UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 13-0883 JGB (SPx)**	Date	June 5, 2017
Title	***Agua Caliente Band of Cahuilla Indians. v. Coachella Valley Water District, et al.***		

Present: The Honorable JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order: GRANTING Plaintiff's Motion to Lift Stay and Proceed with Phase II (Dkt. No. 173) (IN CHAMBERS)

Before the Court is Plaintiff's Motion to Lift the Stay and Proceed with Phase II of the litigation. (Dkt. No. 173.) After consideration of the papers filed in support of, and in opposition to the Motion, as well as the parties' arguments at the June 5, 2017 hearing, the Court GRANTS Plaintiff's Motion to Lift the Stay. The Court sets out its reasons below.

I. BACKGROUND

A. Procedural History

The Agua Caliente Band of Cahuilla Indians (hereinafter "Agua Caliente" or the "Tribe") filed this action for declaratory and injunctive relief against the Coachella Valley Water District ("CVWD"), Desert Water Agency ("DWA"), (collectively, the "water agencies"), and various individuals sued in their official capacities as members of the Boards of Directors of CVWD and DWA, (collectively, "Defendants") on May 14, 2013. ("Complaint," Dkt. No. 1.) The Tribe's reservation is located in the Coachella Valley. (Compl. ¶ 4.) Extending underneath the Tribe's Reservation is the Coachella Valley Groundwater Basin aquifer, specifically the Upper Whitewater and Garnet Hill sub-basins. (Id. at ¶¶ 3, 4.) The United Sates, pursuant to statute, holds the lands of the Tribe's Reservation in trust for the Tribe.[1] (Id. at ¶ 5.) Its complaint

[1] On June 5, 2014, the United States intervened on the Tribe's behalf, asserting claims materially similar to the Tribe's complaint. (Dkt. No. 71.) The Court refers to the United States and Agua Caliente collectively as "Plaintiffs."

sought a declaration of its federally reserved and aboriginal water rights in the groundwater underlying the reservation. (Id.) On December 2, 2013, the parties stipulated to divide the litigation into three phases, which they agreed would address the following issues:

- Phase I: whether the Tribe has a reserved right and an aboriginal right to the groundwater;
- Phase II: whether the Tribe beneficially owns the "pore space" of the groundwater basin underlying the Agua Caliente Reservation and whether a tribal right to groundwater includes the right to receive water of a certain quality; and
- Phase III: the quantity of groundwater and/or pore space to which the Tribe is entitled pursuant to the groundwater rights so identified (Dkt. No. 49.)

On June 19, 2014, this Court granted the United States's motion to intervene on behalf of the Tribe.[2] (Dkt. No. 70.) On March 24, 2015, the Court granted in part and denied in part Plaintiffs' and Defendants' cross motions for partial summary judgment with respect to Phase 1 of the litigation. (Dkt. Nos. 115, 116.) The Court held that the reserved rights doctrine applies to groundwater and that the United States reserved appurtenant groundwater when it established the Tribe's reservation under Winters v. United States, 207 U.S. 564 (1908. (Dkt. No. 116.) In its Order, the Court certified the issue of whether the Winters rights extend to groundwater for interlocutory appeal under 28 U.S.C. section 1292(b). (Id. at 14.)

On September 8, 2015, the Court stayed proceedings pending resolution of the interlocutory appeal, with the exception that the parties would proceed with briefing the Phase II legal question of whether Defendants can lawfully assert the equitable defenses of laches, balance of the equities, and unclean hands against Plaintiffs. (Dkt. No. 136, 5.) The parties were directed to jointly file a report every sixty days regarding the status of the appeal, as well as within five days after the Ninth Circuit issued its opinion. (Id. at 5.) The Court then proceeded to address the applicability of Defendants' Phase II equitable defenses. Plaintiffs filed a motion for partial summary judgment on Defendants' Phase II equitable defenses on September 18, 2015. (Dkt. Nos. 137, 138.) The Court granted Plaintiffs' motions for partial summary Judgment on Defendants' equitable defenses on February 23, 2016. (Dkt. No. 150.)

On March 7, 2017, the Ninth Circuit issued its decision affirming this Court's holding that "the United States impliedly reserved appurtenant water sources, including groundwater, when it created the Tribe's reservation in California's arid Coachella Valley" under Winters v. United States, 207 U.S. 564 (1908) ("Winters doctrine"). ("Ninth Circuit Order," Dkt. No. 159, 3.) The panel held that the Winters doctrine does not distinguish between surface water and groundwater and that this Court's decision recognizing the Tribe's right to appurtenant water sources, like groundwater, was sound. (Id. at 4.) On April 10, 2017, the Ninth Circuit granted Defendant-Appellants' joint motion requesting a stay of the issuance of the mandate pending the filing and disposition of a petition for a writ of certiorari in the United States Supreme Court. (Dkt. No. 168.)

[2] The Tribe and the United States are collectively referred to as "Plaintiffs."

On April 25, 2017, Agua Caliente filed a Motion to Lift the Stay and proceed with Phase II of the litigation. ("Motion," Dkt. No. 173.) On May 15, 2017, CVWD filed an Opposition to the Tribe's Motion. ("CV Opp'n," Dkt. No. 176.) In support of its Opposition, CVWD filed the following documents:

- Exhibit A: Declaration of Patti Reyes (Reyes Decl., Dkt. No. 176-1);
- Exhibit B: Alternative Groundwater Sustainability Plan Bridge Document for the Indio Subbasin (Dkt. No. 176-2);
- Exhibit C: Letter Regarding SGMA Alternative Groundwater Sustainability Plan dated February 27, 2017 (Dkt. No. 176-3);
- Exhibit D: Coachella Valley Groundwater Basin Salt and Nutrient Management Plan dated June 2015 (Dkt. No. 176-4);
- Exhibit E: Letter from Agua Caliente Band of Cahuilla Indians to Coachella Valley Regional Water Managers Group dated August 20, 2013 (Dkt. No. 176-5);
- Exhibit F: Letter from Coachella Valley Regional Water Managers Group to Agua Caliente Band of Cahuilla Indians dated August 26, 2014 (Dkt. No. 176-6); and
- Exhibit G: Letter from Agua Caliente Band of Cahuilla Indians to Coachella Valley Regional Water Managers Group dated May 15, 2014 (Dkt. No. 176-7.)

DWA filed its Opposition on May 15, 2017 as well. ("DWA Opp'n," Dkt. No. 177.) On May 19, 2017, the Tribe filed its Reply in support of its Motion, attaching the Declaration of Margaret Park in support. ("Reply," Dkt. No. 178; Park Decl., Dkt. No. 178-1.)

B. Factual Allegations

The Agua Caliente Reservation was established by two Executive Orders issued in 1876 and 1877, and as discussed, the United States, by statute, holds remaining reservation land in trust for the Tribe. Exec. Order of May 15, 1876; Exec. Order of Sept. 29, 1877. The land was initially set aside by President Ulysses S. Grant for the "permanent use and occupancy of the Mission Indians in southern California." Exec. Order of May 15, 1876. President Rutherford B. Hayes set aside additional lands for "Indian purposes," including "build[ing] comfortable houses, improve[ing] their acres, and surround[ing] themselves with home comforts." Comm'r of Indian Aff., Ann. Rep. 224 (1875). In so doing, the United States sought to protect the Tribe by "secur[ing] the Mission Indians permanent homes, with land and water enough." Comm'r of Indian Aff., Ann. Rep. 37 (1877).

Today, surface water is virtually nonexistent in the Coachella valley for the majority of the year. (Ninth Circuit Order at 7.) As such, most of the water consumed in the region comes from the aquifer underlying the valley—the Coachella Valley Groundwater Basin. See CVWD, Urban Water Management Plan at 3-20 (2005). The Groundwater Basin supports 9 cities, 400,000 people, and 66,000 acres of farmland. See CVWD-DWA, The State of the Coachella Valley Aquifer at 2. Since the 1980s, the aquifer has been in a state of overdraft and the water levels have been declining at a steady rate, despite major efforts to recharge the basin with water

delivered from the California Water Project and the Colorado River. As of 2010, the estimated cumulative overdraft was 5.5 million acre-feet.

Currently, the Tribe does not pump any groundwater on its reservation, but purchases the groundwater from the defendant-water agencies in addition to receiving water from other water systems. The minimal surface water available to the Tribe means that the groundwater supplied by the water agencies is the main source of water for all types of consumption on the reservation throughout the year. The Tribe alleges that Defendants continually cause the groundwater to be in a state of "overdraft" and that Defendants' attempted solution to the overdraft—importation of water from the Colorado River—degrades the quality of the groundwater in the aquifer. (Compl. ¶ 47.)

C. The Present Motion

The Tribe moves for an Order lifting the stay to proceed with the Phase II legal issues of: (1) whether Agua Caliente owns the "pore space" beneath the reservation; (2) whether a right to a quantity of groundwater encompasses a right to water of certain quality; and (3) the legal standard for quantifying Agua Caliente's reserved water right. (Mot. at 2-3.) In support of its Motion, the Tribe argues that continued delay would be "fundamentally unfair to Agua Caliente and the United States, while moving forward poses no risk of irreparable harm to the water districts." (Mot. at 3.) Further, the Tribe contends that "given the clarity of the Ninth Circuit's ruling," and its consistency not only with prior Ninth Circuit law, but also "the overwhelming weight of authority from other jurisdictions," it is exceedingly unlikely that: (a) the Supreme Court will grant certiorari, and (b) the Ninth Circuit decision will be reversed if cert is granted. (Id.) Significantly, the Tribe maintains that this Court was never deprived of jurisdiction over the Phase II issues by virtue of the Ninth Circuit's decision to hear the interlocutory appeal on Phase I issues. (Id.) In the Tribe's view, the Ninth Circuit's delay in issuing the mandate does not bear in any way on whether this Court should proceed with Phase II. (Id. at 4.) The Court agrees.

II. LEGAL STANDARD

A court's "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254 (1936). A stay is "an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case." Nken v. Holder, 556 U.S. 418, 433 (2009) (internal alterations, citations, and quotations omitted).

District courts consider three factors when deciding whether to stay proceedings: (1) "the possible damage which may result from the granting of a stay"; (2) "the hardship or inequity which a party may suffer in being required to go forward"; and (3) "the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962).

III. DISCUSSION

Both CVWD and DWA argue that the Tribe's Motion is barred as a motion for reconsideration because this Court's September 18, 2015 Order staying the matter remains in force. (CVWD Opp'n at 4; DWA Opp'n at 6.) In so doing, the water agencies argue that the Tribe's Motion seeks to "vacate" the Order and so its failure to comply with Local Rule 7-18 compels denial of the Motion. (Id.) Specifically, CVWD argues that "[t]he Ninth Circuit stayed the issuance of the mandate pending the filing and disposition of a petition for writ of certiorari to the Supreme Court," and therefore, "until the Supreme Court disposes of the petition for certiorari, the issues raised in Phase 1 are still pending and the current stay remains in effect." (CVWD Opp'n at 5.) CVWD therefore maintains that until the Ninth Circuit issues its mandate, its opinion cannot constitute a "change of law" under Local Rule 7-18. (CVWD Opp'n at 6.)

The thrust of the water agencies' arguments in opposition to the Tribe's Motion is that the reasons underlying the Court's decision to stay the case are unaffected by the Ninth Circuit rendering its decision on appeal. (See CVWD Opp'n at 7; DWA Opp'n at 3.) The water agencies argue that the Ninth Circuit's Order lacks finality and precedential weight so proceeding with the litigation would risk wasting judicial resources on litigating issues that may be disposed of by a possible reversal of the Ninth Circuit's ruling by the Supreme Court. (DWA Opp'n at 3; CVWD Opp'n at 8.)

In support of maintaining the stay, the water agencies assert that the Tribe will not be prejudiced as the Supreme Court, if it grants the petition for certiorari, "would resolve the matter no later than June 2018." (CVWD Opp'n at 10); (DWA Opp'n at 4) ("[M]aintaining the stay will not prejudice the Tribe, particularly because the timeframe involved is very short.") CVWD points out that the Tribe's assertion that the water agencies are not engaging with it are mistaken as it has regularly met with CVWD to discuss its water management plans since 2005. (Id.) In that vein, DWA avers that it is unclear how "planning" for water management in the region by the water agencies harms the Tribe in any way. (DWA Opp'n at 5.) CVWD rejects the Tribe's contention that a continued stay would further impair its water resource. (CVWD Opp'n at 12.) In support, CVWD represents that the water agencies "actively monitor and manage water quality" and "follow existing state-adopted and U.S. environmental Protection Agency-approved water quality standards for salinity on the Lower Colorado River," and "[c]urrent data on water quality and future projections show the recharge water meets acceptable consumer standards." (Id.)

The water agencies' arguments are unavailing. That the Court granted the water agencies' prior motion to stay the case pending the Ninth Circuit appeal does not prevent the Court from lifting the stay as to Phase II at any point, and especially once the decision has been rendered. The Court has the discretion to grant or lift stays depending on the circumstances of the particular case. Nken, 556 U.S. at 433. Here, the circumstances have changed since the Court imposed the stay. Those changes justify lifting the stay.

For one thing, the Ninth Circuit clarified the issue of whether the Winters doctrine extends to groundwater. The Ninth Circuit stated that "while [it] express[es] no opinion on how much water falls within the scope of the Tribe's federal groundwater right, there can be *no question* that water in some amount was necessarily reserved to support the reservation created." (Ninth Circuit Order at 21-22.) Further, the Tribe has made a strong showing in support of its assertion that it will suffer irreparable harm if the case is stayed any longer. The Tribe asserts that indefinite delay is inherently unfair to its water rights as more than two years have passed since this Court held that Winters applies to the groundwater underlying its Reservation and during those two years, the water agencies have continued to pump groundwater, damaged the water quality of the aquifer by pumping lower quality Colorado River water, and continued to exclude the Tribe from its rightful role in groundwater management. (Mot. at 5-6.)

The proper exercise of the Court's discretion under these circumstances is to lift the stay and proceed with the litigation, just as the parties and the Court envisioned at the time the water agencies' motion to stay the proceedings pending the interlocutory appeal was granted. This case was filed over four years ago and has been stalled for two years since this Court recognized the Tribe's rights to the groundwater underlying its Reservation under the Winters doctrine. A further stay is not warranted given that the Ninth Circuit has affirmed this Court's March 24, 2015 decision. (Ninth Circuit Order.)

That the Supreme Court may reverse the Ninth Circuit, and thereby simplify this litigation by, presumably, making it disappear, is not, in and of itself, a sufficient basis to prevent the Tribe from enforcing the water rights the law establishes it currently holds. The Court already concluded that the water agencies could not raise the equitable defenses of laches, balance of equities or unclean hands on February 23, 2016. As such, continuing the stay would prejudice the Tribe and unfairly advantage the water agencies by permitting their ongoing disregard of the Tribe's rights. The Tribe has provided ample evidence of the water agencies' overdrafting of the aquifer and impairment of the Tribe's crucial water resource. As such, the Court is persuaded that further delay in quantifying the Tribe's water rights and the resulting continued degradation of such rights under these circumstances is unwarranted. The water agencies have not persuasively demonstrated how they would suffer any hardship as a result of lifting the stay, let alone hardship that could outweigh the harm to the Tribe if its Motion is denied.

Accordingly, the Court finds that lifting the stay is warranted and shall proceed to Phase II.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's Motion to Lift the Stay. The parties are ordered to meet and confer and jointly propose a Scheduling Order regarding Phase II.

IT IS SO ORDERED.

Time: 00:10