

This e-copy is the official court record (GC68150).

FILED
MERCED COUNTY

2023 JAN -5 PM 1:14

CLERK OF THE SUPERIOR COURT

BY  _____

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MERCED

CSPA GROUNDWATER CASES

) Case No. 22CV-00203

) **ORDER AFTER HEARING**
) **DENYING MOTIONS TO DISMISS**

The San Joaquin River Exchange Contractors Groundwater Sustainability Agency (SJRECGSA) filed a Motion to Dismiss asserting that the claims in the operative complaint have been rendered moot because the Department of Water Resources directed certain Defendants to correct deficiencies in the Ground Water Sustainability Plans (GSP) as required by the Sustainable Groundwater Management Act. The Moving Party argues the court is unable to grant effective relief as the plans have been revised from the GSP that is the subject of the complaint, thus rendering the operable complaint in this action moot.

Nine Districts filed joinders to the motion. Six Districts have filed independent motions, and several Defendants filed a Statement of Support. Some of the motions also argue that Plaintiff has not prosecuted the case aggressively enough which also supports dismissal at this juncture.

The Motions to Dismiss were heard and argued on December 9, 2022.

1 The Motions to Dismiss were denied for reasons set forth below.

2 Under the case law that moving parties assert as authority for their motions, a matter is
3 deemed moot only if it is impossible for the Court to grant any relief. Thus, the burden of proof
4 requires moving parties to provide judicial notice of facts that would allow the court to make the
5 determination it is impossible for the Court to grant relief as a matter of law. While this Court
6 takes judicial notice of the fact that the Department of Water Resources (DWR) directed certain
7 Defendants to correct deficiencies in their Ground Water Sustainability Plans for failure to
8 comply with the Sustainable Groundwater Management Act, this fact alone does not necessarily
9 render the relief requested moot because it is impossible for this Court to determine that it cannot
10 grant any relief. Additionally, the DWR determination letter has no effect on the requests for
11 relief sought for parties that were not the subject of the letter. None of the Motions to Dismiss or
12 Joinders thereto evaluate the grounds on which the Reverse Validation Complaint is based, the
13 relief sought, and the reasons that it is now impossible to provide any of the relief sought in the
14 Reverse Validation Complaint.

15 “The enactment of subsequent legislation does not automatically render a matter moot.
16 The superseding changes may or may not moot the original challenges...The issue may only be
17 determined by addressing the original claim in relation to the latest enactment.” (*Davis v.*
18 *Superior Court* (1985) 169 Cal.App.3d 1054, 1057-1058.) Thus, this Court finds that the
19 moving parties have failed to meet their burden of proof for establishing that they are entitled to
20 judgment as a matter of law on the grounds that it is impossible to provide the relief requested
21 when addressing the initial claim in relation to the latest enactment.

22 Even if this Court were to find that moving parties have established a prima facie case
23 that the matter is moot, Plaintiffs have established that relief can still be provided because the
24 plans are merely being modified, not vacated, and that until all of the alleged defects in the plans
25 are corrected, relief can still be provided. In the Notice of Determination letter, DWR directed a
26 modification of the GSP, not a replacement GSP. While Defendants argue their Revised GSPs
27 repealed and replaced the prior GSPs, they are still labeled as “revised” or “amended.” For
28 example, the Court takes judicial notice of the fact SJREC referred to their replacement GSP as

1 an "amended" GSP in their Notice of Intent to Adopt an amended GSP (EX 4 to the Declaration
2 of Andrew McClure filed in support of the Motion) and as a "First Amended" GSP in the
3 Resolution they passed adopting the First Amended GSP (EX 5 to the Declaration of Andrew
4 McClure).

5 Requiring a plaintiff to refile its suit after every amendment would result in a
6 "multiplicity of suits and its concurrent drain on private, governmental, and judicial resources..."
7 (*Davis v. Superior Court* (1985) 169 Cal.App.3d 1054, 1061), especially when involving the
8 multi-county coordinated action at issue here, and would elevate form over substance.

9 Even if this Court were to find that moving parties have established a prima facie case
10 that Complaint for Reverse Validation is moot, and even if this Court were to find that Plaintiff
11 has not established that relief can still be provided, it would be an abuse of discretion for this
12 Court to enter judgment for Defendants without giving Plaintiff an opportunity to plead around
13 the facts giving rise to the finding of mootness. This Court finds that moving parties have not
14 established that it is impossible for Plaintiff to amend, and that Plaintiff has in fact alleged facts
15 that this Court finds establish a reasonable possibility that Plaintiff can file an amended
16 complaint that successfully states a claim for Reverse Validation.

17 The Motions to Dismiss on the ground that Plaintiff has not diligently prosecuted their
18 case are also denied.

19
20 DATED: 01/04/2023

21
22 C. Ash
23 CAROL K. ASH
24 Superior Court Judge
25 Merced Superior Court
26
27
28