



1 XAVIER BECERRA
 Attorney General of California
 2 MYUNG J. PARK
 Supervising Deputy Attorney General
 3 MATTHEW G. BULLOCK (SBN 243377)
 MARC N. MELNICK (SBN 168187)
 4 Deputy Attorneys General
 1515 Clay Street, 20th Floor
 5 P.O. Box 70550
 Oakland, CA 94612-0550
 6 Telephone: (510) 879-0750
 Fax: (510) 622-2270
 7 E-mail: Marc.Melnick@doj.ca.gov
*Attorneys for Respondent State Water Resources
 8 Control Board*

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

12 **SANTA BARBARA CHANNELKEEPER,**
 13
 Petitioner,
 14
 v.
 15
 16 **STATE WATER RESOURCES CONTROL
 BOARD, a California State Agency; CITY
 17 OF BUENAVENTURA, a California
 municipal corporation,**
 18 Respondents.

Case No. 19STCP01176

**SWRCB'S NOTICE OF MOTION,
 MOTION, AND MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF ITS MOTION TO
 INTERVENE**

Date: December 6, 2019
 Time: 10:00 a.m.
 Dept.: 10
 Judge: Honorable W.F. Highberger
 Trial Date: None Set
 Action Filed: September 19, 2014

20 **CITY OF SAN BUENAVENTURA, a
 California municipal corporation,**
 21
 Cross-Complainant,
 22
 v.
 23
 24 **DUNCAN ABBOTT, an individual; et al.,**
 25
 Cross-Defendants.

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

NOTICE OF MOTION AND MOTION

TO THE COURT AND THE PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that respondent State Water Resources Control Board hereby moves to intervene on the cross-complaint in this action and that that motion has been set for hearing on December 6, 2019 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 10 of the above-entitled court, located at 312 North Spring Street, Los Angeles, California. This motion is based on this notice, the accompanying memorandum of points and authorities, and any other matter submitted on reply or at the hearing on matter.

Dated: November 4, 2019

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
MYUNG J. PARK
Supervising Deputy Attorney General



MARC N. MELNICK
Deputy Attorney General
*Attorneys for Respondent State Water
Resources Control Board*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Respondent State Water Resources Control Board (the “SWRCB”) is the state agency
3 responsible for “the orderly and efficient administration of the water resources of the state,” and
4 is empowered with adjudicatory and regulatory functions to carry out this mandate. (Wat. Code,
5 § 174.) Although it is a party to the complaint in this action, it is not a cross-defendant on the
6 cross-complaint brought by the City of San Buenaventura (the “City”). The SWRCB has an
7 interest in ensuring that any determinations by the Court and any settlement are fair, equitable,
8 legally correct, and in the public interest. Its perspective is not shared by any other party. The
9 SWRCB brings this motion in an abundance of caution, to make absolutely clear that it is a party
10 to the adjudication in this action. The SWRCB has met and conferred with counsel about this
11 motion, and no one has expressed any opposition. The SWRCB respectfully requests that it be
12 granted intervention on the cross claims in this action as authorized by the Streamlined
13 Comprehensive Groundwater Adjudication Statute. The SWRCB’s counsel has met and
14 conferred with the other counsel in this case, and no one has voiced an objection to the granting
15 of this motion.

16 **PROCEDURAL BACKGROUND**

17 This case began in September 2014 when petitioner Santa Barbara Channelkeeper filed a
18 petition for declaratory relief and a writ of mandate in the San Francisco Superior Court against
19 the City and the SWRCB, alleging that the City’s use of Reach 4 of the Ventura River from April
20 through October is unreasonable, in violation of article X, section 2 of the California Constitution,
21 and that the SWRCB has failed to perform alleged mandatory duties to prevent that unreasonable
22 use. In response, the City filed a cross-complaint, alleging that it was other users of surface water
23 and groundwater that were unreasonably using water in the Ventura River watershed. The Court
24 of Appeal has ruled that the cross-complaint was appropriate. (*Santa Barbara Channelkeeper v.*
25 *City of San Buenaventura* (2018) 19 Cal.App.5th 1176.) Following remand, the parties stipulated
26 to have venue moved to this Court.

27 The cross-complaint is governed, either entirely or in significant part, by the procedures in
28 the Streamlined Comprehensive Groundwater Adjudication Statute, Code of Civil Procedure

1 section 830 et seq. As the Court is aware, this action has the potential to involve literally
2 thousands of parties.

3 This case was assigned to this Department on May 15, 2019, and the Court has held a case
4 management conference and an initial hearing on the City's motion for approval. Pursuant to
5 counsel's stipulation, the Court ordered a partial stay of the action on August 23, 2019. The
6 City's motion for approval of its notice is to come for hearing on November 1, 2019. At that
7 point, the City will have a period of time to serve the potential cross-defendants. (Code Civ.
8 Proc., § 836, subd. (d).)

9 ARGUMENT

10 Intervention in this Court is generally governed by Code of Civil Procedure section 387.
11 This provision is to be "liberally construed in favor of intervention." (*Lincoln Nat'l Life Ins. Co.*
12 *v. State Bd. of Equalization* (1994) 30 Cal.App.4th 1411, 1423.)

13 A nonparty may also intervene as a matter of right upon timely application when (1) the
14 proposed intervenor has an interest relating to the property or transaction that is the subject of the
15 action; (2) the disposition of this case may as a practical matter impair or impede the proposed
16 intervenor's ability to protect that interest; and (3) the proposed intervenor's interests are not
17 adequately represented by the existing parties. (Code Civ. Proc., § 387, subd. (d)(1); see also
18 *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386.)

19 In the alternative, the Court may permit intervention in its discretion when "(1) the proper
20 procedures have been followed; (2) the nonparty has a direct and immediate interest in the action;
21 (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the
22 intervention outweigh any opposition by the parties presently in the action." (*Reliance Ins. Co.*,
23 *supra*, 84 Cal.App.4th at p. 386, citing *Truck Ins. Exchange v. Superior Court* (1997) 60
24 Cal.App.4th 342, 346.)

25 The Streamlined Comprehensive Groundwater Adjudication Statute recognizes that the
26 SWRCB has a statutory right to intervene as a state agency. (See Code Civ. Proc., §§ 835, subd.
27 (a)(6) [requiring the plaintiff to provide notice to the SWRCB], 837.5 [recognizing that the law
28 allows the state to intervene in a water rights adjudication].)

1 **I. THE SWRCB IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT**

2 **A. Intervention Is Timely**

3 This case is just beginning. Not all parties have been named. The City has stated its
4 intention to file a third amended cross-complaint. The City has yet to give notice under the
5 Streamlined Comprehensive Groundwater Adjudication Statute. The case is currently stayed,
6 except for that notice to landowners, initial disclosures, motions to intervene such as this motion,
7 and other minor matters. Of course, no discovery has occurred, and no trial date has been set. As
8 such, intervention is timely.

9 **B. The SWRCB has an Unconditional Right to Intervene**

10 The Streamlined Comprehensive Groundwater Adjudication Statute provides that the
11 plaintiff is required to give notice of this comprehensive adjudication to the SWRCB, as well as
12 other specified state agencies. (Code Civ. Proc., § 835, subd. (a)(6).) The statutes also provide
13 that “the state” may intervene in a comprehensive adjudication. (*Id.*, § 837.5.) The Code of Civil
14 Procedure provides that a nonparty must be allowed to intervene when a statute confers an
15 unconditional right to intervene. (Code Civ. Proc., § 387, subd. (d)(1)(A).) Given that the
16 Streamlined Groundwater Adjudication statutes require the plaintiff to give notice to the SWRCB
17 as a state agency, and that “the state” is entitled to intervene as a matter of right, it is a fair
18 reading of these statutes together to mean that the Legislature intended that the state agencies who
19 are given notice of a comprehensive groundwater adjudication be allowed to intervene in such
20 action as a matter of right. As such, the SWRCB should be allowed to intervene as a matter of
21 right pursuant to Code of Civil Procedure, section 387, subdivision (d)(1)(A).

22 **C. The SWRCB Has a Right to Intervene to Protect Its Interests**

23 **1. The SWRCB Has an Interest in the Adjudication**

24 The SWRCB is the agency established “to provide for the orderly and efficient
25 administration of the water resources of the state.” (Wat. Code, § 174; see generally 62 Cal.Jur
26 3d (2018) Water, § 45.) The SWRCB has regulated all appropriative water rights acquired since
27 1914 through a permit system. (*Calif. Farm Bureau Fed. v. State Water Resources Control*
28 *Board* (2011) 51 Cal.4th 421, 429; see also Wat. Code, §§ 1200-851.) In doing so, the SWRCB

1 considers avoidance of injury to existing senior water rights and the public interest. (*United*
2 *States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 103-04.) The SWRCB
3 has the power to prevent waste or unreasonable use of water. (Wat. Code, § 275.) And it has the
4 authority to determine water rights. (*Id.*, § 2501; see also *id.*, §§ 2500-868 [provisions related to
5 such a statutory adjudication].) In fact, the Legislature has provided that courts adjudicating
6 water rights may make a reference to the SWRCB to determine legal and factual issues. (*Id.*, §§
7 2000-48.) As to the City's cross-complaint, the SWRCB's interest is in ensuring a fair, equitable,
8 and legally correct determination of the water rights at issue, and an outcome consistent with the
9 public interest. This is a sufficient interest for intervention.

10 The SWRCB's interest is made evident by two things the Court is well aware of. First, the
11 SWRCB is conducting engineering work to model the interaction between the groundwater and
12 the surface water in the region. The purpose of this work is to understand that interaction to
13 understand how some uses affect other uses, and how all reasonable uses can best be preserved
14 given competing demands. Second, the original action by Santa Barbara Channelkeeper here
15 alleges that the SWRCB has mandatory duties to manage the water use in the region. While there
16 can be argument about whether those duties are mandatory or discretionary, and whether they can
17 be enforced by this Court, there is no doubt that the SWRCB could act to impose limits on the use
18 of water in the Ventura River watershed – exactly what the City is seeking in this action.

19 **2. This Case's Disposition May Affect the SWRCB's Interests**

20 This case will, by way of court order or settlement, affect the use of water rights in the
21 Ventura River watershed. That outcome may affect the SWRCB's ability to administer water
22 rights and regulate use of water in the region in the public interest. Should the SWRCB act to
23 impose limits on the use of water, it would be constrained by the holding of any court order in
24 this case. Thus, this case might affect the SWRCB's regulatory power to prevent unreasonable
25 use.

26 **3. The SWRCB's Interests Are Not Adequately Represented By** 27 **Existing Parties**

28 The primary concern for the City and each of the cross-defendants is to protect their water

1 rights and access to water. If this case is litigated, they will be focused on advancing the
2 propriety and priority of their water rights, and casting doubts on others' water rights. The
3 SWRCB has a very different interest at stake. Its interest is to ensure that the outcome in these
4 disputes is consistent with the law and the public interest.

5 The SWRCB's interest is also different from the interest of the California Department of
6 Fish and Wildlife (the "Department"). The Department's interest is as the public's trustee to
7 protect the fish and wildlife resources of the Ventura River and its watershed. The SWRCB
8 certainly has a public trust responsibility, but its interest is broader in scope to encompass
9 balancing all of the competing uses to water in the watershed.

10 ** ** **

11 Based on the foregoing factors, the SWRCB should be granted the right to intervene in this
12 action. The case is in its infancy, the SWRCB has an interest in the adjudication which may be
13 affected by the disposition of the adjudication, and there are currently no existing parties that can
14 adequately represent the SWRCB.

15
16 **II. IN THE ALTERNATIVE, THE COURT SHOULD PERMIT INTERVENTION IN ITS
DISCRETION**

17 While the SWRCB's right to intervene makes analysis under permissive intervention
18 unnecessary, the SWRCB nonetheless meets the requirements for permissive intervention as well.
19 The SWRCB has followed all of the necessary procedural requirements for this motion. As
20 discussed above, the SWRCB has a clear interest in this action. The SWRCB has no interest in
21 enlarging the issues in this litigation, and will only be adding its views on the significant issues
22 already at play in the litigation. Lastly, no party has voiced any opposition to the SWRCB
23 intervening in the action. The SWRCB can bring its expertise to bear in this litigation, to assist
24 the Court in ensuring an outcome consistent with the water rights priority system and the public
25 interest. The SWRCB meets the requirements for permissive intervention, and respectfully
26 requests that the Court exercise its discretion to allow it to participate in this adjudication.

27 ///

28 ///

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

III. THE SWRCB REQUESTS THAT IT BE EXCUSED FROM FILING A COMPLAINT OR ANSWER IN INTERVENTION

In a typical civil case, a motion to intervene must be accompanied by a complaint in intervention or an answer in intervention. (Code Civ. Proc. § 387, subd. (c).) This is not a typical civil case. The Legislature has employed highly unique procedural requirements for the naming of parties and for how entities can participate in the litigation by filing court-approved form answers. (See Code Civ. Proc., § 835.) Given the unique procedural posture of this case and the SWRCB’s unique role in it – not supporting any particular party -- a complaint or answer in intervention would not be meaningful or appropriate. The SWRCB therefore requests that it be relieved of the requirement to file a complaint or answer in intervention.

CONCLUSION

For all these reasons, the SWRCB respectfully requests that the Court allow the SWRCB to intervene on the cross-complaint in this action.

Dated: November 4, 2019

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
MYUNG J. PARK
Supervising Deputy Attorney General



MARC N. MELNICK
Deputy Attorney General
Attorneys for Respondent State Water Resources Control Board

SF2014902766
91171953.docx