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15
 16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 17 COUNTY OF LOS ANGELES
 18 SPRING STREET COURTHOUSE
 19

20 **SANTA BARBARA CHANNELKEEPER,**
 21
 22 **Petitioner,**
 23 **v.**
 24 **STATE WATER RESOURCES CONTROL**
 25 **BOARD, a California State Agency; CITY**
 26 **OF BUENAVENTURA, a California**
 27 **municipal corporation,**
 28 **Respondents.**

Case No. 19STCP01176

**SWRCB AND CDFW'S RESPONSE TO
 MOTIONS FOR JUDGMENT ON THE
 PLEADINGS**

Date: January 18, 2022
 Time: 1:30 p.m.
 Dept.: 10
 Judge: Honorable William Highberger
 Trial Date: February 14, 2022 (Phase One)
 Action Filed: September 19, 2014

1 **CITY OF SAN BUENAVENTURA,**
2 **California municipal corporation,**
3 Cross-Complainant,
4 **v.**
5 **DUNCAN ABBOTT, an individual; et al.,**
6 Cross-Defendants.

7
8
9 Respondent and intervenor State Water Resources Control Board (“State Water Board”) and intervenor California Department of Fish and Wildlife (“CDFW”) respectfully submit this response to the three motions for judgment on the pleadings filed by the City of Ojai, Bob Andren et al., and Andrew Whitman et al., and joined by various other parties. The State Water Board and CDFW are not taking a position as to whether any of the motions should be granted or denied. However, consistent with their motivation for intervening in this action, the State Water Board and CDFW wish to provide the Court with their views on some of the legal issues presented by the motions.

17 This brief does not touch on all of the issues raised by the motions, but instead focuses on the following issues: (1) whether the streamlined comprehensive groundwater adjudication statutes (referred to by the City of Ojai as the “CGAS”) (Code Civ. Proc., §§ 830-52) apply to the entirety of the cross-complaint; (2) whether the streamlined comprehensive groundwater adjudication statutes only allow the adjudication of the water rights in a single groundwater basin; and (3) whether the Sustainable Groundwater Management Act (“SGMA”) (Wat. Code, §§ 10720-37.8) prevents this case from moving forward. The short answers to those queries are that: (1) the streamlined comprehensive groundwater adjudication statutes apply to the entire cross-complaint; (2) those statutes allow the Court to adjudicate more than one basin in a single action; and (3) SGMA coexists with the streamlined comprehensive groundwater adjudication statutes, but any future resolution of this case must ensure consistency with a valid groundwater sustainability plan.

1 **I. THE STREAMLINED COMPREHENSIVE GROUNDWATER ADJUDICATION STATUTES**
2 **APPLY TO THIS ENTIRE ACTION**

3 The streamlined comprehensive groundwater adjudication statutes were enacted in 2015.
4 (Stats. 2015, ch. 672, § 1; see also Stats. 2015, ch. 676, §§ 1-5 [adopting additional provision and
5 related provisions in SGMA]) To date, there are no published cases interpreting the provisions of
6 the streamlined comprehensive groundwater adjudication statutes. In fact, this case appears to be
7 the first case utilizing its provisions. The legislative history also does not assist in interpreting
8 many of the issues in this first phase of trial. So, we must interpret the words of the provisions of
9 the statutes as written, as well as be faithful to the motivating purpose of this new statute:
10 streamlining adjudications. (E.g., *In re Reeves* (2004) 35 Cal.4th 765, 770-71.)

11 The streamlined comprehensive groundwater adjudication statutes explain their reach:
12 “Except as provided in subdivision (b), this chapter applies to actions that would
13 comprehensively determine rights to extract groundwater in a basin, whether based on
14 appropriation, overlying right, or other basis of right.” (Code Civ. Proc., § 833, subd. (a); see also
15 Wat. Code, § 10737 [“an adjudication action to determine rights to groundwater in a basin shall
16 be conducted in accordance with the Code of Civil Procedure, including pursuant to Chapter 7
17 (commencing with Section 830) of Title 10 of Part 2 of that code”].) The third amended cross-
18 complaint reveals that this is such an action, and that none of the exceptions in subdivision (b) of
19 Code of Civil Procedure section 833 apply. (See Respondent and Cross-Complainant City of San
20 Buenaventura’s Third Amended Cross-Complaint etc., filed Jan. 2, 2020 (“Third Amended Cross-
21 Complaint”).) In addition, it is not just the sixth cause of action in the cross-complaint that seeks
22 to comprehensively determine rights to groundwater. The other causes of action seek to do the
23 same.

24 After all, the very first, introductory paragraph for the entire cross-complaint states that the
25 “Cross-Complaint seeks a judicial determination of rights to all water within the Ventura River
26 Watershed.” (*Id.*, ¶ 1, p. 30.) Further, the City of San Buenaventura (“City of Ventura”) has
27 availed itself of the streamlined service methods only available to complaints seeking to
28 comprehensively determine water rights pursuant to the streamlined comprehensive groundwater

1 adjudication statutes; it has not completed service pursuant to traditional methods. Therefore, the
2 streamlined comprehensive groundwater adjudication statutes apply to this action as a whole.
3 The City of Ojai is correct on this point. (Memorandum of Points and Authorities in Support of
4 City of Ojai’s Motion for Judgment on the Pleadings (“City of Ojai MJOP”), served Dec. 20,
5 2021, pp. 4-6.)

6
7 **II. THE STREAMLINED COMPREHENSIVE GROUNDWATER ADJUDICATION STATUTES
CAN BE APPLIED TO MORE THAN ONE BASIN**

8 The City of Ojai also argues that because the streamlined comprehensive groundwater
9 adjudication statutes repeatedly refer to “a basin” in the singular, it was not proper for the cross-
10 complaint to group four groundwater basins together. (City of Ojai MJOP, pp. 6-10.) These
11 statutes define “basin”: “‘Basin’ has the same meaning as defined in Section 10721 of the Water
12 Code.” (Code Civ. Proc., § 832, subd. (a).) Water Code section 10721 in turn defines a basin as
13 “a groundwater basin or subbasin identified and defined in Bulletin 118 or as modified pursuant
14 to Chapter 3 (commencing with Section 10722).” (Wat. Code, § 10721, subd. (b).) The City of
15 Ojai is correct that the streamlined comprehensive groundwater adjudication statutes do use the
16 term “basin” but not the term “basins.”

17 The problem with the City of Ojai’s argument is that the Code of Civil Procedure states,
18 generally: “Words used in this code in the present tense include the future as well as the present.
19 Words used in the masculine gender include the feminine and neuter. *The singular number*
20 *includes the plural and the plural number includes the singular.*” (Code Civ. Proc., § 17, subd.
21 (a), emphasis added.) Similarly, the Water Code states: “The singular number includes the
22 plural, and the plural, the singular.” (Wat. Code, § 13.) Thus, when the streamlined
23 comprehensive groundwater adjudication statutes use the word “basin” those statutes also mean
24 “basins.” There was no need for the Legislature to include both when it enacted the streamlined
25 comprehensive groundwater adjudication statutes.

26 The City of Ojai acknowledges this, but says that there are contrary indications in the
27 legislative intent. (City of Ojai MJOP, p. 8.) The State Water Board and CDFW agree with the
28 basic legal concept that a statute can evidence legislative intent that would be contrary to this

1 general rule. (See *People v. Kunitz* (2004) 122 Cal.App.4th 652, 655, quoted in *State Farm Gen.*
2 *Ins. Co. v. Lara* (2021) 71 Cal.App.5th 148, 173 [“the language and structure” of a statute can
3 “indicate[] that this general rule” – “that ‘the singular number includes the plural’” – “was not
4 intended to apply”].) For example, in *Kunitz*, the statute itself “distinguished between the
5 singular and the plural” by sometimes using the plural and sometimes using the singular. (122
6 Cal.App.4th at pp. 655-56.) This exception to the general rule is simply a recognition that the
7 court must harmonize all statutory provisions. (See, e.g., *Wells v. Marina City Properties, Inc.*
8 (1981) 29 Cal.3d 781, 788 [“It is fundamental that legislation should be construed so as to
9 harmonize its various elements without doing violence to its language or spirit.”].) Such contrary
10 legislative intent, however, must be clear when relying on separate statutes; otherwise the Court
11 would be allowing one statute to impliedly repeal another statute:

12
13 Thus, when two codes are to be construed, they must be regarded as blending into
14 each other and forming a single statute. Accordingly, they must be read together and
15 so construed as to give effect, when possible, to all the provisions thereof. Further,
16 all presumptions are against a repeal by implication. Absent an express declaration of
legislative intent, we will find an implied repeal only when there is no rational basis
for harmonizing the two potentially conflicting statutes, and the statutes are
irreconcilable, clearly repugnant, and so inconsistent that the two cannot have
concurrent operation.

17 (*Linovitz Capo Shores LLC v. California Coastal Com.* (2021) 65 Cal.App.5th 1106, 1117,
18 internal quotation marks, brackets, and citations omitted and quoting *Pacific Palisades Bowl*
19 *Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805.)

20 The State Water Board and CDFW disagree with the City of Ojai’s assertion. These
21 statutes do not evidence such a contrary intent. The City of Ojai points to two other provisions in
22 a separate section of the streamlined comprehensive groundwater adjudication statutes, a section
23 which states the governing principles for interpreting the streamlined comprehensive groundwater
24 adjudication statutes. (City of Ojai MJOP, p. 8, quoting Code Civ. Proc., § 830.) The first of
25 these provisions expresses an intent to “[p]rovide notice and due process” to allow for a
26 comprehensive adjudication. (Code Civ. Proc., § 830, subd. (b)(7).) There is nothing about
27 including more than one groundwater basin in this action that is inconsistent with this provision.
28 Courts can meticulously follow, and this Court has followed, the specific service and notice

1 provisions in this statute across more than one basin. (See *id.*, §§ 835-36.5.) The second
2 provision that the City of Ojai cites is one that expresses intent to be “consistent with the
3 achievement of groundwater sustainability within the timeframes of the Sustainable Groundwater
4 Management Act.” (*Id.*, § 830, subd. (b)(4).) Those SGMA timeframes are twenty to thirty years
5 from the adoption of a groundwater sustainability plan. (Wat. Code, § 10727.2, subds. (b)(1),
6 (b)(3)(A).) Importantly, SGMA itself requires that the outcome of any adjudication of a
7 groundwater basin be consistent with SGMA:

8 [T]he court shall not approve entry of judgment in an adjudication action for a basin
9 required to have a groundwater sustainability plan under this part unless the court
10 finds that the judgment will not substantially impair the ability of a groundwater
sustainability agency, the board, or the department to comply with this part and to
achieve sustainable groundwater management.

11 (*Id.*, § 10737.8.) That consistency with SGMA will be important as this case moves forward, and
12 especially when it reaches a conclusion with the entry of judgment, but there is nothing in these
13 provisions that indicates that such a determination cannot be done with multiple basins. The City
14 of Ojai certainly does not point to any particular provision of SGMA that cannot be fulfilled here
15 just because there are multiple basins at issue. Instead, the City of Ojai contends, without any
16 citation to statute or case law, that “priority cannot be established among water rights holders *in*
17 *different basins.*” (City of Ojai MJOP, p. 8, emphasis in original; see also *id.*, pp. 10-12.) But
18 that is not the case. When there is a common source – that is, the water is interconnected – a
19 court can assess the various water rights from various locations in one action. (*Hudson v. Dailey*
20 (1909) 156 Cal. 617, 628; see also *U.S. v. Fallbrook Pub. Util. Dist.* (S.D. Cal. 1958) 165 F.Supp.
21 806, 847, citing *Hudson* and other cases.) Moreover, one of the important issues in this case is
22 whether all of the parties are making a reasonable use of water. (Third Amended Cross-
23 Complaint, ¶¶ 118-22, 154.) Given the effects on endangered steelhead, and the requirement of
24 reasonable use applies to all uses of all sources of water (*Peabody v. City of Vallejo* (1935) 2
25 Cal.2d 251, 366-68, 383), this case can adjudicate the water rights in different basins.

26 Here, the State Water Board and CDFW believe allowing the adjudication of four basins
27 together, along with the surface water, is consistent with the overarching goal of streamlining
28 adjudications. These four basins are either completely or significantly within the same watershed.

1 The cross-complaint alleges (Third Amended Cross-Complaint, ¶¶ 102, 105), and the State Water
2 Board and CDFW agree and believe the evidence at the phase one trial will show, that the water
3 in this watershed – both on the surface and in the ground – is interconnected. It is all one system,
4 and may be adjudicated together. This is a common resource, and all parties must share in the
5 management of that resource. This is the most efficient way to adjudicate these water rights.

6 **III. THE COURT MUST CONSIDER THE SGMA GROUNDWATER SUSTAINABILITY PLANS**

7 The City of Ojai also makes an argument that the Court cannot consider the City of
8 Ventura’s proposed physical solution until the Ojai Basin Groundwater Management Agency
9 submits its groundwater sustainability plan under SGMA, and the Department of Water
10 Resources approves that document. (City of Ojai MJOP, pp. 14-15.) The State Water Board and
11 CDFW agree, in part, with this assertion.

12 Several statutory provisions link groundwater sustainability plans to the entry by a court of
13 any judgment imposing a physical solution in a comprehensive adjudication. SGMA requires that
14 any judgment in a groundwater basin adjudication (for a basin required to have a groundwater
15 sustainability plan) “not substantially impair the ability of a groundwater sustainability agency,
16 the [State Water Board], or the [Department of Water Resources] to comply with” SGMA “and to
17 achieve sustainable groundwater management.” (Wat. Code, § 10737.8.) Groundwater
18 sustainability agencies achieve sustainable groundwater management by implementing
19 groundwater sustainability plans that include measures that ensure that the groundwater basin is
20 avoiding “undesirable results” (such as the depletion of interconnected surface waters) and
21 operating within its sustainable yield. (*Id.*, §§ 10721, 10727, 10727.2.) Moreover:

22 In an adjudication action for a basin required to have a groundwater sustainability
23 plan under this part, the court shall manage the proceedings in a manner that
24 minimizes interference with the timely completion and implementation of a
25 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.

26 (*Id.*, § 10737.2.) Lastly, “[b]efore adopting a physical solution, the court shall consider any
27 existing groundwater sustainability plan or program.” (Code Civ. Proc., § 849, subd. (b).)

28 SGMA currently only requires medium- and high-priority groundwater basins to adopt and

1 submit groundwater sustainability plans to the Department of Water Resources. (Wat. Code, §
2 10720.7.) Here, that would include the Ojai Valley basin and the Upper Ventura subbasin. (See
3 <https://water.ca.gov/Programs/Groundwater-Management/Basin-Prioritization>;¹ see also City of
4 Ojai’s Request for Judicial Notice in Support of its Motion for Judgment on the Pleadings, served
5 Dec. 20, 2021, ¶ 9.) These two groundwater sustainability plans are due on January 31, 2022.
6 (Wat. Code, § 10720.7, subd. (a)(2).) The Department of Water Resources must evaluate these
7 plans within two years, but nothing prevents the plans from being implemented prior to when the
8 Department of Water Resources evaluation is complete. (*Id.*, § 10733.4, subds. (d), (e); see also
9 Cal. Code Regs., tit. 23, § 355.2, subd. (e) [outlining that the outcomes of the evaluation are that
10 the plan is approved, incomplete, or inadequate].) Also, groundwater sustainability plans may be
11 amended at any time to take into account new information. (Wat. Code, §§ 10728.2, 10728.4.)

12 Thus, if and when the Court considers any physical solution submitted by any party,² or
13 considers entering a judgment after trial, it must evaluate the proposed judgment’s consistency
14 with all of the groundwater sustainability plans adopted for the groundwater basins in this
15 watershed. That would include the Ojai Basin Groundwater Management Agency’s groundwater
16 sustainability plan. If the Department of Water Resources has determined that any of the
17 groundwater sustainability plans for this watershed are incomplete or inadequate, or any of the
18 groundwater sustainability agencies has indicated it is considering amendments to its groundwater
19 sustainability plan, the Court should delay the consideration of any judgment or physical solution

20 ///

21 ///

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23 _____
24 ¹ The Court can take judicial notice of the priorities of the basins relevant to this
25 watershed, as those priorities have been determined by the Department of Water Resources and
26 they are not subject to dispute. The Ojai Valley basin is a high priority basin; the Upper Ventura
27 subbasin is a medium priority basin; and the Lower Ventura subbasin and Upper Ojai basin are
28 very low priority basins.

² The City of Ventura has indicated it may seek to have the Court consider its proposed
physical solution in a second phase of this case, after the phase one trial currently scheduled to
begin on February 14, 2022. But that has not been determined yet by the Court. The City of
Ventura has agreed that it must bring a motion to set the topic for and the contours of the second
phase of this case.

1 until those issues are resolved. As the City of Ojai suggests, it may make sense to wait on any
2 physical solution until the Department of Water Resources approves of these groundwater
3 sustainability plans.

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5 Dated: January 4, 2022

Respectfully Submitted,

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