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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

COMMITTEE TO PROTECT OUR
AGRICULTURAL WATER; MIKE
HOPKINS, an individual; JOHN
WEDEL, an individual,

Plaintiffs,

v.

OCCIDENTAL OIL AND GAS
CORPORATION, a Texas
corporation; WESTERN STATES
PETROLEUM ASSOCIATION (WSPA),
a non-profit trade
association; CALIFORNIA
INDEPENDENT PETROLEUM
ASSOCIATION (CIPA) a non-
profit trade association;
CHEVRON U.S.A. INC., a
Pennsylvania corporation;
CALIFORNIA DIVISION OF OIL,
GAS & GEOTHERMAL RESOURCES
(DOGGR); EDMUND G. BROWN, an
individual; TIMOTHY R.
KUSTIC, an individual;
MARK NECHODOM, an individual;
LORELEI H. OVIATT, an
individual; CALIFORNIA
RESOURCES CORPORATION (DOE
1), a Delaware corporation;
and DOES 2 through 100,

Defendants.

No. 1:15-cv-01323-GEB-JLT

**ORDER DENYING PLAINTIFFS' EX
PARTE APPLICATION**

This action was transferred from the Central District
of California on August 31, 2015. (See Order Re: Motion to
Transfer Venue, ECF No. 95.) At that time, multiple fully-briefed

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. . . .

. . . Plaintiffs thus file this ex parte application with a redacted copy of the Second Amended Complaint. . . seek[ing] leave to either file the Second Amended Complaint (with or without the redacted information as determined by the Court)¹ or an extension of time within which Plaintiffs have to file oppositions to the Re-Noticed Motions to Dismiss.

(Id. at 5:6-6:20 (citations omitted).)

Plaintiffs argue:

[T]he privilege issues makes it impossible for Plaintiffs to address in their oppositions why the Court should deny each of the six re-noticed motions to dismiss. These opposition briefs are due on October 5, 2015. Plaintiffs seek an orderly method to alleviate the Court's burden and avoid multiple motions to dismiss on the previous iteration of the Complaint.

Plaintiffs thus ask the Court to extend time for Plaintiffs to respond to Defendants' re-noticed Motions to Dismiss

. . . [T]his is the most efficient and fair way to proceed for the Court and all parties. It will narrow the issues in contention before the Court and save substantial judicial resources that would otherwise be spent on issues that could be resolved through the filing of an amended complaint.

(Id. at 2:4-19.)

Defendants oppose Plaintiffs' ex parte request, rejoining: "Plaintiffs['] request . . . is an attempt to delay or derail this Court's consideration of the fully briefed Motions to

¹ On September 29, 2015, Plaintiffs submitted for in camera consideration a Request to Seal Documents, declaration in support thereof, proposed order, and an unredacted copy of Plaintiffs' proposed Second Amended Complaint, which is the document Plaintiffs seek to file under seal. Plaintiffs submitted these documents in connection with their ex parte application. However, in light of this order, decision on the sealing request is unnecessary.

1 Dismiss that are currently noticed for hearing on October 19,
2 2015." (Def. Chevron's Opp'n² 1:13-15, ECF No. 120.) Defendants
3 further counter, *inter alia*:

4 [W]hile it is true that Plaintiffs have
5 repeatedly asked Defendants to "stipulate" to
6 the filing of [a Second] Amended Complaint,
7 for more than six weeks they refused to
8 provide a copy of any proposed amendment. In
9 fact, Plaintiffs refused even to explain how
10 . . . they planned to cure the multiple,
11 incurable deficiencies in the First Amended
12 Complaint

13 . . . In fact, even now, Plaintiffs do
14 not claim that the proposed amended pleading
15 cures all of the multiple deficiencies
16 Defendants have identified.

17 Similarly baseless is the notion that
18 because the State Defendants . . . have
19 notified all parties that Plaintiffs'
20 proposed Second Amended Complaint contains
21 attorney-client privileged communications, it
22 is somehow "impossible for Plaintiffs to
23 address in their oppositions why the Court
24 should deny each of the six re-noticed
25 motions to dismiss." Dkt. 116, Application at
26 2. First, Plaintiffs have already filed
27 opposition briefs, and Plaintiffs offer no
28 explanation why the transfer of this case
from the Central to the Eastern District
entitles them to file new opposition briefs
when the motions to dismiss were fully
briefed before the transfer order. The
State's privilege claim with respect to the
proposed Second Amended Complaint does not
impact the already filed opposition briefs,
over which the State has not asserted
privilege. Second, Plaintiffs do not explain
how allegations that are not contained in the
operative pleading could be grounds to deny
motions to dismiss the operative complaint,
whether or not they are something Plaintiff
would like to put in yet another Amended
Complaint.

² Each Defendant has joined in Defendant Chevron U.S.A., Inc.'s
Opposition. (See ECF Nos. 121-125.) Some of the Defendants make in their
joinder notices additional arguments in opposition to Plaintiffs' ex parte
application. (See, e.g., State Defs.' Opp'n 2:1-3, ECF No. 122.)

1 In sum, Plaintiffs' Application is
2 without merit and should be denied.

3 (Id. at 1:20-24, 2:23-3:15.)

4 The State Defendants additionally counter:

5 Plaintiffs' asserted emergency basis for
6 requesting ex parte relief is simply that no
7 hearing date was available for th[eir] . . .
8 request for leave [to amend] before the date
9 of the hearing on [the pending dismissal
10 motions]. Plaintiffs provide no explanation
11 as to why it is necessary to hear th[eir] . .
12 . request for leave to amend on an ex parte
13 basis

14 (State Defs.' Opp'n 2:9-14, ECF No. 122.)

15 Defendant Kern County Planning Director Lorelei H.
16 Oviatt "further opposes Plaintiffs' Ex Parte Application on the
17 grounds that all of the requested relief therein would improperly
18 subject [her] to additional, unwarranted litigation despite clear
19 authority providing that [she] is immune from suit as a result of
20 her absolute and qualified immunity." (Oviatt Not. Joinder 1:7-
21 10, ECF No. 124 (citation omitted).) Oviatt argues:

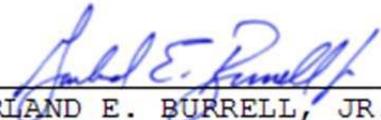
22 In briefing the presently-filed motion
23 to dismiss the First Amended Complaint,
24 Oviatt has already incurred the only
25 permissible "burden of litigation" for an
26 official who has immunity from suit for the
27 alleged claims. See, e.g., Mitchell v.
28 Forsyth, 472 U.S. 511, 525-526 (1985)
(immunity of public officials should be
determined as quickly as possible to avoid
undesirable consequences, including "the
general costs of subjecting officials to the
risks of trial - distraction of officials
from their governmental duties, inhibition of
discretionary action, and deterrence of able
people from public service."). For this
additional reason, Plaintiff's Ex Parte
Application should be denied and the
currently-filed motions to dismiss should be
heard as scheduled on October 19, 2015.

(Id. at 1:15-2:2.)

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Plaintiffs have not shown sufficient justification for the requested extensions. Therefore, Plaintiffs' ex parte application is DENIED.

Dated: October 1, 2015



GARLAND E. BURRELL, JR.
Senior United States District Judge