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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC, a California limited liability company, Plaintiffs and Petitioners vs. IMPERIAL IRRIGATION DISTRICT and DOES 1-10, Defendants and Respondents	Case No. ECU07980 (Assigned for all purposes to Hon. L. Brooks Anderholt, Dept. 9) **PETITIONERS' REPLY IN SUPPORT OF MOTION TO ENFORCE JUDGMENT AND TO ENJOIN VIOLATION OF THE JUDGMENT DURING THE PENDING APPEAL** Action Filed: November 27, 2013 Hearing date: November 28, 2018 Time: 8:30 Dept: 9 Judge: Hon. L. Brooks Anderholt

Plaintiffs/Petitioners MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC ("Petitioners" or the "Abattis") submit this reply in support of their motion to enforce the Court's judgment and in response to the questions posed by the Court at the hearing on November 14, 2018.

I. THE COURT HAS THE JURISDICTION TO ENFORCE ITS JUDGMENT AND SHOULD EXERCISE THAT JURISDICTION TO PREVENT THE IID FROM ENTERING INTO THE DROUGHT CONTINGENCY PLAN ("DCP").

The Court has requested that the parties respond to four questions related to this motion. The answers to those questions also resolve most of the objections IID has raised to this motion. Petitioners address IID's remaining objections below, after responding to the Court's questions.

A. Answer to Question 1: The Court Has Jurisdiction Over This Case Pending the Resolution of the IID's Appeal from the Court's Judgment and Writ of Mandate.

As this Court is aware, the Court of Appeal already has denied IID's request to stay enforcement of this Court's Judgment for Declaratory Relief ("Judgment") because the Judgment is a prohibitory injunction. That portion of the Judgment restraining IID from making new contracts that violate agricultural users' water rights is thus operative and enforceable even during the pendency of IID's appeal. This Court thus has jurisdiction pending the appeal to enforce the Judgment and issue post-judgment relief as long as doing so does not alter the Judgment on appeal so that the Court of Appeal's jurisdiction is preserved. (Frankin & Franklin v. 7-Eleven Owners for Fair Franchising (2000) 85 Cal.App.4th 1168; see also, Cal. Judges Benchbook Civ. Proc. Before Trial (2018 ed.) § 11.63, Injunctive Relief [citing Franklin for authority of trial court to grant post-judgment injunctive relief to preserve the status quo until an appeal is decided].)

In Franklin, the Court of Appeal upheld the trial court's issuance of a post-judgment injunction preventing the appellant former class counsel from pursuing separate attorneys' fees claims against the class representatives and successor class counsel that would have interfered with the attorneys' fees award contained in a class judgment that was on appeal. The Court of Appeal rejected the argument that the trial court lacked jurisdiction to grant any post-judgment relief while the appeal of the class judgment was pending. (Id. at pp. 1172-1173.) The Court of Appeal explained that the trial court's issuance of the injunction was not stayed because it was not in "derogation of" the Court of Appeal's

jurisdiction to decide the appeal from the class action judgment. (Id. at p. 1173.) Indeed, the Court concluded that the injunction was necessary because the conduct threatened to render the appeal from the judgment futile and was thus necessary to preserve the status quo. (Id.) The injunction would not have any impact on the effectiveness of the appeal, but the opposite was true. Thus, the Court concluded that the trial court was not divested of jurisdiction under Code of Civil Procedure section 916. (Id. at p. 1174 [concluding that the trial court "granted the relief sought for reasons that are entirely consistent with the policy underlying the jurisdictional limitations imposed on trial courts by [Code of Civil Procedure] section 916."].)

Similarly, here any injunction or post-judgment order issued by this Court to prevent IID's adoption of the Drought Contingency Plan ("DCP") will not "modify or destroy the pending judgment appealed from, but [] preserve the integrity of one part of it." (Franklin, 85 Cal.App.4th at p. 1174.) This Court therefore has jurisdiction to take the necessary actions requested by Petitioners to protect its Judgment and to preserve the status quo during the pendency of the appeal. Petitioners are not asking for the Court to alter or modify the Judgment in any way, but merely asking for the Court to enforce the Judgment that this Court entered and prevent IID from violating it.

B. Answer to Questions 2 and 3: A New Order from this Court is Necessary to Compel Obedience to the Court's Judgment for Declaratory Relief.

Code of Procedure section 128, subd. (a)(4) provides in relevant part that "*Every court shall have the power . . . [t]o compel obedience to its judgments*, orders, and process . . . ." (Cal. Code Civ. Proc. § 138, subd. (a)(4), emphasis added.) In explaining the inherent power underlying that express statutory power, California courts have embraced the reasoning that:

> The power to enforce their decrees is necessarily incident to the jurisdiction of courts. Without such power, a decree would in many cases be useless 'All courts have this power, and must necessarily have it; otherwise they could not protect themselves from insult, or enforce obedience to their process. Without it they would be utterly powerless.'

(Sec. Trust & Sav. Bank v. Southern Pac. R. Co. (1935) 6 Cal.App.2d 585, 589 [quoting Commonwealth v. Lewis (Pa. 1916) 98 A. 31, 33].)

In addition, pursuant to Code of Civil Procedure section 177(2), every trial judge has the power "[t]o compel obedience to his lawful orders as provided in this code." Furthermore, Code of

Civil Procedure section 187 affords a trial court "all the means necessary" to carry its jurisdiction in effect, and the trial court may adopt any suitable process or mode of proceeding to conform to the spirit of the Code of Civil Procedure.

Appellate courts have cited the statutory power provided under Code of Civil Procedure section 128 in upholding post-judgment orders issued by trial courts to compel compliance with the injunctive decrees contained in trial court judgments. For example, in Brown v. Brown (1971) 22 Cal.App.3d 82, 84, the trial court issued a post-judgment order in a family law proceeding directing the wife to comply with a mandatory injunction in the judgment. The Court of Appeal affirmed the trial court's post-judgment order, stating: "Under the circumstances it would have reasonless for the trial court to bring about unnecessary litigation and delay an inevitable result by requiring Leon to initiate a new action against Beverly to obtain what was already his under the existing judgment." (Id.) Similarly, in City of Los Angeles v. Silver (1979) 98 Cal.App.3d 745, 749-752, the appellate court upheld a trial court's order *restating the provisions of its preliminary injunction* and *ordering additional directives* in order to enforce its preliminary injunction in the face of defendant's persistent and unlawful refusal to abide by it. (See also, Blueberry Properties, LLC v. Chow (2014) 230 Cal.App.4th 1017, 1020 [upholding post-judgment order of the trial court appointing the clerk of the court as an elisor to execute escrow documents on behalf of the defendant after defendant refused to follow judgment directing defendant to execute all the documents necessary to consummate the sale of property].)

As stated in Dawson v. East Side Union High School Dist. (1994) 28 Cal.App.4th 998, 1044: "The jurisdiction of a court of equity to enforce its decrees is coextensive with its jurisdiction to determine the rights of the parties, and it has power to enforce its decrees as a necessary incident to its jurisdiction."

More specifically, a California trial court has the power to issue a post-judgment injunction to compel obedience to its judgment when the defendant refuses to comply with the judgment. In Addiego v. Hill (1969) 268 Cal.App.2d 280, the trial court's judgment compelled the defendants to transfer their majority stock in a corporation to plaintiffs. When the defendants voted to initiate a post-judgment dividend by the corporation, the trial court issued a post-judgment injunction

restraining defendants from all further corporate activities. (Id. at p. 289.) The appellate court upheld the issuance of the new post-judgment injunction, stating: "Certainly the trial court had authority to take *whatever steps were necessary* to preserve the corporation and its assets during the pendency of this appeal. (Id. [opining that the post-judgment appointment of a receiver also would have been proper], emphasis added.)

Here, post-judgment injunctive relief is likewise necessary during the pending appeal to preserve the water rights of Petitioners and other irrigating landowners during the pendency of IID's appeal. Even though the declaratory judgment prohibits IID from entering into new contracts that take water away from agricultural users within the district, IID contemplates doing just that. IID's General Manager recommends adoption of the DCP by IID in disregard of the judgment. (Orr Decl., ¶ 2, Exh. B.) Mr. Kelley recognized that the arguments in opposition to the DCP relating to the landowners' equitable rights in the water right, like those made by Petitioners herein and adopted by this Court as part of its judgment, was the "Elephant in the Room" during the DCP workshop. (Sanchez Decl., Exh. A.) As he said: "The elephant in the room . . . is this question of ownership." (Ibid.) He even stated: "So no one should have any illusions that this is about anything other than the nature of the trust and who owns the water right." (Ibid.) However, as IID's opposition brief makes clear, IID does not believe that any compliance with this Court's judgment is necessary and IID can nonetheless go forward with approval of the DCP. That is why the existence of the Judgment for Declaratory Relief that prohibits the IID from making these new contracts is not sufficient to protect Petitioners.

Without any further injunctive relief enjoining IID from adopting the DCP and related agreements and/or a more specific order directing that adoption of the DCP and related agreements that would violate this Court's Declaratory Judgment, IID is poised to take a vote to approve the DCP and related agreements and thereby violate the Judgment and disrupt the status quo.

Although IID's counsel originally objected to Petitioners seeking *ex parte* relief to enforce the Judgment, contending that no vote on the DCP was imminent, IID rejected Petitioners' proffered stipulation to continue the *ex parte* application on the condition that IID provide Petitioners with seven days' notice of any vote on the DCP. (Orr Decl., Exh. B.) In light of the IID's insistence upon pressing the DCP to a Board vote and its position that the Judgment does not prevent IID from

entering into the DCP and related agreements, this Court should issue an injunction prohibiting IID from approving the DCP and related agreements during the pending appeal of the Judgment and/or a new order confirming that approval of the DCP and related agreements would violate the scope of the Court's existing Judgment and IID lacks authority to enter into those agreements during the pending appeal.

C. Answer to Question 4: When the Court's Rulings Are Upheld by the Court of Appeal, the DCP Entered Into by the IID in the Interim Would Be Void *Ab Initio*, But the Uncertainty and Chaos IID Would Create By Approving the DCP in Violation of the Judgment Should Be Avoided.

Petitioners agree that IID's conduct in approving the DCP and related agreements in violation of this Court's Judgment would be an act that is void *ab initio* when the Court of Appeal affirms this Court's Judgment for Declaratory Relief. However, the ability to punish IID for contempt of the Judgment is not a sufficient remedy in this case. Like the class and their counsel in Franklin, who obtained the award of attorneys' fees by a judgment, Petitioners have the right to preserve the fruits of their victory *in this action* by preserving the status quo during the pendency of IID's appeal from that Judgment. If IID can simply violate the Judgment that the Court of Appeal has ruled is fully enforceable, the outcome of the appeal will be undermined as far as the provision prohibiting the making of new contracts is concerned. The Abattis and other agricultural water users will be forced to initiate a new lawsuit to reassert their equitable and beneficial rights in the water held in trust by IID to invalidate the DCP and related agreements because the DCP is a contract with the federal government subject to validation under Water Code section 23225. Thus, the vindication of rights the Abattis obtained by obtaining the Judgment and the prohibitory injunction against the making of new contracts will be lost if the Court does not intercede now and issue post-judgment injunctive relief, which is correlative or ancillary relief authorized by a court of equity that issued a declaratory judgment.

As the Supreme Court explained in San Ysidro Irrigation Dist. v. Superior Court of San Diego County (1961) 56 Cal.2d 708, 720, it is perfectly acceptable for a court of equity to enjoin acts of a municipal agency, like an irrigation district, from taking acts in excess of its jurisdiction. Thus, in Addiego v. Hill, supra, 268 Cal.App.2d 280, 289, the appellate court upheld the authority of the trial

court to issue a post-judgment injunction prohibiting the defendants from conducting the affairs of a corporation, acts which would have been void *ab initio*, after a judgment by which the defendants were ordered to transfer their shares in the corporation to plaintiffs.

Under the foregoing case law, especially the authority of Addiego, this Court has authority to prohibit IID from making contracts in excess of its jurisdiction and in violation of the Judgment of this Court.

D. NONE OF IID'S OTHER OBJECTIONS PREVENT THIS COURT FROM COMPELLING IID'S OBEDIENCE TO THIS COURT'S JUDGMENT WHICH IS CURRENTLY ENFORCEABLE.

1. Petitioners' Challenge to IID's Entering Into the DCP and Related Agreements is Timely.

IID claims that Petitioners' request for relief is untimely because the DCP was referenced in a May 2018 press release and addressed at an August 2018 meeting. (IID's November 15, 2018 Opp., at p. 8, lns. 19-22.) IID neglects to mention that it negotiated the DCP and the equally important side agreement between IID and Metropolitan Water District of Southern California ("MWD") in secret for years. IID also neglects to mention that it did not release a draft of the DCP until October 10, 2018 and that it did not release a draft of the side agreement between IID and MWD until November 9, 2018. (November 13, 2018 Declaration of Craig Morgan, ¶¶ 26, 29 and Exh. 13 to Index of Exhibits.) Petitioners sought relief from this Court immediately after receiving the side agreement between IID and MWD and when it appeared that IID was preparing to vote on both the DCP and the IIW-MWD Agreements. Therefore, Petitioners' request for relief is timely.

2. IID Has Acknowledged That the DCP Presents Issues that Are Inextricably Intertwined With the Issues Embraced by This Court's Judgment.

Petitioners and other farming families have filed objections with IID that the adoption or approval of the DCP and related agreements would violate the Judgment entered by this Court. (Orr Decl., Exh. B.)

IID's counsel asserts in its opposition that this Court's Judgment is unrelated to the issues presented by the DCP: "[T]he Court's statement of decision and the declaratory judgment said nothing about and had no bearing on IID's arrangements or potential arrangements with third parties

who are not water users within IID and allowing IID flexibility to store water, which *might* have an impact on all of IID's users equally, regardless of type." (IID's November 15, 2018 Opp.., at p. 3, lns. 15-21.)

However, the evening before the *ex parte* hearing, at its Board meeting to discuss the DCP, IID took a very different position on the nexus between the substance of the agricultural users' water rights that are the subject of the present case and the DCP. IID's General Manager, Mr. Kelley, recognized that the arguments in opposition to the DCP relating to the landowners' equitable rights in the water right, like those made by Petitioners herein and adopted by this Court as part of its Judgment, was the "Elephant in the Room" during the DCP workshop. (Sanchez Decl., Exh. A.)

While IID's counsel may not appreciate the relationship between this litigation and the DCP, IID's General Manager does understand it. IID's arguments that IID's adoption of the DCP is unrelated and does not violate this Court's Judgment issued by this Court are not well taken.

3. An Injunction May Be Issued When a Party, Like the IID, Threatens or Is About to Commit an Act Tending to Render a Judgment in an Action Ineffectual.

As discussed above, IID's contention that there is no statutory or decisional law authorizing post-judgment injunctive relief is flat out wrong. Among other statutes providing the Court authority, Code of Civil Procedure section 128, subd. (a)(4), provides express authority for the trial court to compel obedience to a judgment. The cases have consistently recognized that such authority is necessary to prevent a party from rendering the judgment meaningless and the Court's power ineffectual and may be exercised by a the trial court, during an appeal, to avoid rendering the outcome of appeal ineffectual in whole or in part.

IID's companion argument that section 526 only provides authority for *preliminary* injunctive relief, not after a judgment is issued, is likewise erroneous. Section 526 does not only address preliminary injunctions, but sets forth the cases in which "*an injunction* may be granted." (Cal. Code Civ. Proc. § 526, subd. (a), emphasis added.)

Moreover, section 526 authorizes a court to grant injunctive relief "(3) [w]hen it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, . . . some act in violation of the rights of another party to the action respecting the subject matter of the action, and

tending to render the judgment ineffectual[,]" "(4) [w]hen pecuniary compensation would not afford adequate relief[,]" "(6) [w]here the restraint is necessary to prevent a multiplicity of judicial proceedings[,]" and "(7) [w]here the obligation arises from a trust." (Cal. Code Civ. Proc. §§ 526, subd. (a)(3)(4)(6) and (7).) These are all cases in which injunctive relief are authorized that are separate and distinct from the situation where *a preliminary injunction* may be necessary prior to entry of judgment to protect a party against great or irreparable injury. (Cf. Cal. Code Civ. Proc. § 526, subd. (a) (2).)

All of the rationales for injunctive relief under section 526, subds. (a)(3)(4) (6) and (7) are applicable in this case. IID threatens to undertake an act, approval of contracts that threaten to violate the Judgment entered by this Court, and thus render the Judgment ineffectual when it is affirmed on appeal. Pecuniary compensation cannot afford Petitioners' adequate relief from the loss of its equitable and beneficial use of water held in trust by IID. The injunction is necessary to prevent the need for a subsequent action by the Abattis to invalidate the DCP and related agreements as void and unlawful if IID were not restrained from approving them. Indeed, the Abattis may be compelled to file additional lawsuits against other parties, including the Bureau of Reclamation, in an attempt to unwind IID from the DCP. Finally, as this Court has concluded in its Judgment, the water rights are rights held in trust by IID.

For all these reasons, IID's objections to the issuance of injunctive relief under the circumstances of this case are not well-taken.

4. IID's Claim That the DCP is Only a Contingent Plan is Inaccurate.

IID claims that the DCP is only a contingent agreement. Not so. Despite the use of the term "contingency" in its name, the DCP and its related agreements mandate certain actions. Provision 3.A of the MWD/IID Agreement provides "Within one year of the Effective Date of the LB DCP, IID's ICS stored in MWD's system, which is "Excess EC ICS" and "Additional Excess EC ICS" under the California ICS Agreement, as of the Date of the Agreement will be transferred to IID's EC ICS account in Lake Mead. IID shall be responsible for any additional losses that may be incurred, including evaporation losses." (Index of Exhibits, Exh. 13, pp. 3-4.) IID estimates this quantity of water to be 200,000 acre-feet. (Index of Exhibits, Exh. 11, p. 20.)

Furthermore, upon agreement to the DCP, IID immediately loses 10% of the water that it agrees to transfer to Lake Mead under the MWD/IID Agreement. Specifically, provision IV.A.1 provides for a 10% reduction in water stored in Lake Mead on the Effective Date of the agreement: "On the Effective Date, the Secretary shall assess additional losses as necessary such that the total assessed losses (including both system assessments and evaporation) for all ICS set forth in Table 2 is ten percent (10%)." (Index of Exhibits, Exh. 12, p. 9) Provision IV.A.2 also provides for an 10% reduction in stored water created after the Effective Date. "There shall be a one-time deduction of ten percent (10%) of any Extraordinary Conservation, Tributary, or Imported ICS created after the Effective Date." (Index of Exhibits, Exh. 12, p. 9.) IID's contention that this is only a speculative loss of IID's water rights is simply contradicted by the terms of the agreements IID proposes to approve. The agreements provide that IID would initially lose 10% of an estimated 200,000 acre-feet transferred to Lake Mead or 20,000 acre-feet, which together with IID's waters currently stored there would continue to be depleted at 3% per year after the year 2026,

Finally, the idea that IID's approval of the DCP is only contingent upon all other parties agreeing to the DCP is simply not well-taken. According to the terms of the DCP, any party that commits to the agreement is committed to the agreement even if no other party agrees to the DCP. (Index of Exhibits, Exh. 12, pp. 1-4.)

In summary, IID arguments that the DCP is only a "contingent" plan and that IID's commitment or approval is somehow contingent on the remainder of the parties agreeing to the DCP are erroneous and should be rejected as a grounds for denying Petitioners' relief on this motion.

II. CONCLUSION

For all the foregoing reasons, Petitioners submit that this Court does have jurisdiction to compel obedience to its Judgment for Declaratory Relief because (i) that Judgment is not stayed during IID's appeal; and (ii) post-judgment injunctive relief to enforce the Judgment is necessary to the extent that IID does not recognize that it is obliged to obey that Judgment. By its arguments in opposition to the *ex parte*, IID does not recognize that this Court's Judgment precludes it from entering into the new contracts committing to transfer water to Lake Mead for the benefit of the federal government and other water users and to the detriment of Petitioners and other irrigating

landowners. Thus, without injunctive relief as requested, IID will be free to approve the DCP agreements and render Petitioners' victory in this Court ineffectual to the extent that IID will have made agreements committing water to third parties in violation of Petitioners and other agricultural users' water rights and in violation of the "no injury" rule.

The ability to challenge IID's approval of the DCP and related agreements after the fact is not a sufficient remedy. A contempt citation will not do anything to restore the fruits of Petitioners' victory in this litigation. Petitioners will be left to initiate one or more lawsuits, potentially against additional parties and perhaps be forced into litigation in federal court by IID, to invalidate the IID's approval of the DCP and related agreements with third parties. The chaos and uncertainty that will ensue if IID is given license to violate this Court's Judgment can and should be prevented by this Court by an injunction preventing IID from approving the DCP and related agreements and/or a further decree declaring that entry into those contracts would be deemed a violation of the Court's Judgment herein.

DATED: November 20, 2018

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