

Dept. 22

Stacy Speiller
JUDGE

**STANISLAUS COUNTY
SUPERIOR COURT
STATE OF
CALIFORNIA**

2/22/2024

Demurrer

Cindy Cruz
Clerk

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE vs
EASTERN SAN JOAQUIN
GROUNDWATER AUTHORITY

Case No. CV-20-001720

Court Reporter: Laura Fowler

APPEARANCES:

NATHANIEL KANE, Esq., present and THOMAS N LIPPE, Esq. present via VCourt, on behalf of CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

DAVID E CAMERON, Esq. present via VCourt, on behalf of CALAVERAS COUNTY WATER DISTRICT GROUNDWATER SUSTAINABILILTY AGENCY

ZACHARY WALTON, Esq. present via VCourt, on behalf of CALIFORNIA WATER SERVICE COMPANY

REID W. ROBERTS, Esq. present via VCourt, on behalf of CENTRAL SAN JOAQUIN WATER CONSERVATION DISTRICT GROUNDWATER SUSTAINABILITY AGENCY

MILES KRIEGER, Esq. present via VCourt, on behalf of CITY OF ESCALON

KATIE O. LUCCHESI, Esq. present via VCourt, on behalf of CITY OF LODI

NICHOLAS R. GHIRELLI, Esq. present via VCourt, on behalf of CITY OF MANTECA GROUNDWATER SUSTAINABILITY AGENCY

THOMAS H KEELING, Esq. present via VCourt, on behalf of CITY OF STOCKTON

CHRISTOPHER L STILES, Esq. present via VCourt, on behalf of COUNTY OF CALAVERAS

HOLLY J JACOBSON, Esq. present via VCourt, on behalf of LOCKEFORD GROUNDWATER SUSTAINABILITY AGENCY

JEANNE M ZOLEZZI, Esq. present via VCourt, on behalf of STOCKTON EAST WATER DISTRICT

DANIEL J O'HANLON, Esq. present via VCourt, on behalf of WOODBRIDGE IRRIGATION DISTRICT GROUNDWATER SUSTAINABILITY AGENCY

JENNIFER L SPALETTA, Esq. present via VCourt, on behalf of NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT

STEFANIE MORRIS present via VCourt, on behalf of OAKDALE IRRIGATION DISTRICT GROUNDWATER SUSTAINABILITY AGENCY

VALERIE C KINCAID, Esq. and JONATHAN MARZ, ESQ are present on behalf of SOUTH SAN JOAQUIN GROUNDWATER SUSTAINABILITY AGENCY , SOUTH SAN JOAQUIN IRRIGATION DISTRICT

This matter is regularly called for hearing at the request of the Defendant(s).

Counsel present respective oral argument(s).

MINUTE ORDER

The Court rules as follows: Defendants, South San Joaquin Irrigation District and South San Joaquin GSA's Demurrer to First Amended Complaint – **OVERRULED, in part, and SUSTAINED, in part, WITH LEAVE TO AMEND.**

"[A] demurrer tests the legal sufficiency of the allegations in a complaint." (*Lewis v. Safeway, Inc.* (2015) 235 Cal.App.4th 385, 388.) The courts "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] The courts "also consider matters which may be judicially noticed." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

First Cause of Action

Defendants contend that the statute at issue does not authorize a reverse validation action. Water Code § 10726.6(a) states, "A groundwater sustainability agency that adopts a groundwater sustainability plan may file an action to determine the validity of the plan pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure no sooner than 180 days following the adoption of the plan."

It appears to the Court that reverse validation is typically activated when validation is activated, unless specifically stated otherwise. Defendants' arguments to the contrary are not persuasive. For example, Plaintiff cites to Gov't Code 53511(a), which concerns bonds and states, "A local agency may bring an action to determine the validity of its bonds, warrants, contracts, obligations or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure." The Court notes the parallelism of the language between this section and Water Code § 10726(a). And under that language in Gov't Code § 53511(a), reverse validation actions have been brought. (See, e.g., *McGee v. Torrance Unified School District* (2020) 49 Cal.App.5th 814, *disapproved of on inapposite grounds by Davis v. Fresno Unified School Dist.* (2023) 14 Cal.5th 671.)

The main case relied on by Defendants to argue against reverse validation—*Bonander v. Town of Tiburon* (2009) 46 Cal.4th 646—is clearly distinguishable because *Bonander* centered on a statute that expressly stated, "Notwithstanding any other provisions of law, the action authorized by this section **shall not be brought by any person other than the legislative body or the contractor...**" (Sts. & Hy. Code, § 10601 [emphasis added].) Defendants contend that this language was a "belt-and-suspenders" approach because the amendment adding this clause was made during the same 1961 legislative session when the general validation procedure was newly created. Be that as it may, the Legislature is clearly able to add language excluding reverse validation when it thinks it necessary to do so, and it did not do so in this instance. Moreover, Defendants do not provide any specific example of parallel language where a court found that the Legislature intended to activate validation without activating reverse validation.

Consequently, the demurrer to the first cause of action is **OVERRULED.**

Second Cause of Action

Defendants argue that reverse validation and mandamus relief are mutually exclusive; because Water Code § 10726.6(e) specifically provides for mandamus relief, then reverse validation is not an option. Defendants cite in support of their position *Barratt American Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 705. (See Def.'s Mem. at p. 14.) But the statutory language in this instance clearly provides for both application of validation proceedings through §10726.6(a) and mandamus relief through

§10726.6(e). In addition, see *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, as modified on denial of reh'g (Oct. 16, 2000), which involved both mandamus and reverse validation proceedings.

Defendants attempt to use the stipulated stay order filed on June 18, 2020, to argue that the Department of Water Resources (DWR) is the appropriate Defendant, not the groundwater sustainability agencies (GSAs) that were sued. However, the stay order also cuts the other way: by signing the stipulation (which stated in paragraph 5 that “within 30 days after termination of the stay ..., Plaintiff may file an Amended Complaint that may include a petition for writ of mandate pursuant to Water Code section 10726.6(e) or and [sic] California Code of Civil Procedure section 1085 et seq. against Defendants or DWR, or both...”), Defendants expressly agreed that a petition for writ of mandate could be brought against the GSAs, not just the DWR.

With that noted, Defendants’ citation to *Kaczorowski v. Mendocino County Board of Supervisors* (2001) 88 Cal.App.4th 564 is persuasive on the issue that the DWR is a necessary party. It appears to the Court that, at a minimum, the Court’s decision in the current case would be subject to collateral attack by the DWR, as the DWR approved the groundwater sustainability plan (GSP) at issue. There is also a sense that the Court would be violating the hierarchical structure of state oversight if the DWR were not involved in these proceedings.

Accordingly, the demurrer to the second cause of action is **SUSTAINED** with 30 days’ leave to amend so that the DWR can be added as a necessary party.

Request for Judicial Notice

Defendants’ unopposed request for judicial notice is **GRANTED**.

At today's hearing Plaintiff agreed to amend their complaint within the next 30 days naming the Department of Water Resources as a party. Based upon counsels’ representation, there are no longer any objections to the Court’s tentative ruling. Parties submit to the tentative. The Court **CONFIRMS** the tentative.