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12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

15 SANTA BARBARA CHANNELKEEPER,
16 a California non-profit corporation,

Case No. 19STCP01176

17 Petitioner,

Judge: Honorable William F. Highberger

18 v.

CITY OF SAN BUENAVENTURA'S
OPPOSITION TO CITY OF OJAI'S MOTION
FOR JUDGMENT ON THE PLEADINGS

19 STATE WATER RESOURCES
20 CONTROL BOARD, etc., et al.,

*[Concurrently filed with: Request For Judicial
Notice In Support of City of San
Buenaventura's Opposition to City of Ojai's
Motion For Judgment on the Pleadings]*

21 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,

Date: January 18, 2022

23 Cross-Complainant

Time: 1:30 p.m.

Dept: 10

24 v.

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.
27
28

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1 Defendant and Cross-Complainant the City of San Buenaventura (Ventura) submits this
2 opposition to the City of Ojai’s (Ojai) motion for judgment on the pleadings (Motion)¹.

3 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

4 The Court must deny Ojai’s Motion. It is contrary to the law of the case, improperly
5 ignores or directly misstates the material allegations in Ventura’s Third Amended Cross-
6 Complaint (TACC), defies over a hundred years of settled California water law and recently
7 enacted statutes designed to streamline and supplement that common law (not abrogate it), and
8 would result in gross judicial inefficiencies and fundamental unfairness to Ventura. The Court
9 must not accept Ojai’s invitation to repeat the previous trial court’s abuse of discretion that the
10 Court of Appeal had to correct in *Santa Barbara Channelkeeper v. City of San Buenaventura*
11 (2018) 19 Cal.App.5th 1176 (*Santa Barbara Channelkeeper*). The law of the case already
12 establishes that Ventura is *entitled* to bring this action against the other users of and claimants to
13 the interconnected waters in the Ventura River Watershed (Watershed), including groundwater
14 users and claimants in the Watershed’s four groundwater basins, and that the Court *must* consider
15 the demands made on the Watershed by those other water users. (*Id.* at 1188, 1190-1194.) To
16 deny Ventura the opportunity to prove its allegations would again be reversible error that would
17 needlessly delay a case pending since 2014.

18 The material allegations in the TACC, which must be accepted as true for purposes of this
19 Motion, demonstrate beyond any doubt that Ventura has standing to bring this action. The TACC
20 alleges that the Ventura River, its tributaries, and the four groundwater basins are hydrologically
21 connected. (TACC, ¶ 103.) It alleges that Ventura has superior pueblo, prescriptive, and/or
22 appropriative rights to this hydrologically connected water in the Watershed, including water in
23 the Ojai Valley Groundwater Basin (Ojai Basin), which provide Ventura with priority water
24 rights to use sufficient water from the Watershed to meet its present and future needs. (TACC, ¶¶
25 107,124-126, 130-131, 135.) The TACC further alleges that Cross-Defendants’ pumping and
26

27 ¹ This opposition applies with equal force to any proper and timely joinders to the Motion, including the joinders of
28 Cross-Defendants the East Ojai Group and Martin, to the extent the Court considers those joinders to be proper and
timely.

1 diversion activities and/or their conflicting claims to the Watershed and/or its water impair
2 Ventura’s rights, are unreasonable, and are contrary to the public trust doctrine. (TACC, ¶¶ 106,
3 108-110, 115-116, 122.) Under the law of the case, and consistent with settled California water
4 law, Ventura has the right to protect its senior water rights against these competing uses of the
5 interconnected water in the Watershed and to assert its superior rights to the water in the
6 Watershed, including water in the Ojai Basin.

7 The material allegations in the TACC also demonstrate beyond any doubt that this Court
8 has jurisdiction over all of the causes of action in the TACC. The Motion fails to compellingly
9 assert the Court lacks jurisdiction over Causes of Action One through Five and Seven through
10 Nine, and the law of the case clearly establishes that “the court must be able to consider the
11 demands on the watershed being made by other water users, at least where other water users take
12 pursuant to rights that are junior to the City’s or in amounts that are unreasonable.” (*Santa*
13 *Barbara Channelkeeper, supra*, 19 Cal.App.5th at 1181.) The Motion focuses almost exclusively
14 on the claim that this Court lacks jurisdiction over the Sixth Cause of Action for a comprehensive
15 adjudication, but cites no case to support that extraordinary claim.² Instead, the Motion hinges on
16 the unfounded and unsupported assertion that in 2015 the California Legislature, without any
17 expression of intent to do so, and in fact with the clear intent *not* to do so, wiped out all of
18 California’s prior common law on complex groundwater and surface water adjudications.
19 Similarly, the Motion contends that the Court lacks jurisdiction over the Ojai Basin based on the
20 Ojai Basin Groundwater Management Agency Act (Act), but fails to disclose that both the Act
21 itself and applicable case law expressly preserve the Court’s broad and constitutionally-based
22 jurisdiction to conduct adjudications, including in the Ojai Basin.

23 The Motion asserts other arguments based on correlative groundwater rights and
24 consistency with the Sustainable Groundwater Management Act (SGMA) that are easily refuted.
25 The TACC does not ask the Court to determine water rights *across* different groundwater basins,
26 and the Court can and should structure future phases of trial, if needed, to determine rights,

27 _____
28 ² In the Court’s tentative rulings of December 9, 2021, the Court asked Ojai to cite to cases that hold that the Court lacks jurisdiction to consider the Watershed in one proceeding, but Ojai has not provided any responsive authority.

1 including correlative rights, within each basin *after* the Phase One issue of interconnection is
2 determined. Similarly, the Court’s jurisdiction complements and supports the groundwater
3 management provisions of SGMA, as future phases of trial will address, if necessary. Neither
4 argument undermines the Court’s jurisdiction to hear this matter.

5 Therefore, based on the law of the case and settled statutory and common law, the Court
6 must deny the Motion, and the parties should proceed to the Phase One Trial on interconnection.³
7 Any contrary ruling would be reversible error.

8
9 **II. PROCEDURAL BACKGROUND AND PRIOR DETERMINATIONS RELEVANT**
10 **TO THE MOTION**

11 This case has been pending since September 19, 2014, when Santa Barbara
12 Channelkeeper filed suit against Ventura and the State Water Resources Control Board. (*Santa*
13 *Barbara Channelkeeper, supra*, 19 Cal.App.5th at 1182.) The matter was needlessly delayed for
14 three years due to the San Francisco Superior Court’s improper striking of Ventura’s original
15 cross-complaint on September 18, 2015, which the Court of Appeal had to reverse, and by which
16 the Court of Appeal confirmed that Ventura is entitled to bring a cross-complaint against other
17 claimants in the Watershed. (See *id.* at 1182, 1194.)

18 The Phase One Trial is scheduled to occur within the next 45 days, yet Ojai belatedly
19 seeks to deprive Ventura of its day in court and to delay this matter even further through a last
20 minute motion for judgment on the pleadings that is unsupported by facts and law. This Court
21 has previously authorized Ventura (without objection from the parties) to use of the new
22 procedures in the Comprehensive Adjudication Statute (Code of Civ. Proc., §§ 830-852, the
23 “Statute”) to provide notice to landowners in the four groundwater basins at issue in the TACC
24 who were not otherwise personally served in the action. This Court made this determination
25 when it granted Ventura’s motion to approve the notice of adjudication and form answer as to
26 those four groundwater basins. (See, Request for Judicial Notice in Support of the City of San

27 _____
28 ³ To the extent there are any minor technical defects in the TACC, the Court should permit Ventura to amend the
TACC to correct them and to conform the pleadings to the evidence presented in the Phase One Trial.

1 Buena Ventura’s Opposition to the City of Ojai’s Motion for Judgment on the Pleadings (RJN),
2 Exhibit 3.)

3 To the extent Ojai thought it had any valid argument against the use of the new procedures
4 in the Statute to provide notices to these unserved landowners, it should have appeared and
5 objected or timely brought a motion under Code of Civil Procedure section 838, subdivision
6 (a)(2). The Statute provides that a determination regarding whether an action is a comprehensive
7 adjudication should be given calendar preference and must be resolved before other procedural or
8 dispositive motions. (Code of Civ. Proc., § 838, subd. (a)(2).) It should not be raised on the eve
9 of trial, when the Court and the parties have already been proceeding with a comprehensive
10 adjudication of the Ventura River Watershed and its connected groundwater basins for more than
11 two years. This last-minute, unsupported challenge to the pleadings is an attempt to interfere
12 with Ventura’s right to present evidence at the Phase One Trial, for which the parties have
13 expended significant time and efforts preparing. The Court should deny the Motion and conduct
14 the Phase One Trial, reserving any legitimate legal and factual issues for decision based on a full
15 record. (See *Panico v. Truck Ins. Exchange* (2001) 90 Cal.App.4th 1294, 1296 [“Had the court
16 simply taken the time to hold a real trial on any disputed issues of fact, or had the parties agreed
17 to have a court trial by submitting evidence (including conflicting evidence) to the judge, the
18 ensuing judgment would be entitled to the usual presumptions, and all factual inferences would be
19 resolved in favor of the winning party, i.e., the judgment of the trial court.”].)

20 21 **III. STANDARD OF REVIEW**

22 The rules governing a motion for judgment on the pleadings are the same as a demurrer,
23 which tests the sufficiency of the pleadings. (Code Civ. Proc., § 438; *Southern Calif. Edison Co.*
24 *v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.)⁴ In reviewing the Motion, the Court is
25 limited to the contents of the TACC and those matters of which it can take judicial notice.

26 _____
27 ⁴ Whether the Motion is proper under the timelines required by Code of Civil Procedure section 438 or whether it is
28 intended to be a non-statutory motion is unclear. In either case, given that the Phase One Trial is imminent, the
Motion should be denied, and the Court should decide any legal questions based on a full factual record, if for no
other reason than to avoid the need for multiple additional appeals in a case that has been pending since 2014, that
has already resulted in one published decision, but has yet to proceed to even an initial phase of trial.

1 (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.) “As on demurrer, the
2 defendant’s motion cannot be aided by reference to the answer or to matters outside the
3 complaint.” (*Welshans v. City of Santa Barbara* (1962) 205 Cal.App.2d 304, 305.)

4 Because a motion for judgment on the pleadings is the functional equivalent of a general
5 demurrer, it ordinarily does not lie with respect to only part of a cause of action. (*Daniels v.*
6 *Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167.) Thus, where a claim may be
7 based on alternative grounds, one of which is properly pleaded, the motion will ordinarily be
8 denied. (See *Fire Ins. Exch. v. Superior Court (Altman)* (2004) 116 Cal.App.4th 446, 451.) The
9 Motion violates this rule. It addresses only parts of each of the causes of action in the TACC,
10 specifically the parts of each claim related to the Ojai Basin. (See Motion, generally.) Thus, the
11 Motion can be denied on this basis alone.

12 In ruling on a motion for judgment on the pleadings, the Court “must assume that all the
13 facts alleged in the complaint are true” and must interpret all allegations liberally. (*Sheehan v.*
14 *San Francisco 49ers, LTD.* (2009) 45 Cal.4th 992, 998, citing *Evans v. City of Berkeley* (2006) 38
15 Cal.4th 1, 6.) “The trial court is obligated to look past the form of a pleading to its substance.
16 Erroneous or confusing labels attached . . . are to be ignored if a complaint pleads facts which
17 would entitle the plaintiff to relief.” (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) The
18 motion must be denied if there are material factual issues that require evidentiary resolution.
19 (*Schabarum v. California Legislature* (1998) 60 Cal. App. 4th 1205, 1216.) Where the motion
20 for judgment on the pleadings is granted, leave to amend must also be granted unless the defect
21 cannot be cured by amendment. (*Baughman v. State of California* (1995) 38 Cal.App.4th 182,
22 187.) Under these standards, each of the causes of action in the TACC states a valid cause of
23 action, and Ventura is entitled to proceed to the Phase One Trial to prove certain of its allegations,
24 specifically the interconnectedness of the Watershed.

1 **IV. THE MATERIAL ALLEGATIONS OF THE TACC WHICH MUST BE**
2 **ACCEPTED AS TRUE**

3 The Court is well aware of the procedural history of this case and the general factual
4 background of the dispute. For purposes of this Motion, the Court must assume that the
5 following factual allegations from the TACC are true.

6 The Ventura River Watershed is located in western Ventura County, with a small section
7 located in eastern Santa Barbara County, is fan-shaped, and covers 226 square miles. (TACC, ¶
8 98.) The Ventura River runs through the center of the Watershed along a 33.5-mile stretch from
9 its headwaters in the Transverse Ranges to the Pacific Ocean. (TACC, ¶ 99.) The Ventura River
10 is fed by several major tributaries, including Matilija Creek, North Fork Matilija Creek, San
11 Antonio Creek, Canada Larga Creek, and Coyote Creek. (TACC, ¶ 100.) There are four
12 significant groundwater basins in the Watershed—the Lower Ventura Groundwater Basin, the
13 Upper Ventura River Groundwater Basin, the Ojai Valley Groundwater Basin, and the Upper Ojai
14 Valley Groundwater Basin. (TACC, ¶ 103.) The Ventura River and its tributaries and the four
15 groundwater basins in the Watershed are hydrologically interconnected. (TACC, ¶ 103.)

16 Ventura holds pueblo, prescriptive, and/or appropriative rights to the waters in the
17 Watershed. (TACC, ¶ 107.) Ventura is a successor to the Mission San Buenaventura pueblo
18 water right, which gives it a priority right to use sufficient water from the Ventura River
19 Watershed, which by definition includes the Ojai Basin, to meet its needs. (TACC, ¶¶ 107, 124-
20 126.) Ventura also holds pre-1914 appropriative water rights. (TACC, ¶¶ 107, 135.) Ventura's
21 use of water in the Watershed has also resulted in Ventura obtaining prescriptive water rights.
22 (TACC, ¶ 107, 130.) Ventura's water rights in the Watershed are senior to and have priority over
23 the rights of all Cross-Defendants. (TACC, ¶¶ 126, 131, 135-136, 143, 149-150.)

24 Cross-Defendants' claims to the Watershed threaten Ventura's superior rights, and the
25 pumping and/or diversion activities of Cross-Defendants reduce Watershed groundwater tables
26 and surface flows and contribute to the deficiency of the Watershed water supply as a whole.
27 (TACC, ¶ 108.) Cross-Defendants' use of water, or claims of rights to the use of water, reduces
28 the surface and/or subsurface water flow of the Ventura River and impairs Ventura's water rights.

1 (TACC, ¶¶ 105, 108-110.) This continued and increasing extraction and/or diversion of
2 Watershed waters has and will deprive Ventura of its rights to provide water for the public health,
3 welfare, and benefit. (TACC, ¶ 110.) Ventura’s use of Watershed water is reasonable and
4 consistent with the public trust as compared to the use of Watershed water by the Cross-
5 Defendants. (TACC, ¶ 115, 120-121, 154.)

6 Ojai is a named Cross-Defendant, which is alleged to own property in the Watershed and
7 to claim water rights therein. (TACC, ¶ 93.) Ojai’s counsel accepted service of the summons and
8 TACC in this action on May 31, 2020, making Ojai subject to the Court’s *in personam*
9 jurisdiction through personal service. (RJN, Ex. 1.) Ojai was therefore served just like all the
10 Cross-Defendants named as groundwater or surface water rights holders in the TACC, including
11 the parties named in paragraphs 3-93 of the TACC and the Roe Cross-Defendants named in
12 paragraph 96. Ojai also filed a Court-approved form answer for named Cross-Defendants on
13 January 28, 2021. (RJN, Ex. 2.) Only the non-named landowners overlying the Watershed’s
14 groundwater basins identified in paragraph 94 of the Cross-Complaint who were not personally
15 served were provided notice pursuant to Code of Civil Procedure section 836, subdivision
16 (d)(1)(A). (TACC, ¶ 94.)⁵ Ojai significantly misstates these issues in its Motion, erroneously
17 claiming that it is only in the case due to the *notice* process and that it is an unnamed Cross-
18 Defendant under paragraph 94 of the TACC. (See Motion at pp. 3-4, 6.)

19
20 **V. LEGAL ARGUMENT**

21 The Motion must be denied based on the law of the case and because the factual
22 allegations of the TACC, which the Court must accept as true, establish that (1) Ventura has
23 standing to bring the action, and (2) the Court has jurisdiction over all of the nine causes of action
24 in the TACC.

25
26 _____
27 ⁵ Ventura accomplished this service after the Court granted its motion to approve a notice of adjudication and form
28 answer as to all four Watershed groundwater basins. (See Order Granting Respondent and Cross-Complainant City
of San Buenaventura’s Motion for Approval of Notice and Form Answer filed November 27, 2019 (RJN, Ex. 3);
Ventura’s Notice of Completion of Mailing Pursuant to Code of Civil Procedure section 836, subdivision (e), filed
April 15, 2021 (RJN, Ex. 4).)

1 **A. The Motion Must be Denied Based on the Doctrine of the Law of the Case**

2 The Motion must be denied because the Court of Appeal in *Santa Barbara*
3 *Channelkeeper, supra*, 19 Cal.App.5th 1176 has already held that Ventura is *entitled* to bring in
4 the other water users in the interconnected Watershed, including those who divert from the
5 Ventura River or its tributaries or who pump from its groundwater basins, and that the Court *must*
6 consider the other water users' demands on the Watershed. Although Ventura must prove its
7 allegations at trial, Ventura's *right* to bring this action and the Court's *obligation* to hear it is the
8 established law of the case.

9 The doctrine of the "law of the case" addresses the effect of a first appellate decision on
10 the subsequent retrial or appeal of that case. The law of the case doctrine provides that a
11 "decision of an appellate court, stating a rule of law necessary to the decision of the case,
12 conclusively establishes that rule and makes it determinative of the rights of the same parties in
13 any subsequent retrial or appeal in the same case." (See *Morohoshi v. Pacific Homes* (2004) 34
14 Cal.4th 482, 491.) Here, the Court of Appeal established as the law of the case that Ventura is
15 entitled to bring in other water users in the interconnected Watershed, including those who divert
16 from the Ventura River or its tributaries or who pump from its groundwater basins, and that the
17 Court must consider the other water users' demands on the Watershed.⁶ Until this Court
18 determines the merits of the factual issue of interconnection, Ventura's allegation of
19 interconnection is sufficient for the application of this law of the case and the Motion must be
20 denied on this basis alone.

21 The series of quotes set forth below from *Santa Barbara Channelkeeper v. City of San*
22 *Buenaventura* demonstrate that the law of the case requires denial of the Motion. "The question
23 before this court is whether the trial court abused its discretion in striking the City's Cross-
24 Complaint. We hold that it did, because the water that the Cross-Complaint seeks to prevent
25 Cross-Defendants from using is effectively the same water that Channelkeeper asserts the City
26 must leave in the river for the fish." (*Id.* at 1181.) "The City disagrees with this statement,

27 _____
28 ⁶ All of the parties are subject to the law of the case because they were either expressly named in the original Cross-Complaint or were Roe Cross-Defendants at that time.

1 arguing that in this case one must consider the diversion and pumping activities of competing
2 water users in determining the reasonableness of the City’s water use. We agree with the City.”
3 (*Id.* at 1188.) “Can other water users, by reducing the amount of water they divert from the river
4 or pump from surrounding groundwater basins, ensure sufficient waterflow in the river to protect
5 the steelhead (and other public trust resources) without any diminution in the volume of water the
6 City draws?” (*Ibid.*) “The only way to know how influential other water users are—or are not—
7 is to look at their water use, too.” (*Ibid.*)

8 “By analogy, the City is authorized to file a cross-complaint against other water users in
9 the Ventura River watershed, where it alleges that other users are partially responsible for the
10 reduced waterflow in reaches 3 and 4 during summer months.” (*Id.* at 1190.) “[T]he City is
11 entitled to bring these water users into the case so that the trial court can determine whether (at
12 least) junior appropriators should share in any obligation to leave more water in the river during
13 the summer months.” (*Id.* at 1191.) “The alternative—ignoring their diversions while
14 condemning the City’s—would be artificial and unfair, and likely inconsistent with the rule of
15 priority.” (*Id.* at 1192.) “While we express no view on the merits of the pending Complaint or
16 the proposed Cross-Complaint, we hold that the City was entitled to bring in other water users,
17 and its Cross-Complaint should have been allowed to stand.” (*Id.* at 1193.) “In determining
18 whether the volume of water the City is diverting and pumping is reasonable, the court must be
19 able to consider the demands on the watershed being made by other water users, at least where
20 other water users take pursuant to rights that are junior to the City’s or in the amounts that are
21 unreasonable.” (*Id.* at 1194.)

22 The Motion makes no meaningful attempt to address this law of the case, asserting merely
23 that the decision did not address the merits of the Cross-Complaint or how it should be pled. It is
24 true, as quoted above, that the Court of Appeal did not address the merits of the Cross-Complaint,
25 but it is indisputable that the Court of Appeal held Ventura has the right to be heard on the merits,
26 and that the Court must hear the merits of the Cross-Complaint. Ventura is merely seeking to
27 enforce its right to be heard on the merits that it earned through its prior appeal, and granting
28 Ojai’s Motion would contravene this right established by the law of the case doctrine.

1 In addition, the Court of Appeal *did* in fact address the allegations in the Cross-Complaint,
2 as it existed at that time, which material allegations remain in and are expanded by the TACC.
3 As the Court of Appeal explained, the “Cross-Complaint alleges that these water sources are all
4 hydrologically connected, so that the Cross-Defendants’ water use diminishes the surface and/or
5 subsurface water flow of the Ventura River.” (*Id.* at 1182.) “Because the water sources on which
6 all users draw are alleged to be hydrologically connected, the water that the Cross-Defendants are
7 using and which is the subject of the City’s Cross-Complaint is the same water that the City is
8 using, which is the subject of the Complaint.” (*Id.* at 1193.) Thus, contrary to Ojai’s contention,
9 the Court of Appeal did assess the allegations in the then operative pleading and expressly relied
10 upon those allegations in making its ruling that the Cross-Complaint must go forward. This
11 demonstrates that the allegations of interconnection in the TACC are a sufficient basis to deny the
12 Motion. It also shows why it is critical for the Court to hear the Phase One evidence and make a
13 factual determination on interconnection, which will thereafter drive subsequent legal
14 conclusions, future appeals and future phases of trial. To render those legal conclusions now on
15 the pleadings alone would be inconsistent with the law of the case.

16 For these reasons, Ventura has a right to proceed to the merits of the TACC, and the Court
17 has an obligation to proceed to trial. Therefore, the law of the case requires this Court to deny the
18 Motion.

19 **B. Ventura Has Standing, As the Court of Appeal Has Already Determined and**
20 **As the TACC Properly Alleges**

21 The Motion asserts that Ventura lacks standing to bring the TACC, at least as to the Ojai
22 Basin. However, in making this assertion, the Motion ignores or improperly misstates the
23 allegations in the TACC, the law of the case regarding Ventura’s standing, and the applicable
24 common and statutory law. Ventura has standing to protect its senior water rights from
25 impairment by upstream users, and it has standing to assert its senior water rights to water in the
26 Watershed, including water in the Ojai Basin.

27 Notably, Ojai does not actually set forth any law regarding what it contends to be the legal
28 requirements for standing, or explain how the TACC fails to allege sufficient facts to establish

1 standing under those requirements. It only disparages Ventura as a “foreigner” to the Ojai Basin.
2 “At its core, standing concerns a specific party’s interest in the outcome of a lawsuit.”
3 (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247.) Further, even if there is a doubt
4 regarding standing, California courts have discretion to hear cases to reach important
5 constitutional interests. (*Collier v. Lindley* (1928) 203 Cal. 641, 645; *California Water & Tel.*
6 *Co. v. Los Angeles County* (1967) 253 Cal.App.2d 16, 26 [“the public interest requires that there
7 be an adjudication to settle the constitutional question here presented ... that the amenability of
8 water utilities to local control is a matter of substantial public concern. Were there any doubt
9 about the justiciability of the controversy, that doubt would be resolved in favor of present
10 adjudication, because the public is interested in the settlement of the dispute”].)

11 In the water law context, all that is really required is a basic claim to some beneficial
12 interest in the water in question and, if protection of that interest is sought in addition to
13 declaratory relief, a claim that a subordinate or unreasonable use is or may likely interfere with
14 that interest. (*Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489,
15 529-530 (*Tulare Irrigation Dist.*); *People v. Los Angeles* (1950) 34 Cal.2d 695, 701; *Pasadena v.*
16 *Alhambra* (1949) 33 Cal.2d 908, 924; *Orange County Water Dist. v. City of Riverside* (1959) 173
17 Cal.App.2d 137, 167-171 (*Orange County Water Dist.*); *Coachella Valley Co. Water Dist. v.*
18 *Stevens* (1928) 206 Cal. 400, 410; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d
19 419, 431, fn. 11 (*National Audubon Society*)). Indeed, courts have found sufficient standing
20 under these minimal standing requirements when actions are brought in a representative capacity
21 on behalf of other rights holders (*Orange County Water Dist., supra*, 173 Cal.App.2d at 167-171),
22 or even when members of the public who do not have a water right claim sue to protect public
23 trust interests (*National Audubon Society, supra*, 33 Cal.3d at 431, fn. 11). Where, as here, a
24 party not only has a claim that its rights are being impaired by unreasonable or junior upstream
25 uses but also that it has senior rights to water, including water in a basin that is at issue, standing
26 has never been an issue, and Ojai cites no case to the contrary.

27 The new procedures in the Statute do not in any way alter these minimal standing
28 requirements, as there are no express standing requirements to commence an adjudication using

1 the process in the Statute. All that is required is for the “plaintiff” who can be any “person” to
2 file a “complaint.” (Code Civ. Proc., § 832, subs. (b), (j) and (k).) Such a “complaint” initiates
3 a comprehensive adjudication to determine rights to extract groundwater “whether based on
4 appropriation, overlying rights, *or other basis of right.*” (Code of Civ. Proc., §§ 832, subd. (b)
5 and 833, subd. (a), emphasis added.)⁷

6 The TACC alleges multiple factual bases for Ventura’s standing, including, but not
7 limited to, water rights that extend to the Ojai Basin. These allegations more than satisfy
8 California’s minimal standing requirements. The Court must accept as true the allegations in the
9 TACC that Ventura holds pueblo, prescriptive, and pre-1914 appropriative water rights to water
10 in the Watershed, which as alleged, includes the rights in the interconnected groundwater basins,
11 including the Ojai Basin. (TACC, ¶¶ 103, 107, 124.) The Court must also accept as true the
12 allegations in the TACC that the Cross-Defendants’ pumping and diversions impair Ventura’s
13 water rights. (TACC, ¶¶ 108-110.) The Court must additionally accept as true Ventura’s
14 allegation that the exercise of its water rights is reasonable and consistent with the public trust
15 doctrine as compared to the water uses of the Cross-Defendants. (TACC, ¶¶ 115, 121, 154.)
16 Additionally here, the public interest requires that there be an adjudication to settle the
17 constitutional question here presented—that “[a]n adjudication is necessary to protect and
18 conserve the limited water supply that is vital to the public health, safety, and welfare of all
19 persons and entities that depend upon waters from the Watershed and to ensure the reasonable
20 use, pursuant to Article X, section 2 of the California Constitution, of the waters in the
21 Watershed.” (TACC ¶ 2.)

22 The Court of Appeal has already held that Ventura has standing to sue other water users
23 who divert from the Ventura River or pump from the surrounding groundwater basins based on
24 these allegations. (*Santa Barbara Channelkeeper, supra*, 19 Cal.App.5th at 1188, 1193.) This
25 law of the case is consistent with multiple adjudications that have been brought by downstream
26

27 ⁷ Contrary to Ojai’s Motion, overlying and appropriative rights to groundwater are not the exclusive basis for
28 standing in a groundwater adjudication, as stated in the Statute, as discussed more fully below, and as recognized at
common law. (*See generally, City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266.)

1 water rights holders against upstream water users to protect their water rights. (*See, e.g., City of*
2 *Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1234 (*Mojave*) [noting that “the City of
3 Barstow and the Southern California Water Company (plaintiffs) filed this action against the City
4 of Adelanto, the Mojave Water Agency (MWA), *and other upstream water producers*, claiming
5 that their groundwater production was adversely impacting plaintiffs’ water supply,” emphasis
6 added].) Under this authority alone, the allegations of the TACC establish Ventura’s standing.
7 Ventura has the right to protect its water rights from impairment by the actions of upstream water
8 users (surface and groundwater) whom it alleges to have junior rights or whose use is
9 unreasonable or inconsistent with the public trust doctrine.

10 In addition, Ventura alleges that it holds pueblo or treaty rights, which give it a superior
11 priority water right to use sufficient water from the Ventura River Watershed, including the
12 groundwater basins, to meet its needs. Pueblo water rights are prior and paramount to any water
13 rights recognized under California law. (*Los Angeles v. San Fernando* (1975) 14 Cal.3d 199,
14 210-211 (*San Fernando*)). They are held by municipal successors to Mexican and Spanish
15 pueblos, and they give that city the highest claim to waters that are required to satisfy the present
16 and future needs of the city and its inhabitants. (*Los Angeles v. Glendale* (1943) 23 Cal.2d 68,
17 74-75.) The pueblo right takes priority over all other rights in the water source, and it applies to
18 both surface water and contributory groundwater. (*Id.*; *San Fernando, supra*, 14 Cal.3d 199.)
19 Thus, Ventura’s allegation of pueblo rights is more than sufficient to satisfy even Ojai’s
20 erroneous interpretation of the requirements for standing in this action.

21 Ojai cites no case that limits standing in a groundwater adjudication to overlying and
22 appropriative rights holders, and no such requirement is contained in the Statute. In fact, the
23 Statute contains no express standing requirements at all and provides that in a comprehensive
24 adjudication, rights to be determined can include rights based on “appropriation, overlying rights,
25 *or other basis of right.*” (Code Civ. Proc., § 833, subd. (a), emphasis added.) Ventura’s
26 allegation that it holds pueblo or treaty rights to the waters in the Watershed therefore establishes
27 sufficient standing as to the interconnected Ojai Basin. (*See, e.g., City of Los Angeles v. Hunter*
28 (1909) 156 Cal. 603, 607 [holding that the pueblo right of the City of Los Angeles extended to the

1 waters of the Los Angeles River and the groundwater of the San Fernando Valley supplying the
2 river].) Ventura’s claim to a pueblo right is without question a claim to a right based on an “other
3 basis of right.”⁸

4 The allegations of the TACC establish that Ventura has standing to bring all of the causes
5 of action contained in the TACC. These allegations must of course be established through the
6 various phases of trial, if they are contested, but they are more than sufficient to overcome a
7 motion for judgment on the pleadings. The Court should hear the Phase One evidence and make
8 any legal determinations after hearing all the evidence.

9
10 **C. The Court has Jurisdiction Over All Causes of Action**

11 This Court has jurisdiction to hear all of the causes of action in the TACC. The Court has
12 inherent jurisdiction rooted in the reasonable use doctrine of Article X, section 2 of the California
13 Constitution, jurisdiction based on over a hundred years of common law, jurisdiction under the
14 law of the case, and jurisdiction under the Statute. Ojai cites no contrary case authority, despite
15 the Court’s previous request that it do so. There is simply no legal basis for the extraordinary
16 claim that this Court lacks jurisdiction to hear this case.

17 **(1) There is No Reasonable Dispute Regarding the Court’s Jurisdiction**
18 **Over Causes of Action One Through Five and Seven Through Nine**

19 Ojai does not make any meaningful independent arguments that this Court lacks
20 jurisdiction to hear Ventura’s reasonable use claims under Article X, section 2 of the California
21 Constitution (First Cause of Action), its claims under the public trust doctrine (Second Cause of
22 Action), or its declaratory and injunctive relief claims based on its various priority water rights
23 (Third, Fourth, Fifth, Seventh, Eighth, and Ninth Causes of Action). Rather, Ojai asserts that
24 Ventura is stuck in a Comprehensive Adjudication Statute trap. It erroneously claims that the
25 Statue is “exclusive”⁹ and that Ventura may *only* bring its Watershed-wide adjudication of the

26 ⁸⁸ In addition to pueblo and prescriptive rights, “other basis of right” include claims based on public trust and
27 reasonable use. (*National Audubon Society, supra*, 33 Cal.3d at 448-450 [interpreting the phrase “or other basis of
28 right” in Water Code section 2501 to include things like the public trust that are not a “water right” in the technical
sense of that term].)

⁹ The Statute does not refer to itself as the exclusive method to bring a comprehensive adjudication, and, as discussed

1 surface water rights and groundwater rights claims under the Statute, but then contends that
2 Ventura cannot in fact do so, and thus cannot bring any claim at all against Ojai. There is no
3 legal basis for this assertion, and indeed this Court has already determined that this case may
4 properly use the procedural mechanisms of the Statute when it granted Ventura's motion to
5 approve notice of adjudication and form answer filed pursuant to the Statute. (See RJN, Exs. 3,
6 4.)

7 As described above, the law of the case establishes that the Court must hear the merits of
8 Ventura's Cross-Complaint, which at the time included claims based on reasonable use, public
9 trust, declaratory, and injunctive relief. These claims are independent of the Sixth Cause of
10 Action, and must be heard by the Court regardless of Ojai's arguments as to that one claim. A
11 court always has the authority and obligation to consider questions of reasonable use and public
12 trust, regardless of statutes or laws that appear to conflict with the court's power. (*National*
13 *Audubon Society, supra*, 33 Cal.3d 419; *Environmental Law Foundation v. State Water Resources*
14 *Control Board* (2018) 26 Cal.App.5th 844 (*Environmental Law Foundation*); *Tulare Irrigation*
15 *Dist., supra*, 3 Cal.2d 489.) This authority is rooted in the Court's obligations under Article X,
16 section 2 of the California Constitution, and the Legislature cannot deprive the Court of this
17 constitutional obligation via statute. Even where a statute appears to suggest otherwise, the
18 Court's duties under Article X, section 2 prevail and require the Court to hear the merits of the
19 claims. (*Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th
20 535, 550 (*Hillside Memorial Park.*) The TACC alleges that the use of water by the Cross-
21 Defendants is contrary to these core concepts of reasonable use, public trust, and priority, and the
22 Court is obligated to hear the merits of these claims, despite whether Ventura also has the ability
23 to use the new notice procedures contained in the Statute.

24 Ventura's right to be heard on its reasonable use, public trust, declaratory relief, and
25 injunctive relief claims, regardless of the Sixth Cause of Action, is beyond dispute based on
26 settled case law. In *National Audubon Society*, the California Supreme Court held that rights and

27 _____
28 more fully below, the legislative history provides that the Statute is intended to be a parallel process to that already
established by common law.

1 duties under the common law public trust doctrine existed separate from and parallel to the
2 legislative system of water rights. (*National Audubon Society, supra*, 33 Cal.3d at 445-447.) In
3 *Environmental Law Foundation*, the Court of Appeal held that SGMA did not occupy the field of
4 groundwater management and did not “scuttle decades of decisions upholding, defining, and
5 expanding the public trust doctrine.” (*Environmental Law Foundation, supra*, 26 Cal.App.5th at
6 867.) In *Hillside Memorial Park*, the Court of Appeal held that the trial court’s duties under
7 Article X, Section 2 of the California Constitution trumped the statutory provisions of the
8 California Environmental Quality Act and required the Court to hold an evidentiary hearing on a
9 proposed amendment to a judgment and physical solution. (*Hillside Memorial Park, supra*, 205
10 Cal.App.4th at 550.)

11 The Court’s jurisdiction over Ventura’s substantive claims, outside the procedural
12 methods invoked in the Sixth Cause of Action, is rooted in its constitutionally-derived duties and
13 authority, and is independent of the Sixth Cause of Action, which invokes the procedures in the
14 Statute. The Statute is procedural, with permissive methods to streamline groundwater
15 adjudications, and nowhere is it stated to be exclusive. (Code Civ. Proc., § 830, subd. (a) [“This
16 chapter establishes *methods* and *procedures* for a comprehensive adjudication” emphasis added.])
17 In large part, the Sixth Cause of Action is merely one procedural vehicle by which the Court may
18 exercise its constitutional duties and authority, a procedural vehicle which the Court has already
19 permitted Ventura to use (without objection of the parties) to provide notice to unnamed and
20 unserved parties in the four groundwater basins. There is no legitimate reason for the Court to
21 deviate from this prior decision. In any case, regardless of any procedural issues, the Court
22 retains its inherent jurisdiction to hear the merits of the TACC.

23 **(2) The Court Has Jurisdiction Over the Sixth Cause of Action and**
24 **Ventura Has Properly Used the Procedures in the Statute In**
25 **Accordance with the Court’s Prior Determination**

26 The real focus of Ojai’s Motion is the Sixth Cause of Action in the TACC, brought, only
27 in part, pursuant to the procedures of the Statute (Code Civ. Proc., §§ 830-852). (TACC ¶¶ 138-
28 141.) Among other things, the Sixth Cause of Action also requests that the Court impose a

1 physical solution, a request that the Court has a duty to consider under both the common law and
2 the Statute. (*Ibid.*) Ojai asserts without any case law authority or clear expression of Legislative
3 intent that the Statute overturns over a hundred years of common law that permits courts to
4 adjudicate multiple groundwater basins and interconnected surface waters when they form one
5 common system. For all the reasons expressed below, Ojai’s claims are not supported by law and
6 improperly ignore the allegations of the TACC.

7
8 a. The Statute and SGMA Support and Do Not Displace the Common
9 Law

10 Ojai asserts that the Statute and SGMA abrogate the common law, which has permitted
11 comprehensive adjudications of multiple basins and interconnected surface waters that constitute
12 one unified system. There is no legal basis for this claim, and in fact the Legislature was clear
13 that it was preserving, not displacing, the common law through these important new groundwater
14 laws. In fact, at least one case has already confirmed this fact as to SGMA (*Environmental Law*
15 *Foundation, supra*, 26 Cal.App.5th at 867) and another court has rejected a similar claim as it
16 relates to another comprehensive water law statute (*National Audubon Society, supra*, 33 Cal.3d
17 at 445.) These cases provide very clear instructions to this Court to harmonize the common law
18 with new statutes, not to abrogate it, as Ojai improperly invites this Court to do.

19 It is settled law that statutes should not be interpreted to alter the common law, and should
20 be construed to avoid conflict with common law rules. (*Goodman v. Zimmerman* (1994) 25
21 Cal.App.4th 1667, 1676 (*Zimmerman*)). A statute will be construed in light of common law
22 decisions, unless its language clearly and unequivocally discloses an intention to depart from,
23 alter, or abrogate the common-law rule concerning the particular subject matter. (*Ibid.*)
24 Accordingly, there is a presumption that a statute does not, by implication, repeal the common
25 law. (*People v. Zikorus* (1983) 150 Cal.App.3d 324, 330.) Repeal by implication is recognized
26 only where there is no rational basis for harmonizing two potentially conflicting laws. (*Ibid.*)

27 Here, the Legislature made clear in both the text of the Statute and in SGMA, and in
28 legislative history, that it was preserving not abrogating common law. Water Code section

1 10720.5, which is part of SGMA, provides that “[n]othing in this part, or in any groundwater
2 management plan adopted pursuant to this part, determines or alters surface water rights or
3 groundwater rights under common law or any provision of law that determines or grants surface
4 water rights.” (Wat. Code, § 10720.5.) Similarly, Code of Civil Procedure section 830,
5 subdivision (b)(7), which is part of the Statute, states that “[e]xcept as provided in this paragraph
6 [which expressly authorizes and validates in the groundwater context common law procedures
7 regarding dormant riparian rights established in *In re Waters of Long Valley Creek Stream System*
8 (1979) 25 Cal.3d 339], this [Statute] shall not alter groundwater rights or the law concerning
9 groundwater rights.” (Code Civ. Proc., § 830, subd. (b)(2).) Therefore, both the Statute and
10 SGMA express an unambiguous intent to *preserve* rather than *abrogate* the common law.

11 Ojai’s extraordinary contention that SGMA and its companion Statute abrogate the
12 common law has already been rejected as to SGMA. In *Environmental Law Foundation*, the
13 Court of Appeal held that the common law public trust doctrine applied when groundwater
14 pumping impaired contributory flows to interconnected surface water and thereby harmed public
15 trust resources. (*Environmental Law Foundation, supra*, 26 Cal.App.5th at 859-860.) As part of
16 this important public trust decision, the Court of Appeal expressly rejected the contention that
17 SGMA abrogated the common law. (*Id.* at 863, 867.) The Court of Appeal unambiguously held
18 that “the enactment of SGMA does not, as the County maintains, occupy the field, replace or
19 fulfill public trust duties, or scuttle decades of decisions upholding, defending, and expanding the
20 public trust doctrine.” (*Id.* at 867.) The California Supreme Court reached a similar conclusion
21 regarding the relationship between the common law public trust doctrine and California’s
22 comprehensive appropriative water rights system. (*National Audubon Society, supra*, 33 Cal.3d
23 at 445.)

24 To the extent there is any possible remaining question about the unambiguous intent of the
25 Legislature to preserve the common law, the legislative history of the Statute confirms the
26 Legislative intent to preserve the common law. For example, the legislative history provides as
27 follows:
28

1 Concerns were raised by parties that questioned whether this bill
2 could . . . inappropriately bring surface water rights into the
3 groundwater arena. However, such concerns ignore that current
4 law already sets forth the ability of the court to determine water
5 right priorities; and that where groundwater and surface water are
6 interconnected, the “common source” doctrine applies, integrating
7 water rights and applying priorities without regard to whether the
8 diversion is from surface or groundwater. The author states that the
9 reason for including provisions acknowledging existing law is to
10 remove some of the unnecessary uncertainty that has been a major
11 obstacle to a speedy and fair resolution of groundwater claims.

12 (Assem. Com. on Water, Parks and Wildlife Assem. Floor Analysis on Assem. Bill 1390 (2015-
13 2016 Reg. Sess.) Sept. 9, 2015.) (RJN, Ex. 5.)

14 The legislative history further explains that the bill “includes detailed procedures to ensure
15 that a comprehensive adjudication is truly comprehensive” (*Ibid.*) It cites with approval a
16 common law decision that emphasizes that “addressing all water rights could eliminate the
17 uncertainty that leads to recurrent, costly, and piecemeal litigation.” (*Ibid.*) Additionally, the
18 legislative history also reflects that “the author intends to establish a process to adjudicate
19 groundwater rights under SGMA that *operates parallel to California’s existing common law*
20 *groundwater adjudication process*” and accordingly provided the express language in Code of
21 Civil Procedure section 830, subdivision (b)(7) set forth above. (Sen. Com. on Judiciary,
22 Analysis on Sen. Bill 226 (2015-2016 Reg. Sess.) (Apr. 27, 2015), RJN, Ex. 6, emphasis added.)
23 This legislative history makes clear that rather than intending to establish an exclusive new
24 process that displaces the common law, the Legislature intended to establish a new process to
25 operate in parallel to the common law adjudication process.

26 In light of the express language in both laws preserving the common law, and in light of
27 the legislative history, Ojai’s assertion that the common law has been superseded is without any
28 legal support and must be rejected. The Court must incorporate and harmonize the common law
when considering its authority under the Statute. Ojai’s erroneous interpretation of the Statute
defeats the very purpose of the Statute, which seeks to avoid “*piecemeal litigation*,” especially
here when it is only sensible to adjudicate this common water resource in a *comprehensive*
adjudication.

1 At common law, adjudications of groundwater have thus often involved watershed-wide
2 adjudications involving surface waters and interconnected groundwater basins. (*See, e.g.,*
3 *Mojave, supra*, 23 Cal.4th at 1233-1234 [defining the Mojave River Basin area adjudicated
4 therein as being divided into five hydrologic subareas and determining that the groundwater and
5 surface water within the entire Mojave River Basin constitute a single interrelated source];
6 *Orange County Water Dist., supra*, 173 Cal.App.2d at 152-153 [“From the standpoints of
7 geography, geology and hydrology, the Santa Ana River system is one watershed and one basin.
8 It has been and can be divided into three general subdivisions ... for convenience ... Irrespective
9 of the method of division used, any such subdivisions or further divisions are parts of the entire
10 Santa Ana River system, and all the waters thereof, underground and surface alike, are part of one
11 interconnected common supply”].) Courts have thus always had jurisdiction to address multiple
12 basins and interconnected surface waters when they constitute a unified source. Adjudication of a
13 single source in a single action is in fact required under the common law and “promotes
14 efficiency, reduces unnecessary delays, and provides due process” as the Legislature mandated in
15 the Statute section 830, subdivision (b)(2). (Code Civ. Proc., § 830, subd. (b)(2).)

16
17 c. The Comprehensive Adjudication Statute Must be Interpreted
18 Consistent with Common Law and Statutory Requirements that
Permit this Type of Adjudication

19 Because the Statute is expressly intended to preserve common law, it must be interpreted
20 in a manner that preserves the common law jurisdiction of trial courts to hear such multiple basin
21 and interconnected surface water cases. There is ample room in the language of the Statute to do
22 so.

23 Ojai’s argument to the contrary is based on a cramped and narrow reading of the word
24 “basin” as defined in Code of Civil Procedure section 832, subdivision (a). Ojai contends that the
25 use of the singular “basin” limits the Statute to one basin only, and despite the express language
26 to the contrary, abrogates common law. There is no legal basis for this position, which defies
27 common sense.

28 First, Ojai’s claim is inconsistent with basic statutory interpretation. The Code of Civil

1 Procedure provides that the “singular number includes the plural and the plural number includes
2 the singular.” (Code Civ. Proc., § 17, subd. (a).) Water Code section 13 similarly provides that
3 the “singular number includes the plural, and the plural, the singular.” (Wat. Code, § 13.) Thus,
4 the term “basin” as defined in Code of Civil Procedure section 832, subdivision (a), means both
5 the singular “basin” and plural “basins.” Similarly, the term “basin” in Water Code section
6 10721, which is incorporated into the definition in Code of Civil Procedure section 832
7 subdivision (a), means both “basin” and “basins.” In *Southern Pac. Co. v. Superior Court* (1924)
8 69 Cal.App. 106, the court found that sections of the Code of Civil Procedure “must be read in
9 connection, as applied to this case, with the provisions of section 17 of the same Code specifying
10 that the singular number includes the plural.” (*Id.* at 111; see also *River Trails Ranch Co., Ltd. v.*
11 *Superior Court* (1980) 111 Cal.App.3d 562, 565 [no explicit or implicit requirement that plural
12 language of “sureties” under Code Civ. Proc., § 529 required two or more individual sureties];
13 *People v. Scarborough* (1959) 171 Cal.App.2d 186, 190 [impeachment of witness by showing
14 prior conviction for a “felony” included plural felonies]; *Golden West Credit & Adjustment Co. v.*
15 *Peardon* (1933) 130 Cal.App. 186 [“defendant” could be read in the plural]; *Gallivan v. Jones*
16 (9th Cir. 1900) 102 F. 423 [the words “executor and administrator” include the plural].)

17 Rather than always having to write “basin(s)” in the Statute and in SGMA, the Legislature
18 was free to rely on the provisions of Code of Civil Procedure section 17, subdivision (a) and
19 Water Code section 13, and use the term “basin” to mean both the singular and the plural, that is
20 “basin” and “basins.” If the Legislature had intended otherwise, and had intended that each basin
21 within an interconnected watershed had to be a subject of a separate lawsuit, it would have had to
22 expressly state so given Code of Civil Procedure section 17 and Water Code section 13. It did not
23 do so.

24 Second, courts must interpret statutes to harmonize with the common law. (*Zimmerman,*
25 *supra*, 25 Cal.App.4th at 1676.) This is particularly important in the water law context, where
26 constitutional concepts of reasonable use and common law doctrines like public trust play such a
27 critical role. (*National Audubon Society, supra*, 33 Cal.3d 445 [“To embrace one system of
28 thought and reject the other would lead to an unbalanced structure, one which would either decry

1 as a breach of trust appropriations essential to the economic development of this state, or deny
2 any duty to protect or even consider the values promoted by the public trust.”].) Following the
3 directives of Code of Civil Procedure section 17 and Water Code section 13 and interpreting
4 “basin” to include the plural “basins” harmonizes the statute with the common law that has
5 always permitted multiple basin and interconnected surface water adjudications. This is also
6 entirely consistent with the express language of Code of Civil Procedure section 833, subdivision
7 (c), which recognizes and preserves the common law right for courts to consider interconnected
8 surface waters when necessary for the fair and effective determination of groundwater rights in a
9 basin.

10 Third, interpreting basin to include the plural basins would be consistent with the express
11 goals of the Statute and SGMA. The Statute was adopted to promote efficiency and reduce
12 unnecessary delays. Code of Civil Procedure section 830 subdivision (b)(2) provides that the
13 Statute “shall be applied and interpreted consistently with” the goal of conducting “a
14 comprehensive adjudication in a manner that promotes efficiency, reduces unnecessary delays,
15 and provides due process.” (Code Civ. Proc., § 830, subd. (b)(2).) It is intended to establish
16 procedures by which courts may conduct comprehensive determinations of all rights and
17 priorities to groundwater in a basin or basins. Interpreting the Statute to require separate lawsuits
18 regarding the four groundwater basins and the interconnected surface water in the Watershed
19 would violate these interpretive provisions and result in gross inefficiency, unnecessary delays,
20 and potential due process concerns. Resolving common issues in the Watershed and the
21 interconnected groundwater basins in a single action promotes the efficient resolution of common
22 issues on an expedited basis. It promotes a more efficient resolution of issues and protects due
23 process since all parties are at the same table regarding the same water, with the same information
24 and opportunity to be heard and address issues.

25 In contrast, Ojai’s interpretation of the Statute would require four or maybe even five
26 separate lawsuits, followed by a motion to coordinate or consolidate the lawsuits, with the
27 possibility of inconsistent findings, duplicative discovery, and substantial burdens to the many
28 parties who claim rights in multiple basins or surface waters. Other than creating inefficiencies

1 and duplication of effort, the actual result for individual landowners from a notice point of view
2 would be the same, just more confusing, because many would receive separate notices for the
3 separate basins and the interconnected surface waters instead of one comprehensive notice.
4 Rather than promoting efficiency, reducing unnecessary delays, and protecting due process,
5 Ojai’s approach would undermine each of these stated goals of the Statute, and should be
6 rejected. It is entirely appropriate for this Court to consider the consequences that will flow from
7 an interpretation subjecting the parties to separate actions to adjudicate an interconnected
8 watershed. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-
9 1387 [where a statute’s meaning is uncertain, “consideration should be given to the consequences
10 that will flow from a particular interpretation.”].)

11 Fourth, contrary to Ojai’s contention that SGMA requires that single groundwater basins
12 be treated as completely separate entities in a vacuum (see Motion, at p. 8), several provisions
13 under SGMA support comprehensive and interbasin management. SGMA requires that DWR
14 “shall evaluate whether a groundwater sustainability plan adversely affects the ability of an
15 adjacent basin to implement their groundwater sustainability plan or impedes achievement of
16 sustainability goals in an adjacent basin.” (Wat. Code, § 10733, subd. (c).) Similarly,
17 Groundwater Sustainability Agencies must consider surface water users, “if there is a hydrologic
18 connection between surface and *groundwater bodies*.” (Wat. Code, § 10723.2, subd. (f),
19 emphasis added.) The SGMA regulations similarly provide for comprehensive and interbasin
20 coordination and management per the following provisions:

- 21 ○ “A Plan will be evaluated, and its implementation assessed, consistent with the
22 objective that a basin be sustainably managed within 20 years of Plan
23 implementation *without adversely affecting the ability of an adjacent basin to*
24 *implement its Plan or achieve and maintain its sustainability goal over the*
25 *planning and implementation horizon.*” (Cal. Code Regs., tit. 23, § 350.4, subd.
26 (f), emphasis added.)
- 27 ○ Groundwater Sustainability Plan must describe “How minimum thresholds have
28 been selected to *avoid causing undesirable results in adjacent basins* or affecting

1 the ability of adjacent basins to achieve sustainability goals.” (Cal. Code Regs.,
2 tit. 23, § 354.28, subd. (b)(3), emphasis added.)

- 3 ○ Two or more Groundwater Sustainability Agencies may enter into an interbasin
4 agreement “to establish compatible sustainability goals and understanding
5 regarding fundamental elements of the Plans of each Agency as they relate to
6 sustainable groundwater management. Interbasin agreements may be included in
7 the Plan to support a finding that implementation of the Plan will not adversely
8 affect an adjacent basin's ability to implement its Plan or impede the ability to
9 achieve its sustainability goal.” (Cal. Code Regs., tit. 23, § 357.2.)

10 In short, nothing in SGMA suggests the Legislature intended to discourage the
11 comprehensive management of interconnected groundwater basins. To the contrary, SGMA
12 encourages such an approach.

13 For all of these reasons, the Court has jurisdiction over the Sixth Cause of Action and may
14 properly consider the Watershed and rights within the Watershed on a comprehensive basis. The
15 Court has already authorized Ventura to use the new procedures in the Statute, and there is no
16 basis in law or fact to change that previous decision.

17 **D. The Ojai Basin Groundwater Management Act Expressly Preserves the**
18 **Court’s Jurisdiction Consistent with Settled Law**

19 Ojai contends that this Court lacks jurisdiction over the Ojai Basin because the Ojai Basin
20 Groundwater Management Agency Act (the Act) invests the Ojai Basin Groundwater
21 Management Agency (OBGMA) with exclusive jurisdiction over groundwater rights in the basin.
22 This contention is contrary to existing statutes and case law.

23 If the Legislature intends to deprive a court of jurisdiction, it must do so expressly or
24 otherwise clearly indicate an intent to do so. (*Int’l Assn. of Fire Fighters, Loc. 188, AFL-CIO v.*
25 *Publ. Emp. Rel. Bd.* (2011) 51 Cal.4th 259, 270.) Ojai discusses the various powers that
26 OBGMA has under the Act, but fails to disclose the *one* relevant provision of the Act, which
27 expressly *preserves* rather than abrogates the Court’s jurisdiction to adjudicate the Ojai Basin.
28 Section 403 of the Act expressly provides that it “does not abrogate or impair the overlying or

1 appropriate rights of landowners or existing appropriators within the agency, *including the right*
2 *to seek an adjudication of those rights . . .*” (Emphasis added.) Rather than impairing the
3 Court’s jurisdiction, the Act expressly preserves it, *even for those parties who may otherwise be*
4 *directly regulated by OBGMA.*¹⁰

5 This makes perfect sense because OBGMA lacks the power to determine groundwater
6 rights; it only has the power to help the Basin manage, protect¹¹ and regulate the exercise of
7 rights. This is similar to the power that OBGMA has under SGMA, which provides that
8 “[n]othing, in SGMA, or in any groundwater management plan adopted pursuant to [SGMA],
9 determines or alters surface water rights or groundwater rights under common law or any
10 provision of law that determines or grants surface water rights.” (Wat. Code, § 10720.5, subd.
11 (b).) And which further provides that “[w]ater rights may be determined in an adjudication action
12 pursuant to [the Statute].” (Wat. Code, § 10720.5, subd. (c).) The Court thus expressly retains
13 the power to adjudicate rights in the Ojai Basin, including the consideration of how the exercise
14 of rights in the Ojai Basin relate to downstream uses that are not otherwise directly subject to
15 OBGMA’s jurisdiction. The Court can and must exercise its jurisdiction here.

16 In addition, given that the Court has to accept as true Ventura’s allegations that it
17 possesses priority pueblo or treaty rights that extend to the water in the Ojai Basin, the only
18 reasonable reading of Section 403 of the Act is that the Court retains jurisdiction to adjudicate the
19 basin based on the TACC. Pueblo water rights are prior and paramount to any water rights
20 recognized under California law. (*San Fernando, supra*, 14 Cal.3d at 210-211.) They are held
21 by municipal successors to Mexican and Spanish pueblos, and they give that city the highest
22

23 ¹⁰ Ojai also fails to acknowledge that OBGMA has the right under Code of Civil Procedure section 837(a) to
24 intervene in the action, but has not done so. If OBGMA actually has the concerns Ojai expresses, presumably it
would have intervened in the action.

25 ¹¹ The Act itself recognizes that the Watershed and the Ojai Basin are interconnected and that actions in one area of
26 the Watershed can affect water rights in another area. For example, Section 702(b) of the Act gives OBGMA the
27 right “to commence and prosecute legal actions to enjoin unreasonable uses or methods of use of water within the
28 agency *or outside the agency to the extent those uses or methods of use adversely affect the groundwater supply*
within the agency.” (Emphasis added.) It is entirely unreasonable to contend that the Legislature gave OBGMA the
right to use the court system to prevent unreasonable uses upstream or downstream of the Ojai Basin (that is, to
extend beyond the boundaries of the Basin to protect rights in the Basin), but, through special legislation, deprived
other rights holder in the Watershed from using the court system to prevent unreasonable uses that may exist in the
Ojai Basin and affect the Watershed or downstream rights.

1 claim to waters that are required to satisfy the present and future needs of the city and its
2 inhabitants. (*Los Angeles v. Glendale, supra*, 23 Cal.2d at 74-75.) The pueblo right takes
3 priority over all other rights in the water source, and it applies to both surface water and
4 contributory groundwater. (*Id.*; *San Fernando, supra*, 14 Cal.3d 199.) The Act cannot abrogate
5 Ventura’s senior rights and, among other bases for jurisdiction, the Court’s jurisdiction is
6 preserved to hear Ventura’s claim under Section 403 of the Act.

7 Ojai’s argument on this issue has already been rejected in *California American Water v.*
8 *City of Seaside* (2010) 183 Cal.App.4th 471 (*Seaside*). In *Seaside*, the Monterey Peninsula Water
9 Management District contended that a trial court exceeded its jurisdiction and violated the
10 separation of powers doctrine by adopting and ultimately enforcing a physical solution in an
11 adjudication. (*Id.* at 473.) The District contended that the trial court’s approval and enforcement
12 of a physical solution interfered with the District’s statutory authority to adopt a groundwater
13 management plan for the Seaside Basin. (*Id.* at 475.) The Court of Appeal held that the trial
14 court “acted within its jurisdiction and properly exercised its discretion in adhering to its prior
15 rulings to minimize conflict with and frustration of the physical solution.” (*Id.* at 481.) The
16 Court of Appeal quoted with approval the following statement from the trial court: “Clearly, the
17 [L]egislature contemplated that courts had the power to develop management plans for aquifer
18 management even if a water management district already existed in a geographical area.” (*Id.* at
19 476.) Of course, this makes sense because courts have a constitutional duty to impose a physical
20 solution. (*Id.* at 480.)

21 Nothing in the OBGMA Act deprives the Court of jurisdiction to adjudicate rights within
22 the Ojai Basin, and in fact the Act expressly preserves the Court’s jurisdiction. This is consistent
23 with existing case law. Ojai’s arguments to the contrary are without support.

24
25 **E. The Preparation of the Ojai Basin Groundwater Sustainability Plan Does Not**
26 **Deprive the Court of Jurisdiction**

27 Likewise, Ojai’s contention that the preparation by OBGMA of a proposed Groundwater
28 Sustainability Plan somehow deprives the Court of jurisdiction is not supported by law. The

1 Statute recognizes the Court’s jurisdiction even when a groundwater sustainability agency already
2 exists in the geographical area and even when such an agency has or is working on a
3 Groundwater Sustainability Plan. For example, Code of Civil Procedure section 849 subdivision
4 (a) expressly provides that the Court “shall have the authority and the duty to impose a physical
5 solution on the parties in a comprehensive adjudication” (Code Civ. Proc, §849, subd. (a).)
6 The only requirement in Section 849 is that “[b]efore adopting a physical solution, the court shall
7 consider any existing groundwater sustainability plan or program.” Similarly, Code of Civil
8 Procedure section 838 subdivision (d) provides that “an action against a groundwater
9 sustainability agency that is located in a basin that is being adjudicated pursuant to this chapter
10 *shall be subject to transfer, coordination, and consolidation with the comprehensive adjudication,*
11 *as appropriate, if the action concerns the adoption, substance, or implementation of a groundwater*
12 *sustainability plan, or the groundwater sustainability agency’s compliance with the timelines in*
13 *the Sustainable Groundwater Management Act.”* (Code of Civ. Proc, § 838, subd. (d), emphasis
14 added.) Therefore, the Statute not only recognizes the Court’s independent authority to impose a
15 physical solution as long as it “considers” any existing groundwater sustainability plan or
16 program, but also gives the Court specific jurisdiction over the actions or inactions of
17 groundwater sustainability agencies.

18 SGMA similarly recognizes the Court’s jurisdiction even when a Groundwater
19 Sustainability Plan is in place or is being prepared. (Wat. Code, § 10737.2.) Rather than
20 displacing the Court’s jurisdiction, SGMA recognizes that courts have an important role to play in
21 implementing SGMA as part of an adjudication action, and should manage its proceedings in a
22 manner that would support the completion of SGMA’s goals to comprehensively manage
23 groundwater basins in ways that are sensitive to both interconnected surface waters and adjacent
24 groundwater basins. As alleged in the TACC, the comprehensive adjudication will promote these
25 goals.

26 The Court’s jurisdiction to proceed even as the SGMA process moves forward is
27 confirmed in *Environmental Law Foundation*. There, the Court of Appeal’s holding
28 demonstrates that the trial courts retain their independent authority under the common law even

1 after the enactment of SGMA. This is because SGMA does not occupy the field or supplant the
2 common law, and can and should be applied in harmony with the trial court’s existing jurisdiction
3 under the common law. (*Environmental Law Foundation, supra*, 26 Cal.App.5th at 866.)

4 **F. The Court Could Structure Future Phases of the Trial to Address Water**
5 **Rights, as Needed, Within Each Basin**

6 Ojai creates a “straw man” argument based on correlative groundwater rights, and then
7 spends a great deal of time seeking to knock the “straw man” down. Ojai’s efforts are misplaced,
8 however, because Ventura is not asking the Court to adjudicate groundwater rights *across* the
9 different basins in this interconnected system. Rather, Ventura asks the Court to initially address
10 the hydrological conditions within the entire Watershed to determine how each part of the system
11 works together as a unified source. This approach is entirely consistent with common law
12 approaches described above, which first consider the interactions within the entire single-source
13 Watershed, fix the collective contribution of each part of the system, and then, within each basin,
14 subarea, or management area, determine individual rights within those parts of the system. (*See,*
15 *e.g., Fossette, supra*, 235 Cal.App.2d 689; *Orange County Water Dist., supra*, 173 Cal.App.2d
16 137; *Mojave, supra*, 23 Cal.4th 1224.) The Court can and should control future phases of the trial
17 such that correlative rights within each basin are addressed only within the individual basins or
18 management areas. This approach is entirely consistent with and mandated by Code of Civil
19 Procedure section 833, subdivision (c), which recognizes that the Court can and should consider
20 interconnected surface waters when necessary to the fair and effective determination of the
21 groundwater rights in a basin.

22 This is of course an issue for future phases of the trial. At this time, all Ventura is asking
23 the Court to do is permit it to demonstrate that the Watershed is an integrated system that must
24 first be assessed on a Watershed basis to determine how each part of the system contributes to the
25 whole. If necessary to determine them, the Court in future phases could address correlative rights
26 on an individual basin level, with due consideration of relationship between the basin and
27 interconnected surface waters and adjacent basins. To proceed otherwise “would be artificial and
28

1 unfair, and likely inconsistent with the rule of priority.” (*Santa Barbara Channelkeeper, supra*,
2 19 Cal.App.5th at 1192.)

3 **G. Water Code Section 2500 Does Not Apply to this Case**

4 Ojai implies that the TACC is somehow defective because it does not plead a surface
5 water adjudication under Water Code section 2500. This assertion lacks any legal support.

6 Water Code section 2500 is an optional administrative process in which a water rights
7 claimant may petition the State Water Resources Control Board for a general adjudication of all
8 water rights to a stream system. (Water Code §§ 2501, 2525.) This process excludes percolating
9 groundwater. (Water Code § 2500.) The State Board’s determination is not self-executing and
10 must be filed with the superior court, where it is subject to challenge. (Water Code §§ 2768-
11 2769.) This statutory procedure for determining surface water rights provides merely an optional
12 procedure and does not preclude the obtaining of judicial relief in the first instance because the
13 common law has long recognized the right of water rights claimants to file suit to enjoin
14 interference with those rights. (*Rank v. Krug* (S.D. Cal. 1956) 142 F.Supp. 1, 74, *aff’d in part*,
15 *rev’d in part sub nom. State of Cal. v. Rank* (9th Cir. 1961) 293 F.2d 340, *on reh’g* (9th Cir.
16 1962) 307 F.2d 96, and *aff’d in part sub nom. City of Fresno v. California* (1963) 372 U.S. 627,
17 and *aff’d in part, rev’d in part sub nom. Dugan v. Rank* (1963) 372 U.S. 609.) The Court retains
18 independent and direct jurisdiction to hear Ventura’s claims. (*National Audubon Society, supra*,
19 33 Cal.3d at 449-450 [“A long line of decisions indicate that remedies before the Water Board are
20 not exclusive, but that the court has original jurisdiction.”].)

21 Ventura was legally entitled to file its surface and groundwater claims directly in this
22 Court, without pursuing the optional administrative process under Water Code section 2500. This
23 makes sense for several reasons. First, Ventura was already subject to the superior court’s
24 jurisdiction due to the underlying complaint by Santa Barbara Channelkeeper. As the Court of
25 Appeal properly recognized, it would have been unfair to Ventura to permit the underlying
26 complaint to proceed but to deprive Ventura of the right to bring the Cross-Complaint in the same
27 action. Second, since Water Code section 2500 excludes percolating groundwater, it would have
28

1 limited use to the alleged interconnected surface and groundwater in the Watershed. For these
2 reasons Water Code section 2500 does not apply to this case and is irrelevant to the Motion.

3 **H. The Proposed Physical Solution is Irrelevant for Determination of this Motion**

4 The Motion can only lie for defects fully disclosed on the face of the pleading under
5 attack or by matters of which judicial notice may be taken. (Code Civ. Proc., § 438, subd. (d).)
6 Declarations or other extrinsic matters are thus improper, and this Court cannot consider
7 discovery admissions or other evidence controverting the pleadings.

8 Accordingly, Ventura objects to, and the Court must disregard Ojai's arguments set forth
9 in Section III.C of the Motion regarding the draft proposed physical solution, provided for
10 settlement discussion purposes, as irrelevant and improper. The *draft* proposed physical solution
11 is not currently before the Court, is not subject to a proper request for judicial notice, and cannot
12 properly be considered as part of the Motion. The TACC requests the imposition of a physical
13 solution, but the Motion discusses the details of the draft proposed physical solution (Motion,
14 Memorandum of Points and Authorities, at 13) that is not properly before the Court for the
15 purposes of its Motion. Further, the scope of the draft proposed physical solution and its
16 relationship with the OBGMA and its authority to manage groundwater within the Ojai Basin
17 through the development of a Groundwater Sustainability Plan is not before this Court on the
18 operative Motion and cannot be considered in a motion for judgment on the pleadings. It is
19 entirely possible that future negotiations over the physical solution result in OBGMA having a
20 significant role in the implementation of the physical solution, at least as it relates to the Ojai
21 Basin, but those issues are irrelevant to the Court's consideration of the Motion.

22 **I. The Court Should Consider Deferring These Motions Until After Phase One**
23 **Trial Evidence Is Presented**

24 For judicial efficiency, and to avoid multiple appeals and further delay in an already
25 delayed proceeding, Ventura suggests that the Court should consider hearing the Phase One
26 evidence first and then make any necessary dispositive legal rulings based on a full evidentiary
27 record. The approach would prevent multiple appeals and additional delays, while also providing
28 the Court of Appeal, if required, with a full record based on a complete evidentiary proceeding

1 regarding the issue of interconnection to avoid the result that “haste makes for a lower affirmance
2 rate.” (See *Panico v. Truck Ins. Exchange, supra*, 90 Cal.App.4th at 1296.) As fully described in
3 the law of the case, the issue of interconnection is critical to the overall scope of the proceedings.
4 It is consistent with judicial efficiency and the long-term interests of the parties for the Court to
5 first hear the evidence on interconnection and then decide any necessary legal issues.

6 **J. To the Extent the Court Finds Any Technical Defects in the TACC, the Court**
7 **Should Permit Ventura to Amend According to Proof at the Phase One Trial**

8 If the Court determines that there are any technical defects in the TACC, the Court should
9 grant Ventura leave to amend the TACC according to proof at the Phase One Trial. This would
10 be the most efficient way to address any defects and would provide the Court the opportunity to
11 make any final legal rulings based on a full evidentiary record.

12 **VI. CONCLUSION**

13 For all of the reasons set forth above, the Court must deny Ojai’s motion for judgment on
14 the pleadings.

15 Dated: January 4, 2022

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