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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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 BUENA VENTURA, a California municipal corporation, incorrectly named as CITY OF BUENA VENTURA,

Respondents.

CITY OF SAN BUENA VENTURA, a California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT; et al.

Case No. 19STCP01176

Hon. William F. Highberger

CITY OF OJAI'S REPLY BRIEF REGARDING OPPOSITION TO THE 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

TABLE OF CONTENTS

I. Introduction AND SUMMARY OF ARGUMENT 1

II. ARGUMENT 2

A. The Law of the Case Doctrine Does Not Apply to Ojai's Motion. 2

B. Ventura Ignores the Legislature's Express Requirements and Intent in the 2015 Legislation to Ensure that Lawsuits Affecting Groundwater Were Consistent with SGMA, Which is Built Entirely on the Foundation of Bulletin 118 Basins. 4

C. Ventura et al.'s Interpretation Seeks Improper Judicial Revision of the Plain Language of the Statute. 7

D. Ventura's Nonexistent Pueblo Rights Can Not Extend to the Ojai Groundwater Basin. 12

E. Ventura Lacks Standing to Bring Any Claims Concerning the Ojai Basin. 13

F. Ventura's Contention Regarding Watershed Adjudications Would Result in Statewide Litigation. 14

III. Conclusion 15

TABLE OF AUTHORITIES

Cases

Burr v. Maclay Rancho Water Co. (1908) 154 Cal. 428 11

California State University, Fresno Assn., Inc. v. County of Fresno, (2017) 9 Cal. App. 5th 250 8

City of Barstow v. Mojave Water Agency (2000) 23 Cal.4th 1224 10

Coachella Valley County Water Dist. V. Stevens, (1929) 206 Cal. 400 ..... 9, 15

England v. Hospital of Good Samaritan, (1939) 14 Cal. 2d 791 3

Gore v. Bingaman, (1942) 20 Cal. 2d 118 3

Hart v. Burnett, (1860) *15 Cal. 530* 14

Hudson v. Dailey (1909) 156 Cal. 617 12

Katz v. Walkinshaw (1903) 141 Cal. 116 11

Los Angeles v. Los Angeles Farming & Milling Co., (1908) 152 Cal. 645 14

Los Angeles v. San Fernando (1975) 14 Cal. 3d 199, 221 ..... 11, 13

Messenger v. Anderson, (1912) 225 U.S. 436 3

Morohoshi v. Pacific Home (2004) 34 Cal.4th 482 2

Nolan v. City of Anaheim, (2004) 33 Cal. 4th 335 8

Orange Co. Water Dist. v. City of Riverside (1959) 173 Cal.App.2d 137 ..... 12, 15

People ex rel. Department of Public Works v. Lagiss, (1963) 223 Cal. App. 2d 23 2

People v. Cal. Fish Co., (1913) 166 Cal. 576 16

People v. Guzman, (2005) 35 Cal. 4th 577, 587 8

People v. Yokely (2010) 183 Cal.App.4th 1264 2

San Diego v. Cuyamaca Water Co., (1930) 209 Cal. 105 13

Santa Barbara Channelkeeper v. City of San Buenaventura (2018) 19 Cal.App.5th 1176. 3

Standard Oil Co. v. Johnson, (1942) 56 Cal. App. 2d 411 3

State Farm General Ins. Co. v. Lara, (2021) 71 Cal. App. 5th 148 9

State Farm General Ins. Co. v. Lara, (2021) 71 Cal. App. 5th 197 2

State of Cal. v. Superior Court (*Underwriters at Lloyd's of London*) (2000) 78 Cal.App.4th 1019 16
Trope v. Katz (1995) 11 Cal.4th 274, 287 10
Vernon Irrigation Co. v. Los Angeles, (1895) 106 Cal. 237 14

Statutes

Code Civ. Proc. § 16 8
Code Civ. Proc. § 832, subd. (a) 5
Code Civ. Proc. §§ 841, subd. (a) 5
Code Civ. Proc., § 832, subds. (c), (b) 5
Stats. 1866, pp. 216-218 15
Wat. Code § 5 8
Wat. Code §1037.2 7
Wat. Code §10737 7
Wat. Code, § 10721, subd. (b) 6
Wat. Code, § 10723, subd. (c)(1)(L) 7
Wat. Code, § 10737.2 7
Water Code § 10721, subd. (a) 5, 6

Other Authorities

9 Witkin, Cal. Procedure (2021, 6th ed.) Appeal, §§ 530-531 10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The City of Buenaventura ("Ventura")'s Opposition and all joinders[1] thereto (referred to collectively as "Ventura et al.") fail to refute the plain points of law on which the City of Ojai ("Ojai") relies in its motion for judgment. Simply put, Ventura, et al. ignore, and ask the Court to ignore, that, in 2015, the Legislature enacted the Comprehensive Groundwater Adjudication Statute ("CGAS") and amended the 2014 Sustainable Groundwater Management Act ("SGMA") specifically to ensure that gigantic lawsuits like the one Ventura et al. seek to pursue will not interfere with SGMA's historic, carefully constructed and explicitly comprehensive regime for managing groundwater according to Bulletin 118 basins. This point was critical enough to the Legislature that, in 2015, it double-joined the bill that enacted CGAS with the bill that amended SGMA to ensure that lawsuits like this one will not interfere with SGMA implementation. Neither bill could become law unless both did. They both did become law, they both govern this case, and they both preclude Ventura et al.'s attempt to drag an entire watershed into a case that started because Ventura's river diversions allegedly are injuring fish.

Ventura asks this Court to adjudicate the entire watershed on the theory that somehow the Legislature intended these comprehensive statutes to just be "alternatives" for managing groundwater litigation and permit Ventura to adjudicate any party's rights under amorphous common law doctrines. However, the cases upon which Ventura relies demonstrate that applicable statutes govern whether and how anyone can pursue groundwater litigation. The statutes that apply here – SGMA and CGAS – do not allow Ventura to pursue this case against Ojai. Because denying Ojai's motion would allow Ventura to undermine the Legislature's effort to rationalize the state's groundwater management based on Bulletin 118 basins, the Court should grant Ojai's motion.

[1] Ojai objects and moves to strike Wood Claeyssens Foundation's Joinder as failing to comply with this court's order that any joinders to Ventura's Opposition be limited to Code. Pursuant to CRC 3.1113, opposition papers are limited to 15 pages.

II. ARGUMENT

A. The Law of the Case Doctrine Does Not Apply to Ojai's Motion.

It is telling that, in its lead argument, Ventura seeks to avoid any discussion of the applicable statutes and instead argues that, under the "law of the case" doctrine, the Court of Appeal's prior decision allows Ventura to drag essentially anyone it chooses into this lawsuit. That theory, however, is incorrect. The "law of the case doctrine" applies when "an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the *same parties* in any subsequent retrial or appeal in the same case." (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491 [emphasis added].) To invoke this doctrine, the issues "must be the same." *State Farm General Ins. Co. v. Lara*, (2021) 71 Cal. App. 5th 197, 212-213 ("State Farm Gen. Ins. II[2]"), [citing *People v. Yokely* (2010) 183 Cal.App.4th 1264].) Where the issues are not the same, this argument will fail.

Moreover, this doctrine is "one of policy only and…will be disregarded when compelling circumstances call for a redetermination of the determination of the point of law on a prior appeal." (*People ex rel. Department of Public Works v. Lagiss*, (1963) 223 Cal. App. 2d 23, 35.) "This is particularly true where an intervening or contemporaneous change in the law has occurred by the overruling of former decisions or the establishment of new precedent by controlling authority." (*Id.*; see also *Gore v. Bingaman*, (1942) 20 Cal. 2d 118, 122 ["the rule should never be made the instrument of injustice. Thus, where the controlling rules of law have been altered or clarified in the interval between the first and second appeal and adherence to the previous decision would result in defeating a just cause, it has been held that the court will not hesitate to reconsider its prior determination."].)

The courts' discretion in applying this doctrine makes sense given the recognition that the rule is "'harsh' and 'the modern view is that it should not be adhered to when the

[2] Note there were two opinions in *State Farm Ins*. The first, discussed *infra*, dealt with statutory interpretation similar to Ventura's "singular versus the plural" argument. The second concerned an attorneys' fees motion and the law of the case doctrine. To avoid confusion, these opinions are distinguished in these papers as "State Farm Ins. I" and "State Farm Ins. II."

application of it results in a manifestly unjust decision.'" (*Standard Oil Co. v. Johnson*, (1942) 56 Cal. App. 2d 411, 415-416 [citing *England v. Hospital of Good Samaritan*, (1939) 14 Cal. 2d 791, 795].) Thus, even if the same issues and same parties are involved, "a court which is looking to a just determination of the rights of the parties to the litigation and not merely to rules of practice, may and should decide the case without regard to what has gone before." (*Id*. [citing *Messenger v. Anderson*, (1912) 225 U.S. 436].)

Ventura had not joined Ojai to this case when the Court of Appeal issued its decision in *Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176. As Ventura's opposition demonstrates, Ojai was served years later. As a result, Ojai[3] cannot be compelled by the law of the case doctrine to participate in this lawsuit simply because Ventura states otherwise.

Acknowledging that this is a fatal problem for its argument, Ventura's opposition attempts to bury this fact in its footnote six, which does not even cite Ojai by name. That footnote states, in full, "All of the parties are subject to the law of the case because they were either expressly named in the original Cross-Complaint or were Roe Cross-Defendants at that time." (Ventura's Opposition to Motion for Judgment ("Opp."), p. 15, fn. 6.) Ventura cites no authority at all for its apparent suggestion that the Court should force Ojai to participate in this case because Ventura supposedly considered Ojai to be a "Roe Cross-Defendant" when the Court of Appeal issued its decision (even though Ventura did not name or serve Ojai in this manner when it did serve the Third Amended Cross-Complaint). Accepting that suggestion would create a serious due process problem in which parties could be bound by court decisions because an adverse party considered them to be adequately named – by placeholder pleadings – before they were served.

Moreover, the Court of Appeal's decision did not invite or compel Ventura to bring a groundwater adjudication of four separate groundwater basins, contrary to applicable statutes.

[3] Two of the parties that filed joinders to Ventura's opposition (Meiners Oaks County Water District and Wood Claeyssens Foundation) were named as cross defendants in the initial cross-complaint.

As demonstrated by the 2018 decision, Ventura was allowed, under the liberal pleading policy[4] of this state, to plead allegations like those contained in its original amended complaint. However, as Ventura admits, the TACC significantly expanded on the allegations that were before the Court of Appeal in 2018. (See Opp., at pp. 16:28-17:2.) This admission refutes Ventura's application of the law of the case doctrine and Ventura's representations of what issues were presented to the Court of Appeal. Ventura could have proceeded in the litigation on the prior cross-compliant under the direction of the Court of Appeals decision. Instead, it chose to expand its pleading.

It is, at best, disingenuous of Ventura to claim that the Court of Appeal's decision makes it "indisputable that the Court of Appeal held Ventura has the right to be heard on the merits, and that the Court must hear the merits of the Cross-Complaint." (Opp., at p. 16:25-26.) What is indisputable is that Ventura had not joined Ojai to this case when the Court of Appeal acted and the "law of the case" doctrine therefore does not support Ventura in opposing Ojai's motion.

B. Ventura Ignores the Legislature's Express Requirements and Intent in the 2015 Legislation to Ensure that Lawsuits Affecting Groundwater Were Consistent with SGMA, Which is Built Entirely on the Foundation of Bulletin 118 Basins.

California law significantly changed with the passage of SGMA and CGAS between 2014 and 2015. As demonstrated in the moving papers, CGAS specifically addressed one of the many problems with the prior common law adjudications by specifically *limiting* the scope of comprehensive adjudications to the boundaries of a basin as defined in Bulletin 118. (Code Civ. Proc. §§ 841, subd. (a) , 832, subd. (a); Water Code § 10721, subd. (a) .) These statutes do not allow Ventura to drag four Bulletin 118 basins into one gigantic lawsuit. Contrary to Ventura's various arguments about parts of SGMA that do not concern litigation and stray comments by legislative staff that have been cherrypicked from CGAS's legislative history, the

[4] This policy does not eviscerate California's pleading requirements or challenges to pleadings pursuant to Code Civ. Proc section 438.

manner in which the Legislature enacted CGAS and SGMA amendments in 2015 demonstrate that none of Ventura's arguments allow it to escape those statutes.

In order to make doubly sure that new groundwater cases would not undermine SGMA's Bulletin 118-specific implementation, in 2015, the Legislature double-joined the bills that enacted CGAS and that amended SGMA's litigation-related provisions. Assembly Bill 1390 enacted CGAS and Senate Bill 226 amended SGMA by enacting Water Code sections 10737 through 10737.8. Both bills contained language stating that neither bill would become law unless both did. (RJN Nos. 1-2 [SB 226 states "[t]his act shall only become operative if Assembly Bill 1390 of the 2015–16 Regular Session is enacted and becomes effective" and AB 1390 states "[t]his act shall only become effective if Senate Bill 226 of the 2014–15 Regular Session is enacted and becomes effective.].)"

While CGAS is based on the definition that a "comprehensive adjudication" is "an action filed in superior court to comprehensively determine rights to extract groundwater in a basin," including any action that is initiated by a cross-complaint (Code Civ. Proc., § 832, subds. (c), (b)), SB 226's language for managing groundwater cases is even broader. Specifically, Water Code sections 10737 through 10737.8 rely on SGMA's broader definition of "adjudication action," which is as follows:

> [A]n action filed in the superior or federal district court to determine the rights to extract groundwater from a basin or store water within a basin, including, but not limited to, actions to quiet title respecting rights to extract or store groundwater or an action brought to impose a physical solution on a basin.

(Wat. Code § 10721 (a) .)

There are two aspects of this definition that are important here. First, it incorporates SGMA's definition of "basin," which depends on the Department of Water Resources' definition of basins in Bulletin 118, as potentially modified through SGMA. (See Wat. Code, § 10721, subd. (b) ["Basin" means a groundwater basin or subbasin identified in Bulletin 118 or as modified pursuant to Chapter 3 (commencing with Section 10722")[5].) Second, SGMA's

[5] This specific statutory definition disposes of Ventura's argument that "basin" includes multiple basins. If the Legislature had intended to leave SGMA's definition of "basin" subject to that sort of general rule, it would not have explicitly referred to a basin as being defined by Bulletin 118. That argument also

definition of "adjudication action" is so broad that it encompasses any "common law" cause of action and further explicitly includes "*an action brought to impose a physical solution on a basin*." (See Wat. Code, § 10721, subd. (a) [Emphasis added].) That is exactly what Ventura's TACC attempts to do in all of the basins, including the Ojai Basin. SGMA's definition of "adjudication action," as incorporated into SB 226 and co-enacted with CGAS, does not allow parties to evade the requirement that groundwater litigation proceed consistently with SGMA and Bulletin 118's basin definition through a pleading relying on "common law" theories.

Crucially for purposes of this motion, 2015's Senate Bill 226 enacted, in conjunction with CGAS, Water Code sections 10737 and 10737.2. Those statutes state, respectively:

> Except as provided in this chapter, an adjudication action to determine rights to groundwater in a basin shall be conducted in accordance with the Code of Civil Procedure, including pursuant to Chapter 7 (commencing with Section 830) of Title 10 of Part 2 of that code.

> In an adjudication action for a basin required to have a groundwater sustainability plan under this part, the court shall manage the proceedings in a manner that minimizes interference with the timely completion and implementation of a groundwater sustainability plan, *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 within the timeframes established by this part*.

(Wat. Code §10737; Wat. Code §1037.2 [Emphasis added].) Ventura's TACC explicitly seeks to impose on the Ojai Basin, and every other basin it covers, a physical solution that ignores Bulletin 118 boundaries. Moreover, that physical solution would put the Court in the position of managing the Ojai Basin, where the Legislature explicitly declared that the Ojai Groundwater Management Agency (OBGMA) is the "exclusive local agenc[y] within [its] statutory boundaries with powers to comply with this part [SGMA]." (Wat. Code, § 10723, subd. (c)(1)(L).)

All of Ventura's various arguments about OBGMA's organic act ignore the simple point that Ventura's lawsuit seeks to put this Court in the position of managing the Ojai Basin through a physical solution – in direct contravention of SGMA's provisions establishing

ignores Water Code section 5, which indicates that Water Code section 13 only applies "[u]nless the provision or the context otherwise requires . . . ."

OBGMA as that basin's manager and SB 226's 2015 amendments to SGMA that require that courts ensure that "adjudication actions" not create "redundancy and unnecessary costs in the development of technical information and a physical solution." (Wat. Code, § 10737.2.) It is hard to imagine how it would be possible to cause more "redundancy and unnecessary costs" than to allow Ventura to drag the Ojai Basin – in which Ventura is not located, and from which it does not pump – into a lawsuit for a physical solution while OBGMA is seeking to comply with its statutory mandate to manage that basin under SGMA. Ventura's lawsuit presents the exact risk that the Legislature sought to eliminate by enacting CGAS and SGMA amendments in 2015, namely that a party, by initiating complex and massive litigation that will take years to resolve, could undermine SGMA's historic and carefully-constructed regime for managing the state's groundwater for the first time.

Ignoring all of the above, Ventura et al. state, without support, that CGAS merely establishes a "parallel process" with the prior common law adjudications and is simply "procedural, with permissive methods to streamline" groundwater adjudications. (See Opp., at pp. 23:11-20; 26:13-17.) Thus, Ventura et al. claim that CGAS was never intended to be the *exclusive* means for groundwater adjudications. However, the statutes clearly state otherwise. Ventura's argument is premised on ignoring plain statutory text. As such, it necessarily fails.

C. Ventura et al.'s Interpretations Require Improper Judicial Revision of the Plain Language of the Statute.

Ventura agrees that the plain language of CGAS and SGMA are unambiguous. (Opp., at p. 25:9-10.) Therefore, the court "need go no further" in an effort to interpret the statute. (*See Nolan v. City of Anaheim*, (2004) 33 Cal. 4th 335, 340) Oddly, though, in contradiction to that admission, Ventura disregards the statutory language and insists that Code of Civil Procedure section 17 saves the pleading. Not so. As demonstrated by the statutes and set forth above, the application of section 17 to this context is nonsensical. Moreover, the Code of Civil Procedure requires "[w]ords and phrases [to be] construed according to the context and the approved

usage of the language…" (Code Civ. Proc. § 16.) And the Water Code requires its definitions to govern the construction of the code unless the context provides otherwise. (Wat. Code § 5)[6]

As explained *supra*, the Legislature spent significant time creating SGMA and then double joining AB 1390 and SB 266. The plain language from those chaptered bills, not staff's comments or analyses of drafts thereof, is what controls. Moreover, Ventura et al.'s statutory construction argument was flatly rejected by *State Farm Gen. Ins. I.*, interpreting similar provisions in the Insurance Code. (*State Farm General Ins. Co. v. Lara*, (2021) 71 Cal. App. 5th 148, 173 ("State Farm Gen. Ins. I.").) There, the applicable statute specifically stated that the general rules only applied "[u]nless the context otherwise requires." (*Id*., [citing section 5 of the Insurance Code].) According to *State Farm Gen. Ins. I*, the "language and structure" of the statute demonstrated that the general rule was not intended to apply because it simply did not make sense to read it as appellants argued. (*Id*.) Here too, the plain language of the statutes, and their context, clearly define and limit groundwater adjudications to a Bulletin 118 basin, thereby precluding Ventura's attempt to use the earlier-enacted general language of the Code of Civil Procedure to overrule the more specific later language of CGAS and SGMA limiting adjudications to a single Bulletin 118-defined basin.

Ventura's arguments boil down to the theory that it should be able to drag multiple groundwater basins, defined by Bulletin 118 and SGMA as separate, in which Ventura is not even located, into one huge lawsuit because that is the way things always have been done in southern California: "In Southern California at least, these types of multiple basin and interconnected surface water cases are the norm under the common law, not the exception." (Opp., at p. 27:13-14.) Ventura certainly deserves credit for audacity in asserting that the Legislature's enactment of SGMA, as California's first groundwater-management statute in

[6] It is a cardinal rule of statutory construction, codified in Code of Civil Procedure section 1858, that courts are not permitted to insert additional language or provisions to statutes. (*People v. Guzman*, (2005) 35 Cal. 4th 577, 587) In reviewing a statute, the plain language is examined first as that is the language that has "successfully braved the legislative gauntlet." (*California State University, Fresno Assn., Inc. v. County of Fresno*, (2017) 9 Cal. App. 5th 250, 266) Where the "statutory language is clear and unambiguous, resort to the legislative history is unwarranted." (*Id*. at 268)

2014, its follow-up 2015 enactment CGAS, as a comprehensive statute for managing groundwater litigation, and coordinated SGMA amendments did nothing to change the law. However, for the reasons discussed above, Ventura's argument is incorrect.

Further, Ventura's own "common law" decisions do not support its argument. The most obvious of Ventura's citations that defeat its position is *Coachella Valley*. In that decision, the state Supreme Court interpreted the applicable statute in deciding that the relevant water district could pursue its groundwater case. (*Coachella Valley County Water Dist. V. Stevens*, (1929) 206 Cal. 400, 403-404, 406-409.) Additionally, the applicable statute was reviewed because that district had pleaded that the landowners and inhabitants within the district had actually relied on the groundwater supply at issue. (*Id*.) In contrast, Ventura seeks to evade applicable statutes on the theory that all they do is "establish a new process to operate in parallel to the common law adjudication process" (Opp., at p. 26:19-20), in order to compel litigation of basins on which it does not rely for any supply.

Newer California Supreme Court decisions on which Ventura also relies actually support Ojai's arguments. The 2000 *Mojave* decision did not decide how to define a groundwater basin, so Ventura's citation of it for that point violates the basic rule that an appellate decision is only authority for propositions that it decided. (*Trope v. Katz* (1995) 11 Cal.4th 274, 287 ["[O]nly the ratio decidendi of an appellate opinion has precedential effect"]; *See also* 9 Witkin, Cal. Procedure (2021, 6th ed.) Appeal, §§ 530-531.) In *Mojave*, the trial court wrongly determined that Article X, section 2 *required* equitable apportionment of all water rights, regardless of their nature or priority, when a basin is in overdraft, concluding all use was unreasonable when an "interrelated water source" is in overdraft. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1237-1238 ("Mojave").)

Mojave's main holding was that neither the common law nor Article X, section 2 of the state constitution allows a court to obliterate legal categories of water rights in favor of amorphous equitable physical solutions. (*Id*. at p. 1250.) Since the state Supreme Court redefined groundwater rights in the 1903 *Katz v. Walkinshaw* decision, those rights have been based on a basin as the unit of analysis, and it defined basins as water-bearing sediments

bounded by more impermeable geologic materials.[7] (*See Katz v. Walkinshaw* (1903) 141 Cal. 116; *see also Burr v. Maclay Rancho Water Co*. (1908) 154 Cal. 428, 431–436, [defining whether a water use is an overlying use according to whether it occurred on the wet side or the dry side of an underground "impermeable dyke"].) Contrary to *Mojave*, Ventura's theories would allow it to thoroughly subvert these traditional rules by forcing the adjudication of basins from which it does not use water.

The 1975 *San Fernando* decision also actually contradicts Ventura's common law theories. That decision held that, while the City of Los Angeles held a pueblo right in groundwater basins that were tributary to the Los Angeles River, the pueblo right did *not* extend to other basins in the watershed that are not tributary to the river because of geologic, and other, factors. (*Los Angeles v. San Fernando* (1975) 14 Cal. 3d 199, 221 ["Rejecting plaintiff's contention that the ULARA contains a single basin, the court found: 'The mere existence of hydraulic continuity between ground water reservoirs does not cause them to become one basin or one ground water body.'"].) Moreover, in *San Fernando*, the state Supreme Court defined the Sylmar basin's safe yield to allow for pumping in wetter times to make space for groundwater recharge that otherwise would have flowed downstream in the river. (*Id*. at 278-280.) In other words, *San Fernando* legally cut off the boundaries for calculating the basin's safe yield so that they did not include the downstream river. That holding is the polar opposite of Ventura's position that it is entitled to force parties to litigate multiple basins in which it is not located because a river runs through them.

The 1909 *Hudson v. Dailey* decision does not provide any law that helps Ventura through the "common source" doctrine. Preliminarily, as discussed above, any action brought under that doctrine is within the definition of "adjudication action" that SGMA applies to control all groundwater adjudications. *Hudson v. Dailey* addressed the question of whether a parcel of land that has been divided from a larger parcel that had riparian rights could maintain riparian rights even though it was no longer adjacent to the stream. (*Hudson v. Dailey* (1909)

[7] While water-bearing sediments bounded by more impermeable geology are the basic definition of a basin, the Water Code allows Bulletin 118 to subdivide those basins for practicality using other factors. (See Wat. Code §§ 10722-10722.4 and 12924)

156 Cal. 617.) The case dealt with a single creek–not a watershed–and the subsurface waters that were so connected that they were part of the same stream. (*Id*. at pp. 624-627.) *Hudson*, referring to *Katz v. Walkinsaw*, simply explained that this case involved diversions from one legal source of water from both the surface and the connected subsurface and that those diversions affected one another. (*Id*.) Moreover, *Hudson* certainly did not contradict the *Burr* decision from just the prior year that held that groundwater rights are defined according to whether use occurs on the wet side or the dry side of geologic groundwater barriers.

Likewise, *Orange Co. Water Dist. v. City of Riverside* (1959) 173 Cal.App.2d 137 ("*Riverside*") actually undermines Ventura's position, for several reasons. First, relying on the *Coachella Valley County Water District* decision, it explicitly based its holding that a particular district could bring a lawsuit against upstream water users on its interpretation of applicable statutes. (*Id*. at pp. 166-172.) It therefore does not support Ventura's argument that the Court should rely on "common law" theories as "parallel" to SGMA and CGAS as the now-applicable statutes. Second, the plaintiff district asserted its case on the theory that upstream water uses were injuring groundwater supplies in a basin in which the district was located and the district was acting as a representative to protect its landowners' and inhabitant's ability to use that basin. (*Id*. at pp. 163-164.) The decision does not support the argument that Ventura can pursue whomever it likes in litigation as long as Ventura claims "an interest" in doing so. Third, *Riverside* predates *San Fernando's* segregation of a watershed into legally separate basins according to underlying geology and therefore is not good authority for allowing anyone who claims an "interest" to initiate a basin's adjudication, if *Riverside* in fact ever could have been precedent for that theory.

In sum, the "common law" cases on which Ventura et al. rely actually support Ojai's argument that SGMA and CGAS, as the applicable statutes, prohibit Ventura from pursuing this case against Ojai. Ignoring the well-known prohibition on judicial encroachment into legislative powers, Ventura et al. improperly ask the court to revise the statutes to conform with their interpretation of the common law. This request must be rejected.

D. Ventura's Nonexistent Pueblo Rights Can Not Extend to the Ojai Groundwater Basin.

Pueblo water rights, even if they exist, do not provide an exception to the statutory provisions of CGAS or SGMA. Thus, any party asserting pueblo water rights is still limited to the Bulletin 118 singular basin scope of a groundwater adjudication action if it seeks to determine or limit the groundwater rights in that basin. Further, the Supreme Court long ago rejected the theory that pueblo rights extend to all groundwater basins in a watershed, even if those groundwater basins, without any pumping, would contribute water to the river that is subject to pueblo rights. (*San Fernando, supra,* 14 Cal.3d, at pp. 249-250 ["We are of the opinion that the pueblo right does not extend that far even if it be assumed that the maintenance of full basins to support the river's supply would constitute a reasonable beneficial use."].) Therefore, as a matter of law, Ventura simply cannot state a claim that its pueblo rights (assuming they even exist) extend to the Ojai basin.

Moreover, Ventura has not pled sufficient facts to establish that it has pueblo rights at all. Missions and pueblos were different institutions under Spanish and Mexican law, so the existence of a mission means nothing relative to the existence of pueblo water rights. (*See San Diego v. Cuyamaca Water Co.,* (1930) 209 Cal. 105, 124-125 ("*San Diego*").)[8] As the name implies, they arise from pueblos. (*See Hart v. Burnett,* (1860) 15 Cal. 530; *see also San Diego, supra* 209 Cal. at pp. 124-127.*)* Only the cities of Los Angeles and San Diego have established pueblo water rights. Those cities pled, and proved, that they were successors to pueblos, not missions. (*Vernon Irrigation Co. v. Los Angeles*, (1895) 106 Cal. 237, 240-241; *Los Angeles v. Los Angeles Farming & Milling Co.,* (1908) 152 Cal. 645, 648; *San Diego, supra,* 209 Cal at pp. 124-130.) Unlike Los Angeles and San Diego, Ventura does not allege that Mission San Buenaventura was a pueblo. Nor does it allege that its California incorporating statute

[8] "The pueblos . . .were purely civil and political foundations, as the term itself implies, being equivalent to the English word "town" and signifying a civic body corporate and politic, and intended, through the cultivation of the lands with which under the Spanish and Mexican laws it was by virtue of its foundation to be invested, to furnish sustenance for its own inhabitants and for the presidios. Mission settlements, on the contrary, were purely ecclesiastical foundations, made or to be made, in Alta California by monks or padres of the Franciscan Order, and existing and being conducted by these for the sole purpose of bringing the blessings and fruits of Christian civilization to the Indian population of Alta California . . . ." (*San Diego, supra*, 209 Cal., at pp. 124-125.)

somehow granted it pueblo rights. Instead, Ventura alleges that it is a successor to the Mission and that the designation of the Mission and "its subsequent secularization led to the creation of a pueblo water right." (TACC ¶ 124.) As explained above, this is not sufficient to establish pueblo rights, as pueblo rights are not created through the existence of the Missions, or their eventual secularization. Ventura therefore has no claim to pueblo rights as a matter of law.

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

Ventura cannot initiate a groundwater adjudication of a basin in which it has no interest. Ventura has no groundwater rights in the Ojai Basin and has not pled otherwise. Nor has it pled that the Legislature invested Ventura with statutory authority, as it did with OBGMA, to commence a groundwater adjudication on behalf of the Ojai Basin or landowners overlying it. Groundwater adjudications are meant to address problems within a groundwater basin, typically where the amount of groundwater is insufficient to meet the needs of the parties that have rights to that groundwater. Ventura has not pled that the groundwater in the Ojai basin is in overdraft, that Ventura pumps groundwater from the Ojai basin, or that it owns property in the basin. (See, generally, TACC; see also TACC, ¶¶ 1, 138-141) Nor has it pled that it represents any party with a groundwater right in the Ojai basin. Instead, Ventura states that it has standing based upon its "representative capacity" and that it "holds pueblo, prescriptive, and pre-1914 appropriative water rights *to water in the Watershed."* (Opp., at pp. 18:11-26, 19:9-10 [emphasis added].)

As previously explained, there is no such thing as a "watershed right" in water law and Ventura has no pueblo rights as a matter of law. Moreover, contrary to the claim that standing is established simply by stating Ventura is acting in its "representative capacity," that is only achieved if the governing statute of the agency explicitly permits the action. (*Coachella Valley County Water Dist. v. Stevens*, (1929) 206 Cal. 400, 410-411; *Riverside*, *supra* 173 Cal at 167-171.) Ventura's incorporating act has no such language. (Stats. 1866, pp. 216-218) Interestingly, nowhere in the TACC does Ventura allege that it is bringing the suit in its representative capacity or that it has statutory authority to do so. (See TAC ¶107) Instead, it claims that it brought the action to promote "the public welfare in the Watershed" and to

"protect…the public's water supply." (TACC ¶ 1) The "public" and the "Watershed" necessarily include the Ojai basin and its residents. Yet, Ventura has not pled, or demonstrated in its opposition, that it has any statutory authority to pursue the TACC on behalf of its own citizens let alone the citizens of the Ojai basin.

Moreover, the public trust cases Ventura relies upon do not stand for the proposition that anyone who claims an interest has standing to initiate a comprehensive groundwater adjudication. The public trust doctrine is significantly different from Ventura's effort to protect its own water rights. The state begins with two interests in properties to which the trust applies, a standard ownership interest that it assigned (the *jus privatum*) and its regulatory interest to ensure that it can protect the people's interest in trust resources (the *jus publicum*). (*People v. Cal. Fish Co.,* (1913) 166 Cal. 576, 593.) The Court of Appeal has applied this distinction in defining the state's interests in groundwater. (*State of Cal. v. Superior Court* (*Underwriters at Lloyd's of London*) (2000) 78 Cal.App.4th 1019, 1030–1034.) The footnote in *National Audubon* that Ventura cites indicates that members of the public can assert the state's regulatory interest. It does not support Ventura's theory that its alleged ownership of its specific water rights allows it to use the public trust doctrine in an effort to protect Ventura's alleged rights.

F. Ventura's Contention Regarding Watershed Adjudications Would Result in Statewide Litigation.

Ventura's contention that entire watersheds may be adjudicated raises a number of questions with potentially significant consequences concerning how wide of a net one may cast in a comprehensive groundwater adjudication. Ventura contends that any party may initiate an action, without requiring more. (Opp., at p. 19:1-2) It also contends that a city may initiate the same under the guise of protecting the public interest, without limitation. (Opp., at p. 18:19-26) According to its broad application of these theories, any party, located anywhere in the state of California, could initiate a comprehensive groundwater adjudication of any groundwater basin.

Aside from the fact that this would completely defeat the purpose of fast-tracking groundwater adjudications and prohibiting interference with SGMA, it would result in

absurdity. For example, under Ventura's theories, any person within a Southern California watershed could initiate a groundwater adjudication in Northern California just for fun. And, following Ventura's application of representative capacity, or under the veil of the public trust, Ventura could initiate a comprehensive adjudication of the Feather River because that river provides water to the State Water Project (SWP), which conveys water to Southern California. (RJN No. 3[9]) Ventura's application of historic "common law" would likewise allow an adjudication of all groundwater basins in the Central Valley from Mount Shasta to the Bay-Delta because the Sacramento River (and its tributaries) flow over these basins and could, according to Ventura's theories, reduce water otherwise available to the SWP. Those theories and the potential for groundwater adjudications to explode into absurdity, and interfere with SGMA implementation, is why the Legislature relied on the use of Bulletin 118 basins to define, and limit, the scope of a comprehensive groundwater adjudications.

III. CONCLUSION

Because Ventura's TACC seeks to adjudicate groundwater rights in an entire watershed, including four separate Bulletin 118-designated basins, it exceeds the specific jurisdictional and procedural authority of CGAS and fails as a matter of law. Historical adjudications predating CGAS and SGMA are irrelevant to whether these subsequent statutes limited the boundaries of comprehensive groundwater adjudications moving forward. And since Ventura lacks jurisdiction, standing and ability to state the claims for relief, Ojai respectfully requests that this Court GRANT its motion for judgment on the pleadings on the claims raised in the TACC.

Dated: January 10, 2021

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[9] A complete copy of this Bulletin can be found at https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/Bulletin-132/Bulletin-132/Files/Bulletin-132-17-r.pdf