., § 131-101 et seq.) ("OBGMA Act"), SGMA (Wat. Code, § 10720 et seq.), or the CAS (Code Civ. Proc., § 830 et seq.) limits the relief that may be granted under the TACC to impose a physical solution among water right holders sharing the benefit of the common supply within an entire watershed.

Finally, for the reasons set forth below Ojai's arguments are also procedurally improper—as they are based upon matters that are outside the scope of the TACC, and request relief that may not be granted in a ruling on a motion for judgment on the pleadings.

II. THIS COURT HAS JURISDICTION TO DETERMINE INTER-BASIN OBLIGATIONS AMONG COMPETING DEMANDS TO A COMMON WATER SUPPLY AND TO IMPOSE A PHYSICAL SOLUTION.

Ojai contends that the CAS requires that groundwater adjudications must proceed one basin at a time and thus concludes there is no subject matter jurisdiction for this court to consider inter-basin obligations and no remedy for downstream water right holders to pursue inter-basin relief. They contend this is the logical construction of the CAS because it was intended to be the "exclusive" means to obtain a comprehensive adjudication and they construe the singular form of the word "basin" as used within the CAS to preclude an action involving plural "basins". However, they do not explain why the CAS, which expressly preserved the common law (Code Civ. Proc., §§830(b)(1) and 830(b)(7)) leaves downstream groundwater rights without a remedy to address pumping in the upper tributary basins that causes downstream injury.

Ojai's one-basin-at-a-time theory is a pretty startling departure from California common law right of downstream users to address impacts arising from upstream uses. A prominent example of downstream surface and groundwater users securing inter-basin relief is provided by *Orange County Water District v. Riverside* where the Court of Appeal took up downstream

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claims brought by *surface and groundwater users* on the Santa Ana River against upstream diverters reducing the flow of surface and groundwater available for use.

> This gradual lowering of the general water table in the basin may not, for a considerable number of years, be reflected at all times, even though it will be reflected for part of the time in diminished surface flow or underground percolations over the lip of the gap in the dike, for thither all water that does not sink beyond the level of the lip must find its way. But for all of that, if the withdrawals of water from the basin in excess of replenishment of the voids so created, are allowed indefinitely to continue, it is a mere question of time when they must be reflected in a permanent and continuous decreased spilling from an upper basin into the one next to it and so on, slowly but surely, all the way down the stream. To allow the development of such a condition would be repugnant to the whole water policy of the state, and it is the duty of a court of equity, when its powers are properly invoked, to take such measures as are reasonably necessary to prevent it. (*Orange County Water District v. Riverside* (1959) 173 Cal.App.2d 137, 213-214 [emphasis added].)[1]

Over the course of the next decade, the Court of Appeal continued to resolve disputes among Upper, Middle and Lower basin users tributary to the Santa Ana River, finding that the rights of overlying landowners in Orange County were entitled to protection against diversions in the upper tributary basins. (See *Orange County Water District v. Riverside* (1961) 188 Cal.App.2d 566, 593; *Chino v. Superior Court of Orange County* (1967) 255 Cal.App.2d 747, 755 [riparian and overlying owners may assert claims against upper users]).

This precedent was acknowledged and applauded in *Central Basin Municipal Water Dist. v. Fossette* (1965) 235 Cal.App.2d 689, when the Court of Appeal approved a physical solution to establish boundary obligations between the Upper and Lower Reaches of the San Gabriel River system. The determination of individual rights among the individual holders was expressly reserved, with the court applauding the adoption of a physical solution. (*Id.* at 699-700.) In point of fact, the Court's duty and authority under Article X, section 2 of the California Constitution could not be limited by the Legislature even if that was its intention.[2] Of course, however, the Legislature intended no such thing. (Code Civ. Proc., § 849(a) ["The court shall have the

[2] For example, an action by the Legislature to extinguish constitutionally protected riparian rights for nonuse was itself, unconstitutional. (*Tulare Irrigation District v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 529-531.)

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authority and the duty to impose a physical solution on the parties in a comprehensive adjudication where necessary and consistent with Article 2 of Section X of the California Constitution."]; *City of Lodi v. East Bay Municipal Util. Dist.* (1936) 7 Cal.2d 316, 341; *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 574-575; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1250.)

The Motion also argues that by establishing the OBGMA, the OBGMA acquired the "exclusive authority to manage the groundwater within the" Basin and that authority prevents the Court from adopting a physical solution in this litigation. (Motion, pp. 12-14.) The Motion, however, omits entirely any mention of the express provisions in the OBGMA Act that allow for the adjudication of groundwater rights in the Basin and the imposition of a physical solution.

Section 102 of the OBGMA Act defines the bounds of OBGMA's authority, stating it has the powers expressly granted by the Act, and those "powers reasonably implied and necessary and proper to carry out the purposes of the agency." (Wat. Code App. § 131-102.) The OBGMA Act, however, did not include within these powers the authority to determine or modify groundwater rights. (*People v. Roberts* (2010) 184 Cal.App.4th 1149, 1176 ["The language is construed in the context of the statute as a whole and the overall statutory scheme, and courts give significance to every word, phrase, sentence and part of an act in pursing the legislative purpose."]; *People v. Vargas* (1985) 175 Cal.App.3d 271, 277 [specific statute controls over general statute].) Rather, the OBGMA Act expressly provides for a court's adjudication of those rights:

> This act does not abrogate or impair the overlying or appropriative rights of landowners or existing appropriators within the agency, including the right to seek an adjudication of those rights, or abrogate or impair the jurisdiction of the California Public Utilities Commission.

(Wat. Code App., § 131-403; see also Wat. Code App., § 131-408 [OBGMA may "intervene in" or "defend" actions involving "groundwater, including, but not limited to, groundwater rights adjudication"].)[3] The City offers no explanation why litigation among

[3] The OBGMA Act defines "groundwater rights adjudication" as "the determination of substantially all rights in the basin or the area subject to the adjudication. (Wat. Code App., § 131-315.)

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groundwater users within the Basin is permissible but downstream litigants would be without a remedy to pursue relief against users within the Basin.

Further, while the meaning of section 403 is clear from its plain language, the legislature's intent to preserve the possibility of the adjudication of the basin's groundwater rights is confirmed by the Act's legislative history. (See *Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd.* (1994) 23 Cal.App.4th 1120, 1127 [looking into legislative history despite unambiguous language of the statute.].) The Act's language providing that it does not "abrogate or impair the overlying or appropriative rights of landowners or existing appropriators … including the right to seek an adjudication of those rights," has remained consistent since the bill's first amendment in 1991 (Foundation's Request for Judicial Notice in support of Joinder filed concurrently ("Foundation RJN"), Exh. B at pp. 11, 33, 57, 76, 97 and Exh. C at p. 9) and is repeatedly noted as a prominent feature of the Act throughout its history (*Id*. at Exh. B, pp. 129, 157, 166, 168, 170, 506).

The Motion argues that the OBGMA has "exclusive authority" to manage the Basin's groundwater as a result of the management powers granted to it by the Act (Wat. Code App., § 131-701 et seq.), quasi-legislative authority (*Id.* at § 404), and "charge" (i.e., fee) authority (*Id.* at §§ 901 et seq., 1101 et seq.). (Memo, p. 12.) However, the OBGMA Act nowhere includes the word "exclusive" or states that OBGMA is the only agency with groundwater management authority within the Basin. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545 ["[I]n construing this, or any statute, we may not broaden or narrow the scope of the provision by reading into it language that does not appear in it or reading out of it language that does."].)

In fact, the OBGMA Act prohibits OBGMA from undertaking activities within the Basin that are "normally and historically undertaken" by another entity, like the "construction and operation of dams, spreading grounds, pipelines, flood control facilities, groundwater wells, and water distribution facilities . . . without the prior written consent of those entities," and restricts OBGMA to "monitoring, planning, managing, controlling, preserving, and regulating the

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extraction and use of groundwater within" its boundaries. (Wat. Code App., § 131-402(b).)[4] In short, the OBGMA Act acknowledges that OBGMA – at best - shares authority to manage the Basin's waters supplies with other agencies—an interpretation to the contrary would add language to the Act that does not currently exist, and render sections in the statute surplusage. (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1087 [a statute should not be interpreted to render its provisions surplusage].)[5]

The Motion also fails to acknowledge SGMA's impact on OBGMA's authority within the Ojai Basin. While SGMA deems OBGMA the exclusive groundwater sustainability agency ("GSA") for the portions of the Basin within its statutory boundaries, it also provides that OBGMA may opt out of this responsibility and another local agency may elect to become the GSA for the Basin. (Wat. Code, § 10723(b), (c).) Further, SGMA provides DWR review and evaluation authority over the development of the GSP for the Basin (Wat. Code, §§ 10733, 10733.4, 10733.8), and the California State Water Resources Control Board may intervene in the management of the Basin if necessary by, among other things, developing a physical solution for the Basin (Wat. Code, §§ 10735.4, 10735.6, 10735.8). In short, neither the OBGMA Act nor SGMA provide the OBGMA "exclusive authority" over management of the Basin's groundwater resources.

Finally, while the Motion argues a physical solution will conflict with or contradict OBGMA's authority, Ojai cannot produce any evidence of such conflict or contradiction. (See Memo., pp. 13-14.) The contents of any potential physical solution are not before this Court as part of the Motion—as discussed above, they *cannot* be—or at this stage of the litigation.

[4] From a practical perspective, OBGMA cannot be considered to have been granted "exclusive authority" over the management of the Basin. OBGMA's operating budget is insignificant ($142,022 for the 2017/2018 fiscal year) and staff is comprised of a part-time office assistant who also acts in the capacity of secretary and treasurer, and one technical professional serving as manager at least part time. (Foundation RJN, Exh. A at p. 29.) Furthermore, OBGMA has yet to undertake any significant groundwater management activities and acknowledges that implementation of its recommended actions are on a voluntary basis. (*Id*. at pp. 21, 23.)

[5] Notably, the County of Ventura retains permitting authority over all groundwater wells within the unincorporated portions of the County, including those within the Basin. (See County Code, § 4813.)

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As to Ojai's argument that a physical solution will usurp OBGMA's statutory authority, this has already been resolved in *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471 ("*Seaside*"). There, the Court rejected a special act district's argument with a much more extensive and comprehensive authority than the OBGMA, that the trial court's implementation of a physical solution violated the separation of powers doctrine. Instead the Court held, that the physical solution properly resulted from the Court's constitutional requirement to "maximize the reasonable and beneficial use of [w]ater resources" and protect the public's interest in sustainable groundwater use. (*Id*. at 474.) The Court rejected both the district's claim that it had been granted exclusive authority to regulate groundwater pumping within the basin and its argument that the creation of a watermaster would conflict with its statutory authority. (*Id*. at 476 ["Clearly the [L]egislature contemplated that courts had the power to develop management plans for aquifer management even if a water management district already existed in a geographical area."]; ["Should the powers of the Watermaster overlap those of the MPWMD, the court would, under its retained jurisdiction, be in a position to resolve any resulting conflict."].) These same arguments now put forth by Ojai are similarly resolved.

Ojai's attempt to distinguish the *Seaside* case from this litigation is unpersuasive. Its argument that *Seaside* does not apply because it did not originally request the physical solution or otherwise concede to the Court's authority over the Basin lacks merit—the Court's "affirmative duty to suggest a physical solution where necessary" and "power to enforce such solution" does not require OBGMA's authorization or agreement. (*Id*. at 480.) Further, the Court's constitutional requirement to consider a physical solution in this case does not depend upon whether OBGMA itself is a party to the litigation. (Motion, p. 13.) "The state has a definite interest in seeing that none of the valuable waters from any of the streams of the state should go to waste" regardless of whether OBGMA declares itself a party to this case, as it is the Court who has the authority to determine water rights, not the agency. (*Seaside, supra,*183 Cal.App.4th at 480, citing *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 560.) Ojai's argument that Seaside cannot apply because it preceded the CAS is not compelling as the statute explicitly states that it shall be

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applied and interpreted to "protect water rights consistent with Section 2 of Article X of the California Constitution" and that it "shall not alter groundwater rights or the law concerning groundwater rights." (Code Civ. Proc. §§ 830(b)(1), (b)(7).)

Finally, the Motion argues that the Court may not "impose a physical solution before OBGMA adopts, and DWR approves, the GSP for the Ojai Basin." (Memo., pp. 14-15.) Again, Ojai fails to acknowledge relevant provisions of the law as both SGMA and the Comprehensive Groundwater Adjudication Statute expressly provide the Court the authority to adopt a physical solution in this case despite OBGMA's development of a GSP.

SGMA expressly provides that neither SGMA itself nor groundwater management undertaken thereunder "determines or alters surface water rights or groundwater rights under common law." (Wat. Code, § 10720.5(b).) Rather, the determination of groundwater rights is left to the judiciary. (Wat. Code, §§ 10720.5(c), 10737; see also Code Civ. Proc., § 830 et seq.) The statute then defines procedures for an adjudication to take place contemporaneously with or in lieu of the SGMA process: (1) Water Code section 10737.2 states the Court must manage proceedings in a manner that minimizes interference with the timely completion and implementation of a GSP, avoids redundancy and unnecessary costs "in the development of technical information and a physical solution," and is consistent with the attainment of sustainable groundwater management; (2) Water Code section 10737.4 states a judgment entered in a groundwater adjudication may satisfy SGMA's GSP requirement if DWR "determines the judgment satisfies the objectives of this part for the basin;" and (3) Water Code section 10737.8 permits a Court to enter judgment in a groundwater adjudication for a basin that is required to have a GSP so long as "the court finds that the judgment will not substantially impair the ability of the groundwater sustainability agency, the board, or the department to comply with this part and to achieve sustainable groundwater management." In sum, SGMA clearly provides for this Court to enter a physical solution in this case at any time during OBGMA's development of the GSP for the Basin.

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The provisions of the CAS exist in harmony with SGMA in this regard. (See, e.g., Code Civ. Proc., § 830(b)(4).) Relevant here, the statute states that the Court "has the authority and the duty to impose a physical solution on the parties in a comprehensive adjudication where necessary and consistent with Article 2 of Section X of the California Constitution." (Code Civ. Proc., § 849(a).) But, before doing so, the Court must "consider any existing groundwater sustainability plan or program." (Code Civ. Proc., § 849(b).) Accordingly, the CAS also provides for the prosecution of this litigation and the adoption of a physical solution by this Court at any time before or during the SGMA process, up to the point that a GSP is fully adopted.

The Motion misinterprets these provisions and argues that: "while this SGMA process is underway, the court must not consider a physical solution, require the parties to present duplicative and contradictory technical information, or take other steps in this litigation that would interfere with the OBGMA's statutorily-exclusive status for managing the Ojai Basin and developing the required Groundwater Sustainability Plan." (Memo., p. 15.) However, as discussed above, there is no provision in SGMA or the CAS that prevents the Court from considering a physical solution at any time during OBGMA's development of a GSP for the Basin. Further, the Motion fails to cite to any evidence supporting its claim that the litigation is interfering with or duplicating OBGMA's efforts to develop the GSP. (See, e.g., *In re Marriage of Pasco* (2019) 42 Cal.App.5th 585, 591-92 [Declarations, briefs, and other unsworn statements by counsel are arguments, not evidence]; *In re Heather H.* (1988) 200 Cal.App.3d 91, 95 ["[U]nsworn testimony does not constitute "evidence" within the meaning of the Evidence Code."]; *In re Zeth S.* (2003) 31 Cal.4th 396, 416 ["It is axiomatic that the unsworn statements of counsel are not evidence."].) This is especially true as this phase of the litigation does not pertain to the contents of the physical solution, and the completion of the GSP is over two years away. (Memo., p. 15.) Finally, and perhaps most notably, OBGMA has been notified of this litigation and has the right to intervene in this suit to protect its interests, but has yet to do so. (Code Civ. Proc., §§ 835, 837(a).)

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III. THE MOTION IS PROCEDURALLY IMPROPER

Under the Code of Civil Procedure, a motion for judgment on the pleadings by Ojai may challenge two issues: (a) whether the Court has "jurisdiction of the subject of the cause of action alleged in the" TACC; or (b) whether the TACC "does not state facts sufficient to constitute a cause of action against" Ojai. (Code Civ. Proc., § 438(c)(1)(B).) The purpose of this review is to determine the sufficiency of the TACC, not resolve issues that do not appear on the face of the pleading . (Code Civ. Proc., § 438(d); *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881 [denying general demurrer for raising issues not alleged in the complaint]; *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216 [standard for motion for judgment on the pleadings is the same as that applicable to a general demurrer]; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994 ["[T]he limited role of a demurrer" is "to test the legal sufficiency of a complaint."].) The Motion's arguments exceed this restricted scope of review for a motion or judgment on the pleadings; it argues claims that do not appear on the face of the TACC and may not be judicially noticed, and it requests relief that may not be afforded in a ruling on the Motion. For that reason alone, the Motion must be denied.

A. The Motion Cannot Argue the Merits of Any Potential Physical Solution

The Motion requests the Court issue judgment in its favor because the TACC's requested imposition of a physical solution "will impinge upon OBGMA's existing and exclusive" authority to manage groundwater in the Basin. (Memo., pp. 12-14.) This argument, however, does not challenge the sufficiency of the TACC, as the pleading does not allege facts concerning any potential physical solution's relationship with the OBGMA. Rather, the TACC merely requests imposition of a physical solution as a remedy in the litigation:

> 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. A physical solution can achieve this result by: compelling non-flow related improvements for the protection of public trust resources thereby preserving and protecting water supply for domestic use, the highest and best use, and for irrigation use, the next highest and best use (Water code section 106); augmenting the Watershed's water supply; and imposing other measures. The physical solution is a practical way

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> of fulfilling the mandate of the California Constitution (article X, section 2) that the water resources of the State be put to use to the fullest extent of which they are capable.
>
> 140. Further, the Code of Civil Procedure authorizes the comprehensive adjudication of groundwater rights, including interconnected surface waters, and the imposition of physical solution. Cal. Civ. Proc. Code §§ 830-852.
>
> 141. Accordingly, City seeks a physical solution among City and Cross-Defendants regarding their respective uses of surface and/or surface water and groundwater affecting the Ventura River.

(TACC, ¶¶ 139-141; see also TACC, p. 73 [prayer for relief].) In other words, this Court cannot decide whether any potential physical solution will "impinge upon" or conflict with OBGMA's authority because there are no allegations defining the terms of any potential physical solution in the TACC— specifically, the TACC contains no allegations relating to any "management committee" or the fees that might be imposed pursuant to a physical solution. (See Memo., pp. 13-14.)

Furthermore, this argument is not relevant to the current phase of this litigation, which seeks to define the boundaries of the Ventura River Watershed ("Watershed") and the groundwater basins within the Watershed, and determine the interconnection between surface water and groundwater in the Watershed. (November 1, 2021 Notice of Phase 1 Trial Issues [defining Ventura and Ojai's interpretation of the scope of the Phase 1 trial].) The Motion's arguments concern future phases of trial and hypothetical remedies that may be afforded in those phases. Such arguments are beyond the scope of the TACC and attempt to distract the Court from the question at hand.

B. <u>The TACC Does Not Plead Facts Pertaining to the GSP</u>

The Motion also argues that judgment in Ojai's favor is proper because "OBGMA is currently developing" a GSP for the Basin, and while this process is underway, "the court must not consider a physical solution, require the parties to present duplicative and contradictory technical information, or take other steps in this litigation that would interfere with" the development of the GSP. (Memo., p. 15.) Again, this argument improperly expands beyond the scope of what the Court may consider in its ruling on the Motion. (*Ion Equipment Corp., supra*,

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110 Cal.App.3d at 881.) The terms of any potential eventual proposed physical solution are not presently before the Court in this Motion; the TACC merely alleges the need for a physical solution, and there is no evidence these allegations have or will "interfere" or "conflict" with the development of the GSP.

C. The Motion Requests Relief That May Not Be Afforded on a Motion for Judgment on the Pleadings

Finally, the Motion argues that "Ventura's request to impose a physical solution to the Ojai Basin at this time conflicts with Code of Civil Procedure section 849." (Memo., p. 15.) This argument is not supported by the language of section 849 itself. Initially, the Motion is limited to adjudicating whether the TACC states facts sufficient to constitute a cause of action against Ojai, or whether the Court has jurisdiction over the matters. Code of Civil Procedure section 849 has no bearing on either of these issues—it provides the Court with the authority to impose a physical solution in this matter, and requires the Court to consider any "existing" GSP before doing so. Neither of these statutory provisions relate to whether the TACC alleges sufficient facts to state a cause of action against Ojai, and neither are relevant at the present stage of this litigation, especially considering there is no existing GSP for the Basin. (See Memo., p. 15. [Ojai states that completion and approval for the GSP is more than two years away].)

IV. CONCLUSION

For all the reasons discussed herein and in Ventura's Opposition, the Foundation respectfully requests that the Court deny the Motion.

Dated: January 4, 2022

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PROOF OF SERVICE

I, Ivy Capili, declare:

I am a citizen of the United States and employed in Santa Barbara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Brownstein Hyatt Farber Schreck, LLP, 2049 Century Park East, Suite 3550, Los Angeles, California 90067. On January 4, 2022, I served a copy of the within document(s):

CROSS-DEFENDANT THE WOOD CLAEYSSENS FOUNDATION'S JOINDER IN CITY OF SAN BUENAVENTURA'S OPPOSITION AND SUPPLEMENTAL OPPOSITION TO THE CITY OF OJAI'S MOTION FOR JUDGMENT ON THE PLEADINGS

☒	**(BY ELECTRONIC SERVICE):** By transmitting such document(s) to File & ServeXpress to the persons set forth on the attached service list. Local Rule of Court 2.10(P).
☒	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.

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

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