

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**25CV000704: CALIFORNIA DEPARTMENT OF WATER RESOURCES vs ALL
PERSONS INTERESTED IN THE MATTER OF THE AUTHORIZATION OF DELTA
CONVEYANCE PROGRAM REVENUE BONDS, THE ISSUANCE,...
06/12/2025 Hearing on Demurrer in Department 53**

Tentative Ruling

NOTICE:

Consistent with Local Rule 1.06(B), any party requesting oral argument on any matter on this calendar must comply with the following procedure:

To request limited oral argument, on any matter on this calendar, you must call the Law and Motion Oral Argument Request Line at (916) 874-2615 by 4:00 p.m. the Court day before the hearing and advise opposing counsel. At the time of requesting oral argument, the requesting party shall leave a voice mail message: a) identifying themselves as the party requesting oral argument; b) indicating the specific matter/motion for which they are requesting oral argument; and c) confirming that it has notified the opposing party of its intention to appear and that opposing party may appear via Zoom using the Zoom link and Meeting ID indicated below. If no request for oral argument is made, the tentative ruling becomes the final order of the Court.

Unless ordered to appear in person by the Court, parties may appear remotely either telephonically or by video conference via the Zoom video/audio conference platform with notice to the Court and all other parties in accordance with Code of Civil Procedure §367.75. Although remote participation is not required, the Court will presume all parties are appearing remotely for non-evidentiary civil hearings. The Department 53/54 Zoom Link is <https://saccourt-ca.gov.zoomgov.com/my/sscdept53.54> and the Zoom Meeting ID is 161 4650 6749. To appear on Zoom telephonically, call (833) 568-8864 and enter the Zoom Meeting ID referenced above. NO COURTCALL APPEARANCES WILL BE ACCEPTED.

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.pdf>.

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list.

Once the form is signed it must be filed with the clerk. If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with

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a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

TENTATIVE RULING:

Defendants North Coast Rivers Alliance, et al.'s demurrer to Plaintiff California Department of Water Resources' complaint is overruled.

Defendants' unopposed request for judicial notice is granted for the limited purposes permitted for judicial notice. (See, Evid. Code §451, subd. (a); §452, sub. (b)-(d); see also, *Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 768 [court may take judicial notice of the existence of court documents but not to the truth of the statements contained therein]; *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145-148; *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1569-70.)

In this validation action, Plaintiff seeks validation of a bond resolution adopted on January 6, 2025 which authorizes issuance of bonds to finance Delta conveyance facilities. The bond resolution is titled the Delta Conveyance Program Revenue Bond Resolution ("2025 DCP General Resolution"). The DCP General Resolution includes preliminary cost estimates for the Delta Conveyance Program ("DCP") and an estimate of the amount of costs to be paid with 2025 DCP bond proceeds. (Comp. pp. 3, 5.) In the 2025 DCP General Resolution, Plaintiff defined the DCP as:

[T]he environmental review, planning, engineering, design, and, if and when the Department determines to be appropriate, acquisition, construction, operation and maintenance of facilities for the conservation and conveyance of water diverted from the Sacramento River through intakes located in the north Delta in, about and through the Delta southward toward and ultimately into the California Aqueduct, which is a portion of the existing State Water Project, originally known as the Feather River Project. Delta Conveyance Program facilities include, but are not limited to, one or more water diversion intake structures, sedimentation basins, flow control structures, tunnels, tunnel access structures, pumping plants, pipelines, electrical transmission structures, appurtenant facilities, and including as applicable, necessary or desirable mitigation, all such facilities and mitigation collectively to accomplish the purposes of the preceding sentence. (Comp. p. 5.)

Defendants demur to the complaint on the basis that there is another action pending between the same parties on the same cause of action, that this action should be stayed or dismissed pursuant to the doctrine of exclusive concurrent jurisdiction, and

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that the Court has no jurisdiction over this action because a prior action resulted in judgment on the same cause of action.

A demurrer “tests the pleadings alone and not the evidence or other extrinsic matters.” (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905.) The purpose of a demurrer is to test the legal sufficiency of a claim. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994.) For the purpose of determining the effect of a complaint, its allegations are liberally construed, with a view toward substantial justice. (CCP § 452; *Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140-141; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7.) The Court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law, and considers matters which may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1111-1112.) A general demurrer does not admit contentions, deductions, or conclusions of fact or law alleged in the complaint; facts impossible in law; or allegations contrary to facts of which a court may take judicial notice. (*Blank, supra*, 39 Cal. 3d at 318, *William S. Hart Union High School Dist. v. Regional Planning Com.* (1991) 226 Cal. App. 3d 1612, 1616 fn.2.) Extrinsic evidence may not properly be considered on demurrer or on a motion to strike. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal. App. 3d 868, 881; *Hibernia Savings & Loan Soc. v. Thornton* (1897) 117 C. 481, 482.)

A demurrer may be sustained only if the complaint lacks any sufficient allegations to entitle the plaintiff to relief. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal. App. 3d 764, 778.) “Plaintiff need only plead facts showing that he may be entitled to some relief...we are not concerned with plaintiff’s possible inability or difficulty in proving the allegations of the complaint.” (*Highlanders, Inc. v. Olsan* (1978) 77 Cal. App. 3d 690, 696-697.) “[Courts] are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded.” (*Picton v. Anderson Union High School Dist.* (1996) 50 Cal. App. 4th 726.) A demurrer admits the truth of all material facts properly pled and the sole issue raised by a general demurrer is whether the facts pled state a valid cause of action - not whether they are true. (*Serrano v. Priest* (1971) 5 Cal. 3d 584, 591.)

CCP § 430.10(c)

Defendants first demur to the complaint on the basis that “[t]here is another action pending between the same parties on the same cause of action.” (CCP § 430.10(c).)

According to Defendants, the instant action alleges the same cause of action involved in

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Plaintiff's prior 2020 validation action. In the 2020 validation action, Plaintiff sought validation of three 2020 DP bond resolutions and the bonds which would be issued in accordance with the resolutions. (RJN Exh. A at pp. 10-14, Exhs. 1-3.) Plaintiff defined the Delta Program as:

[T]he environmental review, planning, engineering, design, and, if and when the Department determines to be appropriate, acquisition, construction, operation and maintenance of facilities for the conveyance of water in, about and through the Sacramento-San Joaquin Delta, subject to such further specification thereof as the Department in its discretion may adopt. Delta Program facilities may include, but are not limited to, water diversion intake structures located on the Sacramento River and a tunnel to convey water to Banks Pumping Plant. (RJN Exh. A, at Exh. 1 p. 3.)

Following trial, the court denied validation of the bonds and 2020 Bond Resolutions. Plaintiff appealed the decision and the appeal is currently pending. The trial court concluded that the definition of "Delta Program" in the 2020 General Resolution failed to properly identify or restrict the direction of purpose of the Delta Program conveyance facilities and gave plaintiff "nearly infinite authority" to issue 2020 DP bonds for facilities serving any purposes including those beyond Plaintiff's authority. (RJN Exh. C pp. 18, 25-28.)

"A single cause of action cannot be the basis for more than one lawsuit. A demurrer raising this objection to a second action between the same parties 'is strictly limited so that...the defendant must show that the parties, cause of action, and issues are identical, and that *the same evidence* would support the judgment in each case.'" (*Pitts v. City of Sacramento* (2006) 138 Cal. App. 4th 853, 856 [citations omitted].) "The primary right theory is a theory of code pleading that has long been followed in California. It provides that a 'cause of action is comprised of a 'primary right' of the plaintiff, a corresponding 'primary duty' of the defendant, and a wrongful act by the defendant constituting a breach of that duty. The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action." (*Crowley v. Katleman* (1994) 8 Cal. 4th 666, 681 [citations omitted].) "As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered." (*Id.*) "The latter application of the primary right theory appears to be most common: numerous cases hold that when there is only one primary right an adverse judgment in the first suit is a bar even though the second suit is based on a different theory or seeks a different remedy." (*Id.* [citations omitted].)

In arguing that the instant validation action and the 2020 validation action advance the

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same primary right, Defendants maintain that the right is Plaintiff's need to validate revenue bond funding for the DCP. Defendants contend that the instant action alleges that Plaintiff alleged that it issued a Notice of Preparation for a proposed Delta conveyance facility in January 2020 and that in adopting the General Resolution, Plaintiff authorized a revenue bond financing to fund the DCP as defined in the General Resolution which describes the DCP approved in December 2023. (Comp. ¶¶ 25, 26.) Defendants point out that the allegations in the complaint in the 2020 validation action also refer to the January 2020 Notice of Preparation for a proposed Delta conveyance facility. (RJN Exh. A ¶ 26.) Defendants thus argue that Plaintiff has admitted that the DCP as to which revenue funding is sought is the same in both validation actions. "Because the 2020 and 2025 Delta Conveyance Programs are the same program, DWR's 2025 attempt to validate financing for that program is based on the same primary right as its 2020 attempt." (Dem. 15:6-7.)

Plaintiff contends that Defendants are incorrectly focusing on the DCP and how the bonds could be used to finance the same project as opposed to the bonds themselves. Plaintiff argues that instead of focusing on the *in rem* nature of a validation proceedings, Defendants assume that the bonds at issue in the 2020 validation action are the same bonds at issue in this action.

A validation "action shall be in the nature of a proceeding in rem." (CCP § 860.) "However, 'A validating proceeding differs from a traditional action challenging a public agency's decision because it is an *in rem* action whose effect is binding on the agency and on all other persons.'" (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892, 921 [citations omitted].) In such an action, the Court has jurisdiction of the *res*. (*Id.* at 922.) "A validation action fulfills a second important objective, which is to facilitate a public agency's financial transactions with third parties by quickly affirming their legality." (*Friedland v. City of Long Beach* (1998) 62 Cal. App. 4th 835, 843.) "[I]n its most common and practical application, the validating proceeding is used to secure a judicial determination that proceedings by a local government entity, such as the issuance of municipal bonds and the resolution or ordinance authorizing the bonds, are valid, legal, and binding. Assurance as to the legality of the proceedings surrounding the issuance of municipal bonds is essential before underwriters will purchase bonds for resale to the public.' (Sen. Rules Com., Rep. on Sen. Bill No. 479 (1985-1986 Reg. Sess.).)" (*Id.* at 842.)

Here, the *res* at issue in the 2020 validation action was the 2020 Bond Resolutions and the bonds issued pursuant to those resolutions. By contrast, even though the instant validation action may involve financing of the DCP, the *res* is the 2025 General Resolution and the bonds issued pursuant to that resolution. Indeed, as noted by

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Plaintiff, even if the appellate court were to affirm the trial court's decision in the 2020 validation action which held that the definition of the Delta Program was overbroad, such an affirmance on appeal would not impact the 2025 General Resolution or the bonds issued pursuant to the resolution as they do not contain the same definition of the Delta Program. Even though both validation actions involve funding of the same project, they involve different debt instruments, and thus different *res*. This is true even though the summons in the 2020 validation action may have referred to "subsequent series" of bonds. That reference, however, would at most only refer to any subsequent series of bonds authorized by the 2020 Bond Resolutions, not the bonds issued pursuant to the 2025 General Resolution. The Court rejects Defendants' argument that simply because the two actions involve the same project that they also involve the same cause of action. Defendants cite no authority which would hold that separate bond resolutions, even if meant to finance the same project, may not properly be the subject of separate validation actions. Indeed, relevant case law suggests the opposite is true. (See *State ex rel. Pension Obligation Bond Com. v. All Persons Interested etc.* (2007) 152 Cal.App.4th 1386 [detailing multiple validation actions involving different resolutions regarding funding the State's employer contribution requirements].)

Notably, given that the instant action is an *in rem* action, the traditional application of the primary right doctrine is not particularly apt. This is true because the *in rem* action only results in a judicial determination with respect the validity of the subject *res*. The validation action does not involve a primary right of an injured plaintiff and corresponding duty of a defendant which is the essence of the primary right doctrine. (*Crowley, supra* at 681.) Here, both validation actions involve different bond transactions whose validity will be determined based on different authorizing documents offered in each case.

Defendants also contend that the appellate court in the 2020 validation action could determine the outcome of the instant action. Specifically, Defendants contend that the appellate court could interpret Water Code § 11260 to prohibit Plaintiff from diverting water into the conveyance facility and could therefore rule that Plaintiff could never issue bonds to finance that facility. This is no basis to sustain the demurrer. First, Defendants are entirely speculating as to the outcome of an appeal. Second, the trial court's ruling was "quite narrow" and only focused on the definition of the Delta Program in the General Resolution. (RJN Exh. C p. 28.) But in any event, the mere possibility that an appellate court may interpret the law in such a manner as to impact this or any other case is not a basis to abate this action.

Defendants also contend that Plaintiff admitted that the instant action is premised on the same cause of action as the 2020 validation action because Plaintiff filed a notice of

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related case. The Court rejects this argument. CRC, Rule 3.300 sets forth the standards for when a case is related and those standards do not include any requirement that the causes of action are identical or that they involve identical *res*. Specifically, CRC Rule 3.300 indicates cases are related if they involve the same parties and the “same or similar claims” which is the box Plaintiff checked in the notice of related case filed on January 30, 2025. The cases may be said to be similar given they involve the same project, but as noted, they involve different *res*.

Defendants relatedly argue that the judgment in the 2020 validation action will have preclusive effect on this action again because they involve the same cause of action and any ruling will be *res judicata* in this case. But this argument is premised on the same one rejected above, specifically that both cases involve the same cause of action.

The Court concludes that there is no action pending between the parties on the same cause of action pursuant to CCP § 430.10(c). The instant validation action is not premised on the same cause of action as the one in the 2020 validation action. Rather, the instant in rem validation action is premised on a different bond resolution and the bonds issued pursuant to that resolution. Thus, the instant action is not subject to a plea in abatement, is not barred by *res judicata*, and also does not involve the improper splitting of a cause of action.

Defendants’ demurrer pursuant to CCP § 430.10(c) is overruled.

Exclusive Concurrent Jurisdiction

Defendants next argue that the action is barred by the doctrine of exclusive jurisdiction.

Under the rule of exclusive concurrent jurisdiction, “when two California superior courts have concurrent jurisdiction over the subject matter and all parties involved in the litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved.” (*People ex rel. Garamendi* (1993) 20 Cal.App.4th 760, 769-770.) If “the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule.” (*Plant Insulation v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 788.)

Defendants again argue that the 2020 validation action and the instant action involve the same dispute and thus this case must be abated pursuant to the exclusive concurrent jurisdiction doctrine. However, this doctrine only applies “when **two**

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California superior courts have concurrent jurisdiction” over a dispute. (*People ex rel. Garamendi*, supra, 20 Cal.App.4th at 769-770 [emphasis added].) Here the 2020 validation action and the instant action were both filed in Sacramento Superior Court and thus, there are not two superior courts with concurrent jurisdiction. The doctrine is inapplicable.

Further, the argument is premised again on the argument that both action involve the same project. The Court has already rejected the argument that the cases involve the same dispute.

The demurrer on the basis of exclusive concurrent jurisdiction is overruled.

CCP § 870(a)

Defendants lastly demur on the basis that this action is barred by CCP § 870(a)

In a validation action, CCP § 870(a) states that “[t]he judgment, if no appeal is taken, or if taken and the judgment is affirmed, shall, notwithstanding any other provision of law including, without limitation, Sections 473 and 473.5, thereupon become and thereafter be forever binding and conclusive, as to all matters therein adjudicated or which at that time could have been adjudicated, against the agency and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.” Given the in rem nature of a validation action, CCP § 870(a) section only precludes subsequent challenges to the res which was at issue in the action. The validity of the 2025 General Resolution and the bonds adopted pursuant to that resolution were not at issue in the 2020 validation action. Any final judgment in the 2020 validation action will only preclude challenges to the resolutions and bonds involved in that action. Defendants’ argument to the contrary is the same argument addressed above regarding the fact that both actions involve the same project. The Court has already rejected that contention. Further, in order to obtain jurisdiction over the res in a validation action, a published summons must set forth a “detailed summary of the matter the public agency or other person seeks to validate.” (CCP § 861.1.) In the 2020 validation action, the trial court only had jurisdiction over the matters described in the published summons which could not have included the 2025 General Resolution and the bonds adopted pursuant to that resolution.

The demurrer on the basis that the complaint is barred by CCP § 870(a) is overruled.

Defendants’ demurrer is overruled in its entirety.

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No later than June 26, 2025, Defendants shall file and serve their answer to the complaint.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.