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CLERK OF THE SUPERIOR COURT
BY *[Signature]*
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCED

CSPA Groundwater Cases) Coordinated Action Case No.: 22CV-00203
) Related Cases 21CV-01691 21CV-02127
) Order on Motions to Dismiss and Demurrers to Fourth Amended Complaint
) Date: October 20, 2023 Time: 9:30 A.M. Courtroom 1
) Hon. Carol Ash

Defendants Aliso Water District Groundwater Sustainability Agency and
Widren Water District Groundwater Sustainability Agency's and Defendant
NCDM and Defendant SJREC GSAs' Motions to Dismiss and joinders therein,
Defendant Central Delta-Mendota Groundwater Sustainability Agency's Demurrer
to Plaintiff's Fourth Amended Complaint and joinders therein, and Defendant San
Joaquin River Exchange Contractor's Ground Water Sustainability Agency's
Demurrer to Plaintiff's Fourth Amended Complaint and joinders therein came
regularly on for hearing at 9:30 A.M. on October 20, 2023 in Courtroom 1 of the
Merced Superior Court, the Hon. Carol Ash presiding.

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Lowell K, Chow, Esq., Nathaniel Hoopes Kane, Esq. and Thomas N. Lippe, Esq. appeared on behalf of Plaintiff. Edward M. Amaral, Esq. appeared on behalf of Defendant Turner Island Water District GSA-A, Barbara A. Brenner, Esq. appeared on behalf of Defendant City of Newman Groundwater Sustainability Agency and City of Defendant Patterson Groundwater Sustainability Agency, Christine Di Flippo, Esq. appeared on behalf of Defendant Firebaugh GSA, Shawn M. George, Esq. appeared on behalf of Defendant Ora Loma Water District GSA, Rina M. Gonzales, Esq. appeared on behalf of Defendant County of Merced, Defendant Delta Mendota GSA, Defendant Merced County Delta -Mendota GSA and Northwestern Delta-Mendota GSA, Ann M. Grottveit, Esq. for Defendant Famer's Water District GSA, Joseph M. Marchini, Esq. appeared on behalf of Defendant Central Delta-Mendota GSA, Johnathan R. Marz, Esq. appeared on behalf of Defendant Aliso Water District GSA and Defendant Widren Water District GSA., Stever Ngo, Esq. appeared on behalf of Defendant City of Dos Palos GSA and Defendant City of Madera, Kyle R. Robertson, Esq. appeared on behalf of Defendant County of Fresno GSA and Defendant Delta-Mendota Management Area A and B, Giulio A. Sanchez, Esq. appeared on behalf of Defendant City of Mendota GSA, Edward Terry Schexnayder, Esq. appeared on behalf of Defendant Northwester Delta-Mendota GSA and Defendant Stanislaus County, Lilliana Katherine Selke, Esq. appeared on behalf of Defendant Patterson Irrigation District, Defendant Patterson Irrigation District GSA, Defendant West Stanislaus Irrigation District, and Defendant West Stanislaus Irrigation District GSA, Brett Anthony Stroud, Esq. appeared for Defendant Del Puerto Water District, DM-II GSA and Defendant Oak Flat Water District GSA, Aidah Patrick Wallace, Esq. appeared on behalf of Defendant San Joaquin River Exchange Contractors GSA, and Ellen L. Wehr, Esq. appeared on behalf of Defendant Grassland Groundwater Sustainability Agency, Defendant Grassland Resource Conservation District, and Defendant Grassland Water District.

1 At approximately 3:00 on October 19, 2023, the day before the October 20,
2 2023, hearing, the Court posted the following Tentative Ruling:

3 22CV-00203 CSPA Groundwater Cases #21CV-01691 &
4 21CV-02127

5 Defendants Aliso Water District Groundwater Sustainability Agency
6 and Widren Water District Groundwater Sustainability Agency's and
7 Defendant NCDM and Defendant SJREC GSAs' Motions to Dismiss
8 and joinders therein.

9 **The Motion to Dismiss is DENIED. While this Court declines the**
10 **invitation by Defendant and amicus parties to abstain from**
11 **reviewing the actions of the State Water Board pursuant to**
12 **SGMA's intervention procedures based on the record currently**
13 **before this Court, this Court, on its own motion, is inclined to stay**
14 **this action until the State Water Board's are finalized.**
15 **Recognizing the possibility that State Water Procedure could take**
16 **some number of years to complete and finalize review of all of the**
17 **Groundwater Sustainability Agency plans that are the subject of**
18 **this coordinated litigation, this Court proposes to stay this matter**
19 **indefinitely, subject to periodic status reviews and without**
20 **prejudice to a motion by any party to terminate such stay because**
21 **of changed circumstances.**

22 **The undisputable fact is that the that Reverse Validation**
23 **Procedure created by the Legislature appears on its face to apply**
24 **six Groundwater Sustainability Plans at issue in this litigation and**
25 **that there is no authority expressly exempting such Groundwater**
26 **Sustainability Plans from the Reverse Validation Procedure.**
27 **There is no dispute that the six Groundwater Sustainability Plans**
28 **cover a geographical area that covers multiple counties, and that**
a Coordination Motion for the Reverse Validation Procedure was
granted and is now final. There is no dispute that the Reverse
Validation Procedure contains a very short statute of limitations
and that SGMA provides for various administrative reviews that
can take a significant period of time and whereby Groundwater
Sustainability Agencies whose Plans are found not to comply with
SGMA can be ordered to amend such plans. This Court has
already ruled that the decision by a Groundwater Sustainability

1 Agency to amend its Groundwater Sustainability Plan does not
2 render the existing Coordinated Reverse Validation Procedure
3 moot with regard to the amended plan. No Court of Appeals has
4 as yet reversed this Court's findings that the Coordinated Reverse
5 Validation Action is not rendered moot by an amendment to a
6 given Groundwater Sustainability Plan.

7 While Defendants are correct that it is not practical to proceed
8 with the litigation of the merits of the instant coordinated action
9 while the administrative review of the State Water Board
10 pursuant to SGMA's intervention procedures is in process and
11 the various Groundwater Sustainability Plans that are the subject
12 of this litigation are not finalized, this action is not moot, if for no
13 other reason, because it tolls the statute of limitations that would
14 run if this matter were dismissed and a new Coordinated Reverse
15 Validation Action were brought after SGMA's intervention
16 process is complete. Since the case cannot proceed until the
17 pending administrative review is finalized and if the statute of
18 limitations would preclude a renewed Coordinated Reverse
19 Validation action were brought after the administrative review
20 process is completed, the only practical solution, absent a tolling
21 agreement between all parties, is to stay this action until the
22 administrative review is finalized.

23 If the case is not stayed until the State Water Board review is
24 finalized, then new amended complaints and demurrers to such
25 complaints will need to be filed each time Groundwater
26 Sustainability Plan is amended although the litigation of the
27 merits will not yet be ready to proceed. This serves no practical
28 purpose. The interests of justice are better served by ordering a
stay until the administrative review is finalized so that a single
amended complaint and demurrers thereto can be evaluated on
the merits with respect to the finalized plans.

The parties are ordered to appear to address the court's proposal
to issue an indefinite stay this coordinated action, subject to
periodic status reviews and without prejudice to a motion by any
party to terminate such stay because of changed circumstances.

1 Defendant Central Delta-Mendota Groundwater Sustainability
2 Agency's Demurrer to Plaintiff's Fourth Amended Complaint and
3 joinders therein

4 **The Demurrer is overruled on the grounds of mootness and**
5 **judicial abstention for reasons stated above.**

6 Defendant San Joaquin River Exchange Contractor's Ground Water
7 Sustainability Agency's Demurrer to Plaintiff's Fourth Amended
8 Complaint and joinders therein

9 **Appear to address statute of limitations issues, the Demurrer on**
10 **other grounds is overruled.**

11 After receiving the papers filed by the parties and hearing the arguments of
12 counsel, the matters were submitted by the parties for decision and taken under
13 submission by the Court for purposes of issuing this formal order.

14 **DISCUSSION**

15 **I. Motion to Dismiss**

16 **A. Application of Reverse Validation Procedure to GSP's**

17 As a preliminary matter, Counsel for Defendant Aliso Water District GSA
18 and Defendant Widren Water District GSA objected to the following language in
19 the Tentative Ruling:

20 The undisputable fact is that the that Reverse Validation Procedure
21 created by the Legislature appears on its face to apply six
22 Groundwater Sustainability Plans at issue in this litigation and that
23 there is no authority expressly exempting such Groundwater
Sustainability Plans from the Reverse Validation Procedure.

24 Counsel for Defendant Aliso Water District GSA and Defendant Widren Water
25 District GSA objected to the language stating it was an "undisputable fact" that
26 the Reverse Validation Procedure applied to the six GSPs at issue in this case,
27 arguing Defendant Aliso Water District GSA and Defendant Widren Water District
28 GSA do in fact dispute that the that Reverse Validation Procedure created by the

1 Legislature appears on its face to apply to the six Groundwater Sustainability Plans
2 at issue in this litigation.

3 First of all, this issue was implicitly, if not explicitly, decided when the
4 Stanislaus Superior Court granted the coordination motion: coordination is never
5 required or appropriate to litigate a cause of action that does not exist. A claim
6 that the that Reverse Validation Procedure does **NOT** apply to the six Groundwater
7 Sustainability Plans at issue in this litigation, would essentially seek
8 reconsideration of the Order Granting Coordination without complying with the
9 provisions of Code of Civil Procedure § 1008.

10 Second, this Court finds, as a matter of law, that the Reverse Validation
11 Procedure created by the Legislature appears on its face to apply to the six
12 Groundwater Sustainability Plans at issue in this litigation and that there is no
13 authority expressly exempting such Groundwater Sustainability Plans from the
14 Reverse Validation Procedure. (Code of Civil Procedure § 860, 863). Further, the
15 issue of inapplicability was not raised by Defendant Aliso Water District and
16 Defendant Widren Water District in either the demurrer or motion to dismiss.

17 Water Code § 10726.6 entitled “Action to determine validity of plan”
18 provides as follows:

19 (a) A groundwater sustainability agency that adopts a groundwater
20 sustainability plan may file an action to determine the validity of
21 the plan pursuant to Chapter 9 (commencing with Section 860) of
22 Title 10 of Part 2 of the Code of Civil Procedure no sooner than
180 days following the adoption of the plan.

23 (b) Subject to Sections 394 and 397 of the Code of Civil Procedure,
24 the venue for an action pursuant to this section shall be the county
25 in which the principal office of the groundwater management
26 agency is located.

27 (c) Any judicial action or proceeding to attack, review, set aside,
28 void, or annul the ordinance or resolution imposing a new, or
increasing an existing, fee imposed pursuant to Section 10730,

1 10730.2, or 10730.4 shall be commenced within 180 days
2 following the adoption of the ordinance or resolution.

3
4 (d) Any person may pay a fee imposed pursuant to Section 10730,
5 10730.2, or 10730.4 under protest and bring an action against the
6 governing body in the superior court to recover any money that the
7 governing body refuses to refund. Payments made and actions
8 brought under this section shall be made and brought in the
9 manner provided for the payment of taxes under protest and
10 actions for refund of that payment in Article 2 (commencing
11 with Section 5140) of Chapter 5 of Part 9 of Division 1 of the
12 Revenue and Taxation Code, as applicable.

13 (e) Except as otherwise provided in this section, actions by a
14 groundwater sustainability agency are subject to judicial review
15 pursuant to . Section 1085 of the Code of Civil Procedure
16 (Water Code § 10726.6.; See also, *Santa Clarita Organization for Planning and
17 the Environment v. Castaic Lake Water Agency* (2016) 1 Cal.App.5th 1084, 1096-
18 1098, summarizing the applicability of the reverse validation procedure to a given
19 agency action)

20 The Fourth Amended Complaint alleges at Paragraph 3 that “Plaintiff brings
21 this reverse validation action pursuant to Water Code section 10726.6, subdivision
22 (a), and the validation statute at Code of Civil Procedure section 863 and this
23 Petition for Writ of Mandate pursuant to Water Code section 10726.6, subdivision
24 (e) and Code of Civil Procedure section 1085 to challenge the validity of the
25 coordinated GSP and each component GSP on grounds that Defendants violated
26 the procedural requirements of SGMA and the public trust doctrine in adopting the
27 coordinated GSP and the component GSPs and the coordinated GSP and each
28 component GSP violate the substantive requirements of SGMA, the public trust
doctrine and the waste and unreasonable use doctrine.” (Fourth Amended
Complaint filed May 1, 2023, at ¶ 3 Page 3:6-13.)

1 In *Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 47fn 19, the Court
 2 noted: “Our research discloses that there are more than 200 statutes that provide for
 3 validating proceedings pursuant to sections 860 through 870. The vast majority of
 4 these statutes are found in the Government Code (more than 50 statutes) and in the
 5 Water Code (more than 90 statutes).” (*Id.*) While Water Code § 10726.6(a)
 6 appears to expressly authorize (and insist) that the reverse validation procedure
 7 applies to the Sustainable Groundwater Management Cases, the Court’s
 8 observation that approximately 90 of approximately 200 statutes applying the
 9 Reverse Validation procedure are Water Code statutes infers a Legislative intent
 10 that the Reverse Validation procedure is especially appropriate for cases brought
 11 under Water Code statutes such as the instant case.
 12

13 Thus, the instant action for reverse validation and writ of mandate alleges
 14 procedural and substantive violations of SGMA, the Sustainable Groundwater
 15 Management Act, codified at Water Code § 10720 et seq., for which the validation
 16 procedure of Code of Civil Procedure § 860 and the reverse validation procedure
 17 of Code of Civil Procedure 863 is expressly authorized pursuant to Water Code §
 18 10726.6(a). Furthermore, the actions for writ of mandate pursuant to Code of Civil
 19 Procedure § 1085 is expressly authorized by Water Code § 10726.6(e).
 20

21 Furthermore, “Although reverse validation proceedings appear at first blush
 22 to be optional (*ibid.* [providing that “any interested person may bring an action”],
 23 italics added), they are not: Code of Civil Procedure section 869 “ ‘says [the
 24 interested person] must’ ” bring the inverse validation action “ ‘or be forever
 25 barred from contesting the validity of the agency’s action in a court of law.’ ”
 26 (*Santa Clarita Organization for Planning and the Environment v. Castaic Lake*
 27 *Water Agency* (2016) 1 Cal.App.5th 1084, 1096-1097 quoting *Kaatz, supra*, 143
 28 Cal.App.4th at p. 30, 49, quoting *City of Ontario v. Superior Court* (1970) 2
 Cal.3d 335, 341.)

1 If the instant action is subject to the validation and reverse validation
2 procedure as Water Code § 10726.6(a) strongly suggests, “a third party cannot
3 sidestep those proceedings by purporting to invoke a different procedural vehicle,
4 such as a writ of mandate (Code Civ. Proc., § 1085)...” (*Santa Clarita*
5 *Organization for Planning and the Environment v. Castaic Lake Water Agency*
6 (2016) 1 Cal.App.5th 1084, 1097 [citing *Millbrae School Dist. v. Superior Court*
7 (1989) 209 Cal.App.3d 1494, 1499 [suit seeking a writ of mandate subject to
8 validation proceedings]; *Protect Agricultural Land v. Stanislaus County Local*
9 *Agency Formation Commission* (2014) 223 Cal.App.4th 550, 558, 167 Cal.Rptr.3d
10 343 [same].)

11
12 This Court has already ruled that the amendments being made to the plans
13 do not qualify as new plans. On January 5, 2023, this Court denied a previous
14 motion to dismiss, brought on the same grounds as the instant motion to dismiss,
15 holding as follows:

16 The San Joaquin River Exchange Contractors Groundwater
17 Sustainability Agency (SJRECGSA) filed a Motion to Dismiss
18 asserting that the claims in the operative complaint have been
19 rendered moot because the Department of Water Resources directed
20 certain defendants to correct deficiencies in the Ground Water
21 Sustainability Plans (GSP) as required by the Sustainable
22 Groundwater Management Act. Moving Party argue the court is
23 unable to grant effective relief as the plans have been revised from the
24 GSP that is the subject of the complaint, thus rendering the operable
complaint in this action moot. Some of the motions also argue that
their contention that Plaintiff has not prosecuted the case aggressively
enough support dismissal at this juncture.

25 Nine Districts filed joinders to the motion. Six Districts have filed
26 independent motions, and several Defendants filed a Statement of
27 Support. The Motions to Dismiss were heard and argued on
28 December 9, 2022.

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

1
2 Under the case law that moving parties assert as authority for their
3 motions, a matter is deemed moot only if it is impossible for the Court
4 to grant any relief. Thus, the burden of proof requires moving to
5 parties to provide judicial notice of facts that would allow the court to
6 make the determination it is impossible for the Court to grant relief as
7 a matter of law. While this Court takes judicial notice of the fact that
8 the Department of Water Resources (DWR) directed certain
9 defendants to correct deficiencies in their Ground Water Sustainability
10 Plans for failure to comply with the Sustainable Groundwater
11 Management Act, this fact alone does not necessarily render the relief
12 requested moot because it is impossible for this Court to determine
13 that it cannot grant any relief. Additionally, the DWR determination
14 letter has no effect on the requests for relief sought for parties that
15 were not the subject of the letter. None of the Motions to Dismiss or
16 Joinders thereto evaluate the grounds on which the Reverse Validation
17 Complaint is based, the relief sought, and the reasons that it is now
18 impossible to provide any of the relief sought in the Reverse
19 Validation Complaint.

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

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

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

6 Requiring a plaintiff to refile its suit after every amendment would
7 result in a “multiplicity of suits and its concurrent drain on private,
8 governmental, and judicial resources...” (*Davis v. Superior Court*
9 (1985) 169 Cal.App.3d 1054, 1061), especially when involving the
10 multi-county coordinated action at issue here, and would elevate form
11 over substance.

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

23 The Motion to Dismiss on the ground that Plaintiff has not diligently
24 prosecuted their case is also denied.

25 (Order after Hearing Denying Motions to Dismiss filed January 5, 2023.)

26 On April 11, 2023, this Court issued an Order After Hearing Granting
27 Motions for Leave to File Fourth Amended and Supplemental Complaint and
28 Petition for Writ of Mandate again rejecting Defendants argument the Revised
GSPs repealed and replaced the prior GSPs:

The Court recognizes Reverse Validation is an in rem proceeding
challenging a single discrete public agency action. **In their
opposition to the Motion, Defendant Contractors again raise
arguments that the July 22 Amended and revised GSP was a**

1 wholly new action with its own administrative record replacing
2 the December 2019 GSP, thus the court lacks jurisdiction. This
3 court previously rejected this argument in deciding the
4 defendants' motion to dismiss. For purposes of allowing the filing
5 of the FAC, the court would not deny leave to amend the
6 complaint on the grounds it lacks jurisdiction; that issue would
7 more properly be raised in further motions once the FAC is filed.
(Order After Hearing) [bold added].)

8 Having essentially ruled twice that "Plaintiffs have established that relief can
9 still be provided because the plans are merely being modified, not vacated, and that
10 until all of the alleged defects in the plans are corrected, relief can still be
11 provided" (Order After hearing filed January 5, 2023) dismissal of the instant
12 action would potentially bar judicial review of the amended plans because
13 Defendants could potentially argue that a new action on the amended plans would
14 relate back to the original plans and that the statute of limitations for attack on the
15 amended plans began to run when the original versions of those plans were
16 implemented.

17 Defendants cannot, in good faith, support a motion to dismiss, by arguing
18 that the reverse validation procedure is not applicable to the instant case, and then
19 later argue, after a dismissal is entered, that the instant action is forever barred
20 because the reverse validation procedure does in fact apply, especially given the
21 current contention by Counsel for Defendant Aliso Water District GSA and
22 Defendant Widren Water District GSA that those Defendants wish to preserve, for
23 later litigation, their contention that the reverse validation procedure does not apply
24 to the instant claims for relief under SGMA, the public trust doctrine, and the
25 waste and unreasonable use doctrine. This Court finds that a necessary prerequisite
26 to weighing of the equities of dismissal is a determination of whether or not
27 Reverse Validation applies to the instant action and the claims pending therein.
28

1 **B. The Merits of the Motion to Dismiss**

2 The gist of the Motion to Dismiss, is that the claims set forth in the Fourth
3 Amended Complaint are moot given the Water Board’s determination that the
4 Groundwater Sustainability Plans issued by the various Defendants violate SMGA
5 and must be amended. (Defendant Aliso Water District Groundwater Sustainability
6 Agency’s and NCDM GSA’s Memorandum of Points and Authorities in Support
7 of Motion to Dismiss Action filed June 30, 2023, at Page 5:1-6:8 [“In light of
8 DWR’s inadequacy determination, this case is subject to dismissal for two reasons.
9 First, there remains no justiciable controversy for this Court to resolve. A judicial
10 determination that the GSPs are invalid would serve no purpose because DWR has
11 already made this determination based on its own review. Nor would an order
12 compelling Defendants to develop GSPs that comply with SGMA because DWR’s
13 inadequacy determination triggered SGMA’s intervention procedures and State
14 Water Board oversight which will result in development of a compliant GSP or a
15 State Water Board interim plan. Thus, the case is moot.”]; Defendant San Joaquin
16 River Exchange Contractors Groundwater Sustainability Agency’s Memorandum
17 of Points and Authorities in Support of Motion to Dismiss Action; Joinder in
18 Motion to Dismiss of Aliso Water District GSA filed July 5, 2023, 5:1-5:27
19 [identical language].)

21 Plaintiff and Petitioner California Sportfishing Alliance is not a groundwater
22 agency and has not issued any Groundwater Sustainability Plan at issue in this
23 litigation. As Set forth in the Fourth Amended Complaint, Paragraph 56,
24 California Sportfishing Alliance “brings this action as a private attorney general
25 pursuant to Code of Civil Procedure § 1021.5 and any other applicable legal
26 theory, to enforce important rights affecting the public interest. Issuance of the
27 relief requested in this Complaint will confer a significant benefit on a large class
28 of persons by ensuring that Defendants approve valid coordinated and component

1 GSPs that comply with SGMA and other governing laws.” (Fourth Amended
2 Complaint filed May 1, 2023, Paragraph 56 Page 13:26-14:2.)

3 Code of Civil Procedure § 1021.5 provides: “Upon motion, a court may
4 award attorneys’ fees to a successful party against one or more opposing parties in
5 any action which has resulted in the enforcement of an important right affecting the
6 public interest if: (a) a significant benefit whether pecuniary or nonpecuniary, has
7 been conferred on the general public or a large class of persons, (b) the necessity
8 and financial burden of private enforcement, or of enforcement by one public
9 entity against another public entity are such as to make the award appropriate, and
10 (c) such fees should not in the interest of justice be paid out of the recovery, if
11 any.” (Code of Civil Procedure § 1021.5.)

12
13 In *Center for Biological Diversity v. County of San Bernardino* (2010) 185
14 Cal.App.4th 866, 891, the Court summarized the provisions of Code of Civil
15 Procedure § 1021.5 as follows:

16 Section 1021.5 codifies the private attorney general doctrine adopted
17 by the California Supreme Court in *Serrano v. Priest* (1977) 20 Cal.3d
18 25, 141 Cal.Rptr. 315, 569 P.2d 1303. **395 (*Woodland Hills*
19 *Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933, 154
20 Cal.Rptr. 503, 593 P.2d 200 (Woodland Hills).) “ ‘ “The doctrine
21 rests upon the recognition that privately initiated lawsuits are often
22 essential to the effectuation of the fundamental public policies
23 embodied in constitutional or statutory provisions, and that, without
24 some mechanism authorizing the award of attorney fees, private
25 actions to enforce such important public policies will as a practical
26 matter frequently be infeasible. [Citations.]” [Citation.] Entitlement to
27 fees under section 1021.5 requires a showing that the litigation: “(1)
28 served to vindicate an important public right; (2) conferred a
significant benefit on the general public or a large class of persons;
and (3) [was necessary and] imposed a financial burden on plaintiffs
which was out of proportion to their individual stake in the matter.”
[Citation.]’ [Citation.] In short, section 1021.5 acts as an incentive for
the pursuit of public interest-related litigation that might otherwise
have been too costly to bring.” (*Families Unafraid to Uphold Rural El*

1 *Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505,
2 511, 94 Cal.Rptr.2d 205.) [footnote omitted]

3 (*Center for Biological Diversity v. County of San Bernardino* (2010) 185
4 Cal.App.4th 866, 891.)

5 There can be no dispute that SGMA provides two independent mechanisms
6 for assuring that a GSP complies with SGMA: (1) Code of Civil Procedure § 860
7 and the reverse validation procedure of Code of Civil Procedure 863 is expressly
8 authorized pursuant to Water Code § 10726.6(a) permitting an interested party to
9 bring a reverse validation proceeding to determine whether a GSP complies with
10 SGMA, and (2) Water Code §10733.4(d) requires that the State Water Board
11 “evaluate the groundwater sustainability plan within two years of its submission by
12 a groundwater sustainability agency and issue an assessment of the plan. The
13 assessment may include recommended corrective action.” (*Id.*)

14 Given that the State Water Board is required by Water Code § 10733.4(d) to
15 evaluate every GSP submitted to it (“The department *shall...*”), the only logical
16 legislative purpose for authorizing a parallel judicial review of a GSP pursuant to
17 Code of Civil Procedure § 863 would be to address the situation in which a GSP
18 failed to comply with SGMA, the public trust doctrine (Water Code § 10720.1(b)),
19 or the waste and unreasonable use doctrine but the State Water Board nonetheless
20 approved the GSP. (See analogous procedure in *Shuts v. Covenant Holdco LLC*
21 (2012) 208 Cal.App.4th 609, 623-624 [Legislature provided private right of action
22 for affected residents in addition to creation of agency to enforce the statute].)

23 Given the extremely short period of time by which a Reverse Validation
24 proceeding must be filed, the Reverse Validation Action authorized by Water Code
25 § 10726.6(a) must be filed long before the interested party contemplating such an
26 action would have any knowledge of whether or not the State Water Board was
27 likely to approve or reject a given GSP pursuant to 10733.4(d) or such action
28

1 would be time barred. In the instant case, the State Water Board has declared the
2 various plans at issue in this litigation as incomplete. No definitive action with
3 regard to Reverse Validation of the instant plans can occur until the Plants are
4 either rejected as inadequate or approved pursuant to 23 Cal. Code Regs §
5 335.2(e).

6 There is no question that as a general rule, Reverse Validation is intended to
7 be an extremely rapid remedy. (See *Santa Clarita Organization for Planning and*
8 *the Environment v. Castaic Lake Water Agency* (2016) 1 Cal.App.5th 1084, 1096
9 [Validation proceedings are a procedural “vehicle” for obtaining an expedited but
10 definitive ruling regarding the validity or invalidity of certain actions taken by
11 public agencies. [citations omitted]. They are expedited because they require
12 validation proceedings to be filed within 60 days of the public agency's action
13 [citation omitted] are “given preference over all other civil actions,” (*id.* [citation
14 omitted]; and, most pertinent here, any appeal must be filed within 30 days after
15 notice of entry of judgment.].) Under normal circumstances, one might anticipate
16 that judgment pursuant to a Water Code § 10726.6(a) Reverse Validation action
17 would be entered before State Water Board approval or rejection pursuant to
18 10733.4(d) . In this case, determinations concerning venue and coordination
19 delayed the Reverse Validation procedure until after State Water Board action .
20

21 While it is generally inappropriate for a trial court to speculate on how
22 litigation before it may develop in the future, the fact is that the instant Motion to
23 Dismiss on the grounds that the existing claims are moot on the grounds that there
24 remains no justiciable controversy for this Court to resolve requires precisely that
25 analysis, i.e. a determination of precisely what justiciable controversies remain and
26 the relief Plaintiffs might potentially be entitled to in connection with those
27 controversies.
28

1 If the Plans at issue in this litigation are approved by the State Water Board,
2 then the instant Reverse Validation actions can proceed with regard to any defects
3 or shortcomings Plaintiffs contend remain in the approved plans. If the instant
4 Plans are rejected as inadequate, and the State Water Board designates the basin
5 probationary and elects to take over groundwater management by adopting an
6 interim GSP for the basin pursuant to Water Code § 10735.2(a) and 10735.8, then
7 Plaintiffs would arguably be entitled to an order confirming the State Water Board
8 determination and the GSP's at issue in this action would appear to thereafter
9 become moot requiring the filing of a new action or amendment of the existing
10 action to address any alleged defects in the GSP created by the State Water Board
11 to replace the inadequate plans.
12

13 Even if the instant Plans are rejected as inadequate, it would not be
14 appropriate to enter judgment with respect to the instant Reverse Validation action
15 until the issues relevant to the Code of Civil Procedure § 1021.5 Private Attorney
16 General attorneys fees provisions are resolved, e.g. whether: "(a) a significant
17 benefit whether pecuniary or nonpecuniary, has been conferred on the general
18 public or a large class of persons, (b) the necessity and financial burden of private
19 enforcement, or of enforcement by one public entity against another public entity
20 are such as to make the award appropriate, and (c) such fees should not in the
21 interest of justice be paid out of the recovery, if any."(Code of Civil Procedure §
22 1021.5.)

23 During oral argument, Plaintiff's counsel suggested that a justiciable
24 controversy might also exist if the delay in State Water Board's evaluation of the
25 plans and/or creation of a probationary plan resulted in irreparable harm that might
26 necessitate equitable relief. While need for injunctive or other equitable relief
27 *might* preclude mootness notwithstanding the eventual decision by the State Water
28 Board rejecting the Plans at issue in this case as inadequate, no request for

1 equitable relief is now pending before this Court and there has been no suggestion
2 that Plaintiffs currently anticipate any specific need for equitable relief.

3 The remaining justiciable controversy would then be whether “(a) a
4 significant benefit whether pecuniary or nonpecuniary, has been conferred on the
5 general public or a large class of persons, (b) the necessity and financial burden of
6 private enforcement, or of enforcement by one public entity against another public
7 entity are such as to make the award appropriate, and (c) such fees should not in
8 the interest of justice be paid out of the recovery, if any.”(Code of Civil Procedure
9 § 1021.5.)
10

11 In evaluating those issues, this Court would necessarily have to determine
12 whether the instant action conferred a significant benefit to the public or a large
13 class of persons benefit notwithstanding the fact that the State Water Board
14 independently found the Plans at issue to violate SGMA without the involvement
15 of Plaintiff because Plaintiff assured that a remedy provided by Water Code §
16 10726.6(a) remained available as a Legislative created backup in the event that a
17 Plans already determined to be incomplete were nonetheless approved while not in
18 compliance with SGMA, the public trust doctrine enacted as Water Code §
19 10720.1(b), or the waste and unreasonable use doctrine (See *United States v. Water*
20 *Resources Control Bd.* (1986) Cal.App.3d 82, 105 [“superimposed on these basic
21 principles defining water rights is the overriding constitutional limitations that the
22 water be used as reasonably required for the beneficial use to be served.”].)

23 One potential interpretation of the instant litigation that the Defendants
24 arguably appear indifferent to, is the fact that the GSP’s they defend or attempted
25 to defend were in fact found to be incomplete; thus, supporting an inference that
26 this action was necessary as a backup to State Water Board evaluation, and
27 therefore that a significant benefit was conferred on the public.
28

1 Since there is no question that justiciable controversies remain in this
2 litigation, the Motion to Dismiss is DENIED.

3 II. DEMURRERS

4 The Demurrers to the Fourth Amended Complaint are OVERRULED. As to
5 the Defendants arguments that the Fourth Amended Complaint improperly joins
6 parties, fails to state a claim or is untimely, the court rejects those arguments. As
7 Plaintiff pointed out, in a complex, coordination case such as this, the court has
8 great discretion in the manner of pleadings and management of the case. Further
9 the Fourth Amended complaint clearly states a claim and is not uncertain.
10 Defendant further argues the court lacks jurisdiction over the allegations related to
11 the 2022 GSPs revisions, but as noted above the court has consistently held those
12 revisions were just that “revisions” to the existing GSPs, not new and different
13 governmental actions and were properly raised by way of a supplemental
14 complaint.
15


16 Regarding the statute of limitations issue, at the hearing on the Demurrer,
17 the defendants conceded the 180-day statute pursuant to Water Code 10726.6 was
18 the applicable statute of limitations in a reverse validation action. While
19 Defendants argued this action was filed prematurely, before the 180 days had
20 elapsed, they did not argue they had suffered any prejudice. In any case, the 180
21 period has since elapsed so any prematurity defect no longer exists. As to the
22 Demurrer on grounds of mootness, for reasons stated above concerning the
23 Motions to Dismiss, the demurrer is overruled.

24 The court exercises its’ discretion and orders this action STAYED
25 pending the conclusion of the review of the GSPs by the DWR, subject to
26 periodic status reviews and without prejudice to a motion by any party to
27 terminate such stay because of changed circumstances. Piecemeal litigation
28 of plans that are not yet final serves no practical purpose.

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Any time requirements for the filing of responsive pleadings to the Fourth Amendment Complaint are also stayed pending further order of the court. A status review is set for October 25,2024 at 9:30 in Courtroom 1.

Dated: November 17, 2023



Hon. Carol K. Ash
Judge of the Superior Court

**PROOF OF SERVICE
(1013ab, 2015.5 C.C.P)**

STATE OF CALIFORNIA)
)
COUNTY OF MERCED)

Case No. **22CV-00203**

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is Merced County Superior Court, 627 West 21st Street, Merced, California 95340.

On **November 17, 2023**, I served the within **ORDER ON MOTIONS TO DISMISS & DEMURRERS TO 4TH AMENDED COMPLAINT** was served on each persons listed below, by depositing such notice in the United States Mail or by placing the envelope for collection and mailing following our ordinary business practices or by Interoffice Mail, emailed, enclosed in sealed envelope with postage prepaid. For attorneys and/or agencies that have established boxes at the courthouse, a copy of said document was placed in the appropriate box in the Superior Court Clerk's Office.

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

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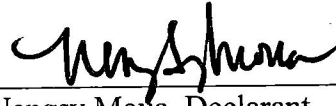
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **November 17, 2023**, at Merced, California.



Nengsy Moua, Declarant