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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CITY OF SAN JOSE,
Plaintiff,

v.

MONSANTO COMPANY, et al.,
Defendants.

Case No. [5:15-cv-03178-EJD](#)

**ORDER DENYING PLAINTIFFS'
MOTION FOR CERTIFICATION OF
ORDER FOR APPEAL**

Re: Dkt. No. 147

CITY OF OAKLAND,
Plaintiff,

v.

MONSANTO COMPANY, et al.,
Defendants.

Case No. [5:15-cv-05152-EJD](#)

Re: Dkt. No. 118

CITY OF BERKELEY,
Plaintiff,

v.

MONSANTO COMPANY, et al.,
Defendants.

Case No. [5:16-cv-00071-EJD](#)

Re: Dkt. No. 111

1 In these related cases, Plaintiffs City of San Jose, City of Oakland, and City of Berkeley
2 (the “Cities”) seek damages from Defendants Monsanto Company, Solutia Inc., and Pharmacia
3 LLC (“Monsanto”) arising from Monsanto’s production of environmental contaminants called
4 polychlorinated biphenyls (“PCBs”). The Cities allege that Monsanto’s PCBs pollute the San
5 Francisco Bay (the “Bay”) through stormwater and dry weather runoff from the Cities, forcing the
6 Cities to spend money to reduce PCB discharge in order to comply with state and federal
7 regulations.

8 This Court previously ordered that the Cities’ federal cases must be stayed while the
9 Cities’ administrative actions are pending. The Cities now move for certification of that order for
10 interlocutory appeal. The Cities’ motion will be denied.

11 **I. BACKGROUND**

12 The Cities are currently pursuing test claims before the California Commission on State
13 Mandates in which they seek reimbursement for the costs of complying with state permit
14 obligations. Order Granting Defs.’ Mot. to Stay (“Stay Order”) 2–4, Case No. 15-cv-3178, Dkt.
15 No. 144; Case No. 15-cv-5152, Dkt. No. 116; Case No. 16-cv-71, Dkt. No. 109. Monsanto argued
16 that the Cities are seeking the same relief before the Commission and before this Court, and so
17 they must exhaust their administrative test claims before their federal actions can proceed. *Id.* at
18 4–5. This Court agreed, finding that “there is substantial overlap” between the Cities’ test claims
19 and their federal cases because both actions “seek the same recovery for the same injury.” *Id.* at 5.
20 Accordingly, on August 4, 2017, this Court issued an order that stayed the Cities’ actions until
21 February 8, 2018 (following the next scheduled hearing on the Cities’ test claims before the
22 Commission). *Id.* at 4, 6.

23 The Cities now move for certification of the Stay Order for interlocutory appeal under 28
24 U.S.C. § 1292(b). Pls.’ Mot. for Certification of Order for Appeal (“Mot.”), Case No. 15-cv-3178,
25 Dkt. No. 147; Case No. 15-cv-5152, Dkt. No. 118; Case No. 16-cv-71, Dkt. No. 111.

1 Storage Dist., No. 1:05-CV-00603 OWW SMS, 2007 WL 781889, at *5 (E.D. Cal. Mar. 13, 2007)
2 (“The appropriate mechanism for redress of factual errors is a motion for reconsideration, not an
3 interlocutory appeal.”); see also Civil L.R. 7-9.

4 Second, the Cities “seek clarification from the Ninth Circuit regarding . . . whether their
5 lawsuits must be dismissed.” Mot. 3. But the Stay Order did not address whether the Cities’ cases
6 must be dismissed. Rather, it decided that their cases must be stayed while their administrative
7 claims are pending.

8 Third, the Cities “seek immediate clarification from the Ninth Circuit regarding the
9 appropriate forum for their public nuisance claims.” Mot. 3. But the Stay Order did not decide that
10 federal court was not the appropriate forum for the Cities’ public nuisance claims. Rather, it held
11 that “the Cities must exhaust their administrative remedies before they can seek relief from the
12 courts” under their public nuisance theory. Stay Order 5 (emphasis added).

13 **IV. CONCLUSION**

14 The Court finds that the Cities have not shown that the Stay Order raises a “controlling
15 question of law” as required by 28 U.S.C § 1292(b). As such, the Cities’ motion for certification
16 of that order for interlocutory appeal must be DENIED.

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18 **IT IS SO ORDERED.**

19 Dated: December 6, 2017

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21 EDWARD J. DAVILA
22 United States District Judge

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