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In Pro. Per.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,
A California non-profit corporation,
Petitioner/Plaintiff,

v.

STATE WATER RESOURCES CONTROL
BOARD, a California State Agency,
CITY OF SAN BUENAVENTURA, a California
Municipal Corporation.
Respondent/Defendant

) Case No. 19STCPO1176
) Judge: Honorable William F. Highberger
) STATUS CONFERENCE COMMENTS
) Date: April 19, 2021
) Time: 1:30 p.m.
) Action Filed: Sept. 19, 2014
) Trial Date: Not Set

CITY OF SAN BUENAVENTURA, a California
Municipal Corporation,
Cross-Complainant

v.

CLAUDE R. BAGGERLY & PATRICIA E. BAGGERLY
Cross-Defendants

1 **INTRODUCTION**

2 The conditions prevailing in California have not changed since the adoption of Article X Section 2 of
3 our Constitution. The general welfare still requires that the water of the State be put to beneficial use to
4 the fullest extent which users are capable, and that water waste, unreasonable use or unreasonable
5 method of use is prevented. The public welfare and the people’s water are conserved through
6 reasonable and beneficial use.

7
8 **ARTICLE X SECTION 2 OF THE CALIFORNIA CONSTITUTION**

9 The instant case before this Court does not, and cannot, comply with Article X Section 2 of the
10 California Constitution. This law of the land holds the keys to prudent water policy regarding
11 reasonable use, beneficial use, unreasonable method of use and the prohibition of water waste. The
12 preponderance of evidence that we have observed supports the conclusion that the San Buenaventura
13 case does not comply with Article X Section 2.

14 The Reasonableness Doctrine is the first cornerstone of the *Golden Rule* of Water Management*.
15 (Russell M. McGlothlin & Jena Shoaf Acos, Golden State University Environmental Law Journal,
16 January 2016) The method proposed by the Appeals Court ruling to join all the basins together thereby
17 bringing all water users into this watershed-wide Physical Solution is not allowed by the Code of Civil
18 Procedures Section 832 et seq. This proposal lacks jurisdiction provided by law.

19 The subsequent drafting of the Physical Solution leaves open the possibility of the Plaintiff to call on the
20 Court to rule on the reserved water rights claims by declaratory relief stated in the Third Amended
21 Cross-Complaint should the Physical Solution fail to keep the Steelhead Trout in “good condition.” The
22 Draft Physical Solution contains enough complicated and conflicting language for the Physical Solution
23 to fail of its own weight. The inclusion of water rights claims in the Physical Solution retained by the
24 City in the Third Amended Cross-Complaint would usurp all the water from the Ventura River for the
25 City of San Buenaventura’s own use. This potential action is not reasonable, it is not a reasonable
26 method of use and it would create a waste of water not put to beneficial use. Article X Section 2 states in
27 part:

1 [T]he general welfare requires that the water resources of the State be put to beneficial use to the
2 fullest extent of which they are capable, and the waste or unreasonable use or unreasonable
3 method of use of water be prevented, and that the conservation of such waters is to be exercised
4 with a view to the reasonable and beneficial use thereof in the interest of the people and for the
5 public welfare.

6 The Doctrine of Reasonable Water Use cannot apply to inaccurate claims that would ultimately deprive
7 thousands of people of their right to water. The asterisk in the *Golden Rule* in Water Management*,
8 refers to the *Mojave Rule* as was determined by the California Supreme Court in the landmark decision
9 **City of Barstow v. Mojave Water Agency**, 5 P.3d 853, 862-64 (Cal. 2000). The *Mojave Rule* requires
10 a balancing of and due regard for common law water right priorities **to the extent those priorities do**
11 **not lead to unreasonable use** (emphasis added). Reasonable use, beneficial use and the *Mojave Rule*
12 are joined together in powerful jurisprudence. You can't have one without the others. As we have
13 stated before, the City of San Buenaventura has put forth water rights claims that would attempt to
14 deprive all other water users of their water rights, while at the same time litigating a comprehensive
15 adjudication throughout the Ventura River Watershed via a method not permitted by statute.
16 Evident throughout local history is a lack of preparation and construction needed to perfect the
17 appropriated water from the Ventura River. None of the pre-1914 appropriators that claimed 4000
18 miners inches of water (72,397 Acre Feet) ever put all or the greater majority of that water to beneficial
19 use. They only put a small amount to beneficial use. The greater amount of that water has gone to waste
20 in the Pacific Ocean for 150 years. This is an unreasonable use and method of use claimed by the City.
21 The Doctrine of Public Trust has never been applied or protected by any of the historical filers of
22 appropriation.

23 This case, along with the current proposed Physical Solution, is based on a misapplication of statutory
24 law which fails to comply with the supreme law of the land in the California Constitution, Article X
25 Section 2.
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1 **MAXIMUM POSSIBLE BENEFICIAL USE**

2 The amount of water appropriated for use and put to beneficial use is not quantified by law. It is judged
3 on a case-by-case basis by the State Water Resources Control Board Water Rights Division (SWRCB).
4 Some case law uses the phrase “the greater majority of water” is to be put to beneficial use. The City of
5 San Buenaventura has a limited amount of “vested water rights” recorded with the Water Rights
6 Division of the SWRCB for Intake Surface (S010335) and Intake Subsurface (G561025). And, although
7 the City currently claims 72,397 acre feet as a so-called pre-1914 appropriative water right in the
8 Ventura River system, they do not have a reasonable method of collection or storage presently to put
9 that amount of water to beneficial use without depriving every other water user in the watershed of their
10 legitimate water rights.

11
12 **RESERVED WATER RIGHTS CLAIMS**

13 The City of San Buenaventura needed to be declared a “Pueblo” by the Mexican or Spanish
14 Governments to claim legitimate Pueblo Rights. San Buenaventura was never declared a Pueblo. The
15 places outlined in history as “pueblos” are known. The cities named as pueblos by either the Governor
16 of Alta California or the Mexican Government in Ciudad Mexico, D.F., are as follows: Los Angeles,
17 San Diego, Sonoma, Branciforte (Santa Cruz) and San Jose. The Treaty of Guadalupe Hidalgo ratified
18 by the U.S. Congress after the end of the Mexican/American War made no reference to water rights
19 other than those within the bundle of rights given to Mexican citizens who elected to remain in the
20 United States after the treaty was signed. Appropriative water rights claimed by the City of San
21 Buenaventura were never perfected by either the pre-1914 owners of the claimed water rights or by the
22 City of San Buenaventura who purchased the conglomeration of 4000 miner’s inches of water rights
23 from Southern California Edison Company in 1923. This inaction leaves unresolved the issue of
24 beneficial use to the maximum extent possible without waste or unreasonable use. Prescriptive water
25 rights cannot be claimed upstream from the City of San Buenaventura. Nor do water rights issue from
26 the simple history of water delivery infrastructure that no longer exists today (apart from the
27 subterranean dam installed at Foster Park.) The prescriptive period of time from the Code of Civil
28 Procedure is five uninterrupted years of illicit water capture and use. Civil Code Section 1007, however,

1 prohibits San Buenaventura’s prescription of water or water rights from public agencies such as Casitas
2 Municipal Water District, Ventura River Water District, Meiners Oaks Water District, and numerous
3 mutual water companies in the Ventura River Watershed dedicated to a public water use. (*People v.*
4 *Shirokow (1980) 26 Cal.3d 301*). This type of prescriptive water right shall never ripen into a right
5 against the legitimate owner.

6 7 **MISAPPLIED STATUTE AND/OR MISTAKEN PLEADINGS**

8 The misapplication of statute was amplified most recently in the brief lodged with the Court for the
9 Status Conference of March 15, 2021 by the attorneys for the City of Ojai as an answer to the Plaintiffs,
10 San Buenaventura’s brief on the Law of Physical Solution. The improper use of the Code of Civil
11 Procedure Section 832, et seq. to expand the comprehensive groundwater adjudication statutes to
12 include jurisdiction over all four groundwater basins in the Ventura River Watershed is troubling and the
13 improper use of the statute brought to light in the City of Ojai’s brief should be instructive for this Court
14 of Equity. It would appear that Plaintiff, San Buenaventura, misapplied the term “comprehensive,” so
15 that the term would literally mean that all four of the separate and distinct groundwater basins in the
16 Ventura River Watershed could be combined to provide water for the Physical Solution. The Court
17 should note that the Sustainable Groundwater Management Acts (SGMA) expediting groundwater
18 adjudication statutes only uses the singular form of the word basin as a noun.

19 We, as Cross-Defendants in this case, support completely the brief lodged with the Court by the City of
20 Ojai and adopt their comments as our own. We urge the Court to make a ruling about the direction in
21 which this case is heading based on this misapplication of the statute Code of Civil Procedure Section
22 832 et seq. As stated in the City of Ojai’s brief, “The court should reject the invitation in the Third
23 Amended Cross-Complaint to combine four distinct groundwater basins in one adjudication as there is
24 simply no authority to support such adjudication.” The expediting groundwater adjudication statutes in
25 Code of Civil Procedures Section 832 et seq. codified by the Sustainable Groundwater Management Act
26 pertains to a completely different body of water, groundwater rather than surface water, and
27 groundwater adjudications and Physical Solutions. Precedent-setting case law from before SGMA case
28 law should have little bearing on modern day groundwater management.

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2 **A POSSIBLE METHOD OF CURING THE MISADVENTURES NOTED ABOVE**

3 As a fee simple land owner with overlying water rights, the prospect of this case proceeding to an
4 evidentiary hearing on the Physical Solution without the adjudication of our water extraction or water
5 storage rights before any Physical Solution is lodged with the court is hopefully out of the question. The
6 Honorable Judge Highberger commented on this situation in his Status Conference Report dated
7 February 9, 2021, “It also appears true that the named Cross-Defendants are entitled to a trial on the
8 other eight causes of action in the 3rd Amended Cross-Complaint before any judgement is entered unless
9 City of Ventura voluntarily dismisses all such claims.”

10
11 **CONCLUSION**

12 The misapplication of statutory jurisdiction is serious. *Article X Section 2 of the California Constitution*
13 *and the Mojave Rule* are powerful legal principles that should be enforced.

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15 We hope this Court of Equity concurs.

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17 Dated: April 9, 2021

Claude R. Baggerly & Patricia E. Baggerly

18 Cross-Defendants In Pro. Per.
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Relevant Case Law, Statutes and Information

Article X Section 2, California Constitution

Golden Rule* of Water Management, Russell M McGlothlin & Jena Shoaf Acos, Golden State University Environmental Law Journal, January 2016

Code of Civil Procedures Section 832 et seq. Sustainable Groundwater Management Act, Expediting Adjudication Statutes

City of Barstow v. Mojave Water Agency 5P.3d 853, 862-64 (Cal. 2000)

State Water Resources Control Board, Water Rights Division, Intake (S010335), Intake Subsurface (G561025)

People v. Shirokow (1980) 26 Cal. 3d 301

Honorable Judge Highberger, Status Conference Report, February 9, 2021, page 4, third paragraph, last sentence