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INDIAN WELLS VALLEY WATER DISTRICT

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN, METROPOLITAN DIVISION
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17 MOJAVE PISTACHIOS, LLC; et al.,
18 Plaintiffs,
19 v.
20 INDIAN WELLS VALLEY WATER
DISTRICT; et al.,
21 Defendants.
22

Case No. BCV-19-103265-DRL
Assigned For All Purposes To:
The Honorable David R. Lampe, Dept. 11

**REPLY BY DEFENDANT INDIAN
WELLS VALLEY WATER DISTRICT
IN SUPPORT OF DEMURRER TO
VERIFIED COMPLAINT**

Exempt From Fees (Govt. Code § 6103)

**Date: June 16, 2020
Time: 8:30 a.m.
Dept.: 11**

Complaint Filed: November 19, 2019
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. PRELIMINARY STATEMENT.**

3 A demurrer should be sustained when the complaint reveals a defect of parties. (Code
4 Civ. Proc., § 430.10(d); *County of Imperial v. Super. Ct.* (2007) 152 Cal.App.4th 13, 35 [61
5 Cal.Rptr.3d 145].) Here, Plaintiffs' Verified Complaint reflects a defect of parties for failure to
6 join necessary, indispensable parties - - i.e., failure to join other pumpers ("Non-Party Pumpers")
7 within the Indian Wells Valley Groundwater Basin ("Basin"). The Indian Wells Valley Water
8 District's Demurrer should be sustained to require Plaintiffs to join the Non-Party Pumpers.

9 Plaintiffs' conclusory Opposition to the Demurrer misses the point. Plaintiffs repeatedly
10 state their action involves a limited number of parties. This is undisputed. The problem:
11 Plaintiffs never explain how the Court can resolve the matter and grant the requested relief
12 among such a limited number of parties. Namely, Plaintiffs fail to explain how the Court can
13 determine rights and craft a physical solution in this closed groundwater basin without all
14 significant pumpers joined. (See 2 Slater, *Cal. Water Law & Policy*, Ch. 11, §§ 11.06[2], 11.09
15 (Matthew Bender); Complaint, p. 6:11 ["Indian Wells Valley is a closed, groundwater basin"].)
16 "Often times, parties object to a piecemeal determination of rights to hydrologically
17 interconnected water supplies. Where feasible, the better result is obtained by addressing all
18 rights in a shared supply." (2 Slater, *supra*, Ch. 11, § 11.06[2] [emphasis added].)

19 Moreover, the cases and statutes on which Plaintiffs rely in their Opposition do not
20 support a limited adjudication here. The cases instead support requiring Plaintiffs to join the
21 Non-Party Pumpers, while the statutes are inapplicable and irrelevant. "Code of Civil Procedure
22 §§ 830-852," which includes the statutes Plaintiffs cite, "includes provisions to streamline
23 adjudications. These provisions open the door to comprehensive adjudications and the
24 determination of all rights, declared priority, pumping location, place of use, and storage space."
25 (2 Slater, *supra*, Ch. 11, § 11.09 [emphasis added].)

26 The District's Demurrer should be sustained.
27
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1 **2. PLAINTIFFS’ OPPOSITION MISCHARACTERIZES THE DISTRICT’S**
2 **DEMURRER AND, THEREFORE, MISSES THE POINT - - I.E., A LIMITED**
3 **ADJUDICATION IS NOT APPROPRIATE HERE. THE NON-PARTY**
4 **PUMPERS ARE NECESSARY, INDISPENSABLE PARTIES.**

5 Plaintiffs claim the District argues “that physical solutions may only be generated from or
6 apply to comprehensive, basin-wide adjudications.” (Opposition, p. 13:12-13.) Plaintiffs have
7 misconstrued the District’s argument in the Demurrer. The District does not argue that there can
8 never be actions to resolve conflicting water rights claims among a limited number of parties.
9 The District instead argues that resolution among a limited number of parties in a closed
10 groundwater basin would not be appropriate here and, accordingly, the Non-Party Pumpers are
11 necessary, indispensable parties who should be joined before the case proceeds.

12 “Whether all indispensable parties [are] before the court is determined by the relief
13 granted The requirement that indispensable parties be before the court is mandatory A
14 failure to join indispensable parties necessary to the relief involved constitutes a jurisdictional
15 defect” (*California Water Service Co. v. Edward Sidebotham & Son, Inc.* (1964)
16 224 Cal.App.2d 715, 730 [37 Cal.Rptr. 1] [citations omitted] [“The trial court’s order directing
17 the amendment of the complaint to bring in additional parties and extend the scope of the action
18 was made pursuant to its authority under section 389 of the Code of Civil Procedure [T]he
19 new parties were essential and the court had no jurisdiction to consider the rights of the
20 additional and original parties inter se until . . . the amended complaint was filed. . . . The
21 judgment finally rendered was an inter se adjudication of the rights of all the parties among
22 themselves.”].)

23 Since Article X, section 2 was added to the California Constitution (as Article XIV,
24 section 3) in 1928, the California Supreme Court has repeatedly stated:

25 “[I]t is clear that when a riparian or overlying owner brings an
26 action against an appropriator, it is no longer sufficient to find that
27 the plaintiffs in such action are riparian or overlying owners, and,
28 on the basis of such finding, issue the injunction. It is now

1 vacuum. (See *Mojave, supra*, 23 Cal.4th at 1242; *Joslin, supra*, 67 Cal.2d at 140.) Indeed, all
2 water needs of those in the Basin’s water field must be addressed in determining whether
3 Plaintiffs are entitled to the requested relief. For this purpose, the Non-Party Pumpers are
4 necessary, indispensable parties.

5 **3. THE CASES AND STATUTES ON WHICH PLAINTIFFS RELY DO NOT**
6 **SUPPORT A LIMITED ADJUDICATION HERE.**

7 The cases and statutes Plaintiffs cite in the Opposition do not address the real issue here.
8 The issue: resolving this matter among a limited number of parties is not appropriate.

9 **A. The Cases Plaintiffs Cite are Inapposite and Distinguishable.**

10 Plaintiffs claim that the District has ignored a long line of authority involving
11 adjudications among a limited number of parties. Plaintiffs are mistaken.

12 (1) **Plaintiffs Rely on an Overbroad Reading of *City of Pasadena v. City of***
13 ***Alhambra.***

14 Plaintiffs cite *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908 [207 P.2d 17]
15 as direct support for their statement “the Court’s jurisdiction to provide the relief requested is not
16 conditioned on the joinder of all potential users of the resource.” (Opposition, p. 6:17-19.) This
17 is an overbroad reading of *Pasadena* that ignores parts of the opinion. It also evades the
18 District’s argument: a limited adjudication is not appropriate here.

19 *Pasadena* does state that a “line must be drawn somewhere in order to bring the
20 proceeding within practical bounds, and it would have been impossible to reach a solution . . . if
21 jurisdiction to make an allocation depended upon the joinder of every person having some actual
22 or potential right to the water in the basin and its sources of supply.” (*Pasadena, supra*,
23 33 Cal.2d at 920.) But *Pasadena* drew that line differently than Plaintiffs seek to do here. In
24 *Pasadena*, the Court affirmed the trial court’s decision to allocate water “without the joinder of a
25 number of private users who pumped comparatively small amounts.” (*Id.* at 919 [emphasis
26 added].) Importantly, the Court also noted it appropriate “that certain named parties who used
27 fairly substantial amounts be joined in the action.” (*Id.* at 920 [emphasis added].)
28

1 *Pasadena* also approved a trial court order enlarging the scope of necessary parties to
2 “embrace an adjudication of rights of the defendants *inter se* and the rights of each and every
3 party as against each and every other party.” (*Id.* at 919.) The Supreme Court continued that “It
4 was within the discretion of the trial court to determine whether it was necessary to adjudicate
5 *inter se* the amount of water to which each party was entitled, and the record indicates that it
6 would have been impracticable to decide the matter solely between plaintiff and each defendant.”
7 (*Ibid.* [emphasis added].)

8 *Pasadena* does not support a limited adjudication as advocated by Plaintiffs - - and, in
9 fact, supports just the opposite.

10 (2) *Allen v. California Water & Telephone Co. and City of Santa Maria v.*
11 *Adam were Not Adjudications Among a Limited Number of Parties.*

12 Plaintiffs cite *Allen v. California Water & Telephone Co.* (1946) 29 Cal.2d 466 [176 P.2d
13 8] and *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266 [149 Cal.Rptr.3d 491] in a
14 string cite of cases that purportedly “resolve[d] conflicting water rights claims between a limited
15 number of parties.” (Opposition, p. 10:1-7.) Yet, neither *Allen* nor *Santa Maria* were
16 adjudications involving a limited number of parties. (See *Allen, supra*, 29 Cal.2d at 472
17 [“Defendant also filed a cross-complaint against plaintiffs and, presumably, all other riparian and
18 appropriative owners of waters of the basin and the holders of liens on many of the riparian
19 lands, seeking not only a determination of the interests of the various cross-defendants, but also
20 to have the trial court make reasonable regulations for the use of the waters.”]; *Santa Maria,*
21 *supra*, 211 Cal.App.4th at 276 [“This litigation was commenced to identify and prioritize the
22 water rights held by the many users of Basin groundwater. Most of the case was resolved by an
23 agreement (Stipulation) among the Santa Maria Valley Water Conservation District (District),
24 local cities and water companies (public water producers), and most of the owners of land
25 overlying the Basin.”].)

26 *Allen* and *Santa Maria* do not support a limited adjudication anywhere, including here.
27
28

1 take water from a particular area, (2) uses being made of the water, and (3) all factors involved.
2 (*Id.* at 524-525.) Here, Plaintiffs’ case, as alleged, seeks both a determination of the priority of
3 water rights and protection of the entire Basin as a whole - - relief appropriate for a
4 comprehensive adjudication. (See Complaint, p. 19:22-23; 2 Slater, *supra*, Ch. 11, § 11.09.)
5 When priority of water rights and preservation of a defined groundwater basin are placed in
6 issue, a comprehensive adjudication involving all significant stakeholders is required. (See Code
7 Civ. Proc., § 841(a) [“Except as otherwise provided in this section, the boundaries of the area
8 subject to a comprehensive adjudication shall be consistent with the boundaries of a basin.”].)

9 Like *Tulare, Hudson v. West* (1957) 47 Cal.2d 823 [306 P.2d 807], *Yorba v. Anaheim*
10 *Union Water Co.* (1953) 41 Cal.2d 265 [259 P.2d 2], *Bloss v. Rahilly* (1940) 16 Cal.2d 70 [104
11 P.2d 1049], *Byington v. Superior Court* (1939) 14 Cal.2d 68 [92 P.2d 896], *Meridian, Ltd. v. City*
12 *& County of San Francisco* (1939) 13 Cal.2d 424 [90 P.2d 537], *City of Lodi v. East Bay*
13 *Municipal Utility District* (1936) 7 Cal.2d 316 [60 P.2d 439], *Crane v. Stevinson* (1936) 5 Cal.2d
14 387 [54 P.2d 1100], *Wallace Ranch Water Co. v. Foothill Ditch Co.* (1935) 5 Cal.2d 103 [53
15 P.2d 929], and *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351 [40 P.2d 486] are readily
16 distinguishable. They each involved a dispute over a specific water source within a basin serving
17 as a common water supply and interference with that source. In other words, the alleged
18 interference and requested remedy could be resolved without joinder of all parties claiming
19 rights within the entire basin. (See *Hudson, supra*, 47 Cal.2d at 826 [competing rights to Grub
20 Ravine]; *Yorba, supra*, 41 Cal.2d at 268 [competing rights to Santa Ana River]; *Bloss, supra*,
21 16 Cal.2d at 72 [competing rights to Duck Creek and certain foreign waters flowing in it];
22 *Byington, supra*, 14 Cal.2d at 69 [arose out of *Meridian, supra*, 13 Cal.2d 424]; *Meridian, supra*,
23 13 Cal.2d at 429 [conflicting rights to Tuolumne and San Joaquin Rivers and their tributaries];
24 *City of Lodi, supra*, 7 Cal.2d at 321-322 [competing rights to Mokelumne River]; *Crane, supra*,
25 5 Cal.2d at 389 [competing rights to Bear Creek and foreign waters flowing in it]; *Wallace*
26 *Ranch, supra*, 5 Cal.2d at 104 [competing rights to Foothill Ditch]; *Peabody, supra*, 2 Cal.2d at
27 358-359 [competing rights to Gordon Valley Creek/Suisun Creek].)

1 *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68 [142 P.2d 289] and *Corona*
2 *Foothill Lemon Co. v. Lillibridge* (1937) 8 Cal.2d 522 [66 P.2d 443] are also distinguishable.
3 *City of Los Angeles* was “concerned only with the existence of the rights of plaintiff and
4 defendants and raises no question as to the remedy.” (*City of Los Angeles, supra*, 23 Cal.2d at
5 72, 80 [emphasis added].) In *Corona Foothill*, the parties disputed the basin boundaries, with the
6 appropriator conceding that if the overlying owners were correct, then there was no surplus in the
7 water field subject to appropriation. (*Corona Foothill, supra*, 8 Cal.2d at 532.)

8 None of the cases that Plaintiffs cite support a limited adjudication here.

9 **B. The Statutes Plaintiffs Cite are Inapplicable.**

10 Plaintiffs discuss two statutes that they claim authorize their limited adjudication here.
11 This attempted reliance also fails.

12 **(1) Code of Civil Procedure Section 833(b)'s Exemptions do Not Apply.**

13 First, Plaintiffs cite Code of Civil Procedure section 833(b)(1) to (b)(3). Section 833(b)
14 exempts some groundwater rights actions from the procedures for a comprehensive adjudication
15 under certain limited circumstances. Those circumstances do not apply here, and Plaintiffs fail
16 to show how any one of them does apply.

17 Rather than explaining how at least one of these circumstances applies, Plaintiffs offer
18 the conclusory statement that “section 833(b)(1)-(3) clearly apply to Plaintiffs’ claims and
19 requested relief” (Opposition, p. 12:12-13 [emphasis added]), followed by the equally unhelpful
20 circular statement that “Plaintiffs’ action, seeking resolution of water right claims between only
21 thirteen parties, is by definition an action that can be resolved among a limited number of parties
22 . . .” (Opposition, p. 12:15-17 [emphasis added]). Saying something is so does not make it so.
23 Merely because Plaintiffs seek a resolution between thirteen parties does not mean that
24 Plaintiffs’ action in fact “can be resolved among a limited number of parties.”

25 Code of Civil Procedure section 833(b) contains three narrowly tailored exemptions to
26 the requirement of proceeding by way of a comprehensive adjudication. Code of Civil
27 Procedure sections 830 to 852 include provisions to streamline the comprehensive adjudication
28 process and provide for the determination of all rights, declared priority, pumping location, and

1 place of use, together with appropriate injunctive relief. (Code Civ. Proc., § 834.) That
2 streamlined comprehensive adjudication process can and must be employed here. As discussed
3 in the District’s Demurrer, none of the three limited circumstances under section 833(b) are
4 relevant here. (Demurrer, pp. 6-8.)

5 (2) **Code of Civil Procedure Section 832(b) does Not Support a Limited**
6 **Adjudication Here.**

7 Finally, Plaintiffs cite Code of Civil Procedure section 832(b) for the proposition that
8 there is a distinction between a water rights lawsuit among a limited number of parties and a
9 comprehensive adjudication. This is true. Section 832(b) defines “complaint” for use within the
10 chapter outlining the streamlined comprehensive groundwater adjudication procedures.
11 “‘Complaint’ means a complaint filed in superior court to determine rights to extract
12 groundwater and includes any cross-complaint that initiates a comprehensive adjudication in
13 response to a plaintiff’s complaint or other cross-complaint.” (Code Civ. Proc., § 832(b).)

14 But in making their argument, Plaintiffs again miss the point. The District does not assert
15 that a plaintiff shall only be allowed to initiate a comprehensive adjudication. The District
16 instead argues that Plaintiffs’ Verified Complaint here should not proceed as a determination of a
17 limited number of rights under the circumstances here. To proceed as a limited adjudication,
18 Plaintiffs’ Verified Complaint must satisfy one of section 833(b)’s exemptions. Plaintiffs’
19 Verified Complaint does not. (See, *supra*, § 3.B(1).) A Basin-wide physical solution is not
20 feasible here absent the Non-Party Pumpers. (See 2 Slater, *supra*, Ch. 11, §§ 11.06[2], 11.09.)


21 Here, the Verified Complaint alleges that the Basin is “closed” and drains “internally”
22 (Complaint, ¶¶ 15, 18), and through the Verified Complaint, Plaintiffs seek imposition of a
23 physical solution to protect the long-term health of the Basin (Complaint, ¶ 1). Requiring joinder
24 of the Non-Party Pumpers will provide a final and comprehensive determination of all rights to
25 the common supply. Rather than proceeding by piecemeal determination of rights to a common
26 interconnected supply, “the better result is obtained by addressing all rights in a shared supply.”
27 (2 Slater, *supra*, Ch. 11, § 11.06[2].)

1 **4. CONCLUSION.**

2 For all of the foregoing arguments and authorities, and for those in the Demurrer, the
3 District respectfully requests that the Court sustain the Demurrer to Plaintiffs' Verified
4 Complaint and require Plaintiffs to join the Non-Party Pumpers if the case is to proceed.

5
6 DATED: June 9, 2020

MURPHY & EVERTZ LLP

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10 By: 
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PROOF OF SERVICE

Mojave Pistachios, LLC; et al. v. Indian Wells Valley Water District; et al.
Kern County Superior Court - Metropolitan Division; Case No. BCV-19-103265-DRL
The Honorable David R. Lampe, Dept. 11

I am a resident of the State of California, over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 650 Town Center Drive, Suite 550, Costa Mesa, CA 92626.

On June 9, 2020, I served true copies of the following documents(s) described as **REPLY BY DEFENDANT INDIAN WELLS VALLEY WATER DISTRICT IN SUPPORT OF DEMURRER TO VERIFIED COMPLAINT** on the interested parties in this action as follows:

PLEASE SEE SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mmendoza@murphyevertz.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on **June 9, 2020**, at Costa Mesa, California.



Mary Ann Mendoza

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SERVICE LIST

Mojave Pistachios, LLC; et al. v. Indian Wells Valley Water District; et al.
Kern County Superior Court - Metropolitan Division; Case No. BCV-19-103265-DRL
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