

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

MOJAVE PISTACHIOS, LLC et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

INDIAN WELLS VALLEY
GROUNDWATER AUTHORITY et al.,

Real Parties in Interest.

G060336

(Super. Ct. No. 30-2021-01187589)

O R D E R

THE COURT:*

The petition for writ of mandate, prohibition, or other appropriate relief is DENIED. As explained below, the petition is denied for prudential reasons, not as a signal regarding the correctness of the challenged order denying a preliminary injunction or the merits of the underlying dispute. The denial of this petition is without prejudice to petitioner seeking extraordinary relief from the court of appeal if it becomes necessary to do so. There are three reasons we deem it wise to deny this petition.

First, real party in interest represents to this court (in its preliminary opposition at page 8) that petitioner “is currently extracting large amounts of groundwater, for which it likely has no right, and is not paying the Replenishment Fee. Although Mojave’s actions are damaging the Basin, the Authority does not possess the

power to unilaterally stop Mojave from extracting groundwater without an order from a court.” The preliminary opposition further represents it “must initiate an additional civil action to enjoin Mojave’s extractions. There is simply no danger of State agents invading Mojave’s property to prevent groundwater extractions before a court has a chance to act on a lawsuit that is actually at issue, and review competent evidence of Mojave’s claims of irreparable injury that has been subjected to cross-examination.” In sum, it does not appear that petitioner is suffering irreparable harm (yet). Petitioner has declined to pay real party’s replenishment fee since January 2021. And there is no indication in petitioner’s briefing or declarations that it will voluntarily comply with the more recent order to cease pumping groundwater prior to entry of a court order.

Second, the informal briefing makes clear that no efforts have been made by the parties to expedite the resolution of the merits of this dispute in the trial court. To the contrary, it appears the parties have been amenable to delaying resolution of the merits of this dispute. This conflicts with both sides’ contentions regarding the urgency of either enforcing the replenishment fee or blocking the replenishment fee. The preferred order of legal operations is: (1) a trial court enters a final appealable judgment on the merits of a dispute; and (2) a court of appeal entertains any appellate issues properly raised by the parties. Any party seeking extraordinary appellate court intervention in this dispute prior to appeal should demonstrate that it is making all possible efforts to accelerate the resolution of the merits of the action in respondent court.

Third, respondent court did not reach the question of whether petitioner was likely to succeed on the merits, ruling only that petitioner was not entitled to injunctive relief as a matter of law due to the “pay first, litigate later” doctrine. Unless it becomes necessary, this court is reluctant to evaluate (even in the context of a preliminary injunction motion) the merits of this lawsuit prior to respondent court. Moreover, there is no need yet for this court to determine whether the “pay first, litigate later” doctrine applies to a policy change that is purportedly a “fee” in name only, in that: (1) the “fee”

is allegedly designed to be assessed against a narrowly targeted group of water users; and (2) the “fee” would, according to petitioner, in effect result in no groundwater being extracted by these targeted parties because the price of the supposed “fee” is set so high as to prohibit any reasonable use of the groundwater by the small number of users subjected to the replenishment fee.

Petitioner’s informal reply (page 3) asks this court to rule now to “avoid [a] waste of judicial resources,” i.e., to preempt any future trial court proceedings that may occur regarding petitioner’s compliance with real party’s orders. While we appreciate petitioner’s concern for the resources of the judiciary, this case is ill suited to considering appellate court intervention prior to the moment of necessity. Perhaps the trial court will rule against real party in its efforts to enforce (in full or in part) the replenishment fee prior to the resolution of the merits dispute. Perhaps the parties will negotiate an arrangement that will minimize harm to both sides while the lawsuit is resolved as promptly as possible. Regardless of what may occur in the future, it is prudent at this time to deny the petition for writ of mandate.

MOORE, ACTING P. J.

* Before Moore, Acting P. J., Fybel, J., and Ikola, J.