Judge Benson – Law & Motion – Wednesday, April 2, 2025 @ 9:00 AM
TENTATIVE RULINGS

1-3. 22CV00348 AquAlliance et al. v. Biggs-West Gridley Water District et al.

EVENT: (1) Defendants and Respondents' Biggs-West Gridley Water District, Butte County, Butte Water District, City of Biggs, City of Gridley, Colusa Groundwater Authority, Glenn County, Reclamation District 1004, Reclamation District 2106, Richvale Irrigation District And Western Canal Water District's Demurrer to Plaintiffs' First Amended Complaint in Validation and Petition for Writ of Mandate

(2) Defendants and Respondents' Biggs-West Gridley Water District, Butte County, Butte Water District, City of Biggs, City of Gridley, Colusa Groundwater Authority, Glenn County, Reclamation District 1004, Reclamation District 2106, Richvale Irrigation District and Western Canal Water District's Motion to Strike Plaintiffs' First Amended Complaint in Validation and Petition for Writ of Mandate

(3) Case Management Conference

MOTION TO STRIKE

Defendants' (for purposes of this ruling "Defendants" means all named Defendants other than the Department of Water Resources) Motion to Strike is GRANTED IN PART. The motion is granted without leave to amend concerning references to the Sustainable Groundwater Management Act ("SGMA"). To be clear, the Court is only striking references to SGMA statues and not the factual allegations made in conjunction therewith.

The motion is granted with leave to amend concerning the Public Trust Doctrine. Again, only references to the Public Trust Doctrine are stricken – not the factual allegations made in conjunction therewith.

Plaintiffs' Legal Theories Concerning Violations of SGMA

The Court re-incorporates its discussion regarding Judicial Abstention from the January 29, 2025 tentative ruling. The Court adopts that analysis and concludes Plaintiffs cannot proceed with their contentions that Defendants violated SGMA. Thus, the framework of the case going forward, at least as to these Defendants, is limited to Article X section 2 and the Public Trust Doctrine.

The FAC Fails to allege Sufficient Facts Under the Public Trust Doctrine

Preliminarily, Defendants contend groundwater is not a public trust resource. There is no published decision addressing the question. While the issue was broached in *Environmental Law Foundation v. State Water Resources Control Bd.,* (2018) 26 Cal. App. 5th 844, the Third District Court of Appeal itself did not explicitly address the specific question.

While it is true that, historically, public trust resources were defined as navigable water ways and streams (see *Nat'l Audubon Soc'y v. Superior Court*, (1983) 33 Cal. 3d 419, 435), it is also true that the doctrine is "expansive", does not just encompass navigation, and is flexible accommodating changing public needs. (*See Environmental Law Foundation, supra*, at p. 857) In this Court's opinion, it is likely groundwater itself is a public trust resource, despite it not being historically defined as one.

Groundwater has been characterized as a "critical resource". (*See Environmental Law Foundation, supra,* at p. 863). The public's increased dependence on groundwater in recent years in response to changing climate conditions and extreme droughts arguably falls within the doctrine's broad parameters. Although perhaps not traditionally considered a public trust resource, applying the flexible standard, a strong argument can be made that it is a public trust resource in our current circumstances.

However, even if groundwater is a public trust resource in and of itself, a challenge to ground water extraction itself, in *isolation*, would be superseded by SGMA. A statute may supplant the common law if it appears that the Legislature intended to cover the entire subject or, in other words, to occupy the field. (*Environmental Law Foundation, supra,* at p. 863) General and comprehensive legislation, where course of conduct, parties, things affected, limitations and exceptions are minutely described, indicates a legislative intent that the statute should totally supersede and replace the common law dealing with the subject matter. (*Id* at pp. 863-864)

The GSA's are charged with procedural and substantive obligations designed to balance the needs of the various stakeholders in groundwater in an effort to preserve, and replenish to the extent possible, this diminishing and critical resource. (*Environmental Law Foundation, supra,* at p. 863) Due to SGMA's comprehensive regulation of groundwater extraction, (which importantly does not include regulation on possible impacts on other public trust resources) the public trust doctrine is superseded by SGMA when a challenge is made only to the groundwater extraction in isolation and is not connected to the effect on a separate public trust resource.

Conversely, consistent with *Environmental Law Foundation, supra*, allegations that proposed groundwater extraction policies have an impact on a separate public trust resource would not be superseded by SGMA. Ultimately, regardless of whether groundwater is, or is not a public trust resource, a legally viable challenge must allege a connection between the groundwater extraction and an impact on a separate public trust resource.

The FAC alleges impacts on surface waters and waterways. The Court finds these allegations are not sufficiently specific. What is important is that the complaint contain sufficient facts to apprise the Defendant of the basis upon which the plaintiff is seeking relief. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099)

The allegations regarding "surface waters and waterways" does not apprise the defendant of the basis upon which plaintiffs are seeking relief. In both *Audubon* and *Environmental Law Foundation*, a specific trust resource was identified – Mono Lake and the Scott River. Here, Defendants are left to guess as to which specific public trust resources should have been considered.

Additionally, although the allegations concern "surface waters and waterways", nowhere does the pleading make any allegations concerning navigable waterways. Although the Court has found public trust resources are not necessarily limited to navigable waters, that finding is only in the context of groundwater. In this Court's opinion groundwater is in its own category. The Court does not believe it is inconsistent to find groundwater is a public trust resource but that surface water is a public trust resource only if it is navigable.

Case precedent suggests the public trust doctrine applies primarily to navigable waterways. This is also consistent with common sense. If there was no navigable limitation, the State would have an almost impossible burden in considering potential impact on all surface waters. Theoretically, it would have to consider ponds, vernal pools, and all other incidental surface waters. It would be impossible for the State to take all this into consideration in making decisions. Thus, although the public doctrine is "expansive" as discussed, the "navigable" limitation on surface waters is a reasonable limitation.

The Court concludes, in pleading a violation of the public trust doctrine, the pleading must identify specific navigable waters. The pleading shall be amended accordingly.

As an aside, regarding the exhaustion of remedies issue and the Public Trust Doctrine, the Court finds exhaustion of remedies is not required. The Court tends to agree with Defendants that this is not a water rights issue. The ultimate adjudication in *Audubon* was not about water rights; rather, it was the duty to consider affects caused by water diversion:

> Accordingly, we believe that before state courts and agencies approve water diversions they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests.
>
> (*Nat'l Audubon Soc'y v. Superior Court, supra*, at p. 426) [Emphasis Added]

Despite Audubon not being a water rights dispute, *Audubon* cited to water rights statutes in order to find concurrent jurisdiction:

> Water Code section 2000 provides that "[in] any suit brought in any court of competent jurisdiction in this State for determination of rights to water, the court

> may order a reference to the board, as referee, of any or all issues involved in the suit.
>
> (*Nat'l Audubon Soc'y v. Superior Court, supra*, at p. 541) [Emphasis Added]

Following the *Audubon* precedent, the Court finds no exhaustion of remedies requirement exists concerning the Public Trust Doctrine.

DEMURRER

Article X section 2

The Court finds Plaintiffs' Article X section 2 allegations are legally viable. As it pertains to judicial abstention, the Court is finding no published decision interpreting judicial abstention in the context of a Constitutional challenge. The published decisions concerning judicial abstention pertain to authority delegated by the Legislature, not authority delegated by the California Constitution.

Art. X § 2. Water resources; Riparian rights

> It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature **may** also enact laws in the **furtherance** of the policy in this section contained.

[Emphasis Added]

The last sentence provides the Legislature may also enact laws in furtherance of the policy; but, it does not explicitly provide the Legislature (or the Executive Branch) with exclusive jurisdiction in adjudicating reasonable use. Thus, despite the fact the SGMA statutes specifically state that one of the purposes of SGMA is to abide by Article X section 2 (See Wat. Code 10720.1(b) – "To enhance local management of groundwater consistent with rights to use or store groundwater and Section 2 of Article X of the California Constitution. It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater.") there is nothing suggesting Art. X section 2 is to be the exclusive domain of the legislative and executive branches.

Courts have traditionally enforced the proscriptions against unreasonable uses. (*DF v. E. Bay Mun. Util. Dist.* (1980) 26 Cal. 3d 183, 198) Courts have concurrent jurisdiction with the legislatively established administrative agencies to enforce the self-executing provisions of article X, section 2. (*Id* at p. 200)

Because Courts have concurrent jurisdiction over challenges based on Art. X Section 2, the Court finds judicial abstention is inapplicable. Further, because Courts have concurrent jurisdiction, challenges based on Art. X Section 2 are not subject to the exhaustion of remedies requirement.

If there are sufficient facts pled or that can be inferred reasonably to state a cause of action under any theory, the demurrer must be overruled. (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700) Because Plaintiffs' Article X section 2 is a viable legal theory, the demurrer must be overruled. The remaining question is whether this case should proceed under validation or mandamus.

Reverse Validation and Mandamus

Both Defendant Department of Water Resources and Plaintiffs contend reverse validation is the appropriate mechanism here. Their arguments are premised on Water Code section 10726.6(a), which is part of the SGMA statutes. However, part of today's ruling is that SGMA challenges will not proceed due to Judicial Abstention. Consequently, the statutory basis for validation no longer exists.

As a result, the demurrer is sustained without leave to amend as to the First Cause of Action for Reverse Validation. The demurrer is overruled as to the second cause of action for mandamus.

Plaintiffs shall amend within 20 days of this order. If they elect not to amend, Defendants shall file an answer to the FAC within 20 days thereafter.

Plaintiffs shall prepare and submit a form of order consistent with this ruling within 20 days.

4. 22CV01497 Newlane Finance Company v. Phillips, Calder et al.

EVENT: OEX of Calder Phillips (Continued from 3/5/25)

The Court will swear in the witness.

5. 24CV01333 Slack, Courtney Alexandra v. Keeney, Morris Bud

EVENT: Plaintiff's Motion for Protective Order

CCP §2025.420(b)(12)

> That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.
>
> [Emphasis Added]

The implication here is that a party cannot be precluded from "attending" a deposition. The question is whether the word "attending" includes remote attendance.

CCP §2025.420 was first enacted in 2005. According to the Court's research zoom technology was founded in 2011 and was widely used beginning in 2013. Consequently, it is highly unlikely the Legislature intended the word "attending" to include virtual appearances when they enacted it in 2005. As a result, the Court interprets the word "attending" as in person attendance.

Thus, CCP §2025.420(b)(12) entitles a party to attend depositions in person. Accordingly, the Court finds Plaintiff's motion contravenes existing law. The motion is denied.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6. 24CV04217 Schmidt, Aaron et al v. Ford Motor Company et al

EVENT: Defendant Ford Motor Company's Demurrer to Plaintiff's Compliant

In light of the First Amended Complaint filed on March 19, 2025 the demurrer is moot.

7. 24CV04442 In re: Johnson, Steven Kit

EVENT: Change of name (adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

8. 25CV00036 In re: Stegge, Miles Gabriel

EVENT: Change of name (adult) (Continued from 2/26/25)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

9. 25CV00254 In re: Newquist, Jesse James

EVENT: Change of name (adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

10. 25CV00336 In re: Pinocchio, Nino

EVENT: Change of name (adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

11. 25CV00379 In re: Wernigg, Bodi Oliver

EVENT: Change of name (adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

12. 25CV00404 In re: Calhoun ShayBrean

EVENT: Change of name (minor)

The Court will hear from Petitioner.

13. 25CV00452 In re: Rodriguez, Daniel Buenrostro

EVENT: Change of name (adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

14. 25CV00536 Sandvig, Darren Alvis

EVENT: Change of name (adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.