EXHIBIT
SJC-4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

SAN JOAQUIN

Coordination Proceeding Special Title (Rule 3.550) DEPARTMENT OF WATER RESOURCES CASES *County of San Joaquin v. California Department of Water Resources*	*Exempt from filing fees per Government Code section 6103* Case No. JCCP 4594 **NOTICE OF ENTRY OF ORDERS**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on October 2, 2020, the court signed an order granting the motion for summary adjudication of defendant State of California, by and through the Department of Water Resources. The order is attached hereto as Exhibit A. The court also signed an order ruling on the parties' various evidentiary objections and requests for judicial notice. This order is attached hereto as Exhibit B.

Dated: October 7, 2020

Respectfully Submitted,

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/s/ *Christine E. Garske*
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EXHIBIT A

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

Coordination Proceeding Special Title: IN RE: DEPARTMENT OF WATER RESOURCES CASES JCCP 4594 *County of San Joaquin v. DWR*	COORDINATED ACTION: JCCP 4594 OPINION AND ORDER GRANTING DWR'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES HEARING DATE: October 2, 2020 Time: 10:00 a.m. (telephonic) Dept.: 10B Hon. John P. Farrell

Background: This coordinated proceeding arose under Code of Civil Procedure Section 1245.010 *et seq.* authorizing Department of Water Resources ("DWR"), as a ". . . person authorized to acquire property . . . by eminent domain to enter upon the property . . . " to undertake tests and activities "reasonably related to acquisition or use of the property for that use." After a long process of hearings, the trial court on February 22, 2011 issued an order granting entry for environmental studies and later after more hearings on April 8, 2011 denied the requested order for geological studies as a "taking" outside the perceived scope of the chapter in question.

The case went on appeal with published opinions by the Court of Appeal and the Supreme Court. *Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151. Upon remand in February 2017, this court conducted further hearings and on June 16, 2017 issued an "Order Permitting Entry and Investigation of Real Property for Geological and Drilling Purposes" which has been amended several times thereafter (the "Entry Order"). The Entry Order was made pursuant to the directions of the Supreme Court and the Court of Appeals to approve entry by DWR onto certain private properties in the County of San Joaquin and several other Delta counties for the purpose of drilling and testing to determine the appropriateness of the properties for locating large water pipes as part of a statewide water conveyance system. This order constituted a form of

eminent domain by which the state takes a property interest for a temporary purpose in order to determine whether it should acquire the property for the purpose in question.

DWR commenced drilling on one parcel in San Joaquin County through its contractor. The County of San Joaquin issued a "stop order" to DWR and its contractors to prevent such drilling until DWR obtained a permit to so drill and test under a County ordinance. The issue presented is whether the County of San Joaquin can lawfully require the State of California to obtain a County permit and to follow County ordinance regulations in doing the particular geological tests authorized by the Entry Order. This court rules that the County of San Joaquin may not require the State of California to obtain a County permit or to obey County ordinances in order to perform the drilling and boring in question. The Court accordingly GRANTS DWR's Motion for Summary Adjudication of the First Cause of Action to Enforce San Joaquin County's Well Permit Requirement in San Joaquin County's First Amended Complaint.

ANALYSIS

No Triable Issue of Material Fact. San Joaquin County filed a First Amended Complaint for Injunctive Relief, Declaratory Relief and Petition for Writ of Mandate ("First Amended Complaint" or "FAC") against DWR. The First Cause of Action within the First Amended Complaint seeks to require DWR to comply with the County's Water Well and Well Drilling Regulations ("Well Ordinance"), found at Chapter 9-1115 of the County's Development Code and to obtain a county permit to do the geological borings authorized under the Entry Order.

DWR filed the subject motion for summary adjudication of this first cause of action on the ground that sovereign immunity bars it – San Joaquin County, a subdivision of the State of California, cannot require the State to comply with its local permitting requirements. County responds that an express waiver of sovereign immunity under Water Code sections 13050(c) and 13755 permits San Joaquin County to enforce its Well Ordinance against DWR with respect to borings authorized under the Entry Order.

The court finds that there is no triable issue of material fact. Essentially, all the documents are official filings. There is no dispute as to the documents and they are undisputed except as to meaning and effect. The "dispute" is whether DWR will drill a type of well covered by the legislative waiver of sovereign immunity. But that turns on the meaning of legislative words – statutory language – not disputed facts or clashing expert opinions.

Pursuant to this court's Entry Order, DWR had begun to drill on one of the properties located in the County of San Joaquin through a C-57 licensed contractor. Such contractor was then served with a stop order by the County for failure to have obtained a County permit for the work in question.

Jurisdiction of this Court. The Entry Order does not specifically provide for its enforcement. But an entry order, like any court order, can be enforced by the court issuing it. *Code Civ. Proc. § 128(a)(4)*. The Order of Entry states in Paragraph 7 that: "All persons having notice of this Order shall refrain from interfering with the entry and activities permitted above." This would be typical of all such entry orders which are interim orders with the court retaining jurisdiction to enforce or modify the provisions of the order and to provide compensation if appropriate at the end of the entry. The issue then is whether the interference with the activities in this case are lawful. This could have been presented by way of OSC re Contempt against the County but the County filed first to seek an injunction against DWR. *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, does not involve an entry order and merely states that there may in some circumstances be another enforcement mechanism. No such enforcement mechanism exists here to displace the authority granted under CCP §1245.010, et seq. and §128(a)(4).

General County and State Authority. A county is a "...legal subdivision of the State..." *Cal. Const. Art. XI § 1(a).* The State Legislature "shall provide for county powers..." *Cal. Const. Art. XI § 1(b).* A County charter can be adopted which constitutes "...the law of the State and have the force and effect of legislative enactments." *Cal. Const. Art. XI § 3.* San Joaquin County is a 'general law' county and

does not have a county charter. Unlike charter cities, counties do not enjoy the grant of broad police power over municipal affairs.

> "[T]he Constitution contains no provision giving charter counties supreme authority over 'county affairs...'"
>
> *City and County of San Francisco v. Regents of University of California (2019) 7 Cal. 5th 536 at 542 fn. 2* (hereinafter *"San Francisco v. Regents"*).

Article X, section 5 of the state Constitution and the Water Code clearly put the State in charge of the water resources of the State in order to put them to beneficial use to the fullest extent of which they are capable. *Water C. § 100.* All "water within the State is the property of the people of the State..." *Water C. § 102; see also § 104.*

The Limited Waiver of Immunity. In general throughout the Water Code, the term "person" does not include the State. *See Water C. §§ 18 and 19.* However, in Chapter 10 (Sections 13700 through 13806), the definition of "person" includes the state. *Water C. § 13050(c).* Section 13755 provides in relevant part that: "every person shall comply with this chapter and any regulation adopted pursuant thereto, in addition to standards adopted by any city or county." The County, in effect, argues that its authority to have stronger ***standards***, allows it to expand ***the scope*** of the waiver of sovereign immunity in this section. Such is not the case.

The Water Code provides that:

> "no person shall undertake **to dig, bore or drill a water well**, cathodic protection well, groundwater monitoring well, or geothermal heat exchange well...unless the person responsible...possesses a C-57 Water Well Contractor's License."
>
> *Id., §* 13750.5.

Section 13700 reiterates the same limited areas of concern for the chapter as follows:

> The Legislature finds that the greater portion of the water used in this state is obtained from underground sources and that those waters are subject to impairment in quality and purity, causing detriment to the health, safety and welfare of the people of the state. The Legislature therefore declares that the people of the state have a primary interest in the location, construction, maintenance, abandonment, and destruction of **water wells, cathodic protection wells, groundwater monitoring wells, and geothermal heat**

> **exchange wells**, which activities directly affect the quality and purity of underground waters."
>
> (Emphasis added).

Section 13710 also defines "Water Well" as follows:

> "...**any artificial excavation constructed by any method for the purpose of extracting water from, or injecting water into, the underground**. ..."
>
> (Emphasis added).

Likewise, Water Code section 13712 defines a monitoring excavation "**for the purpose of monitoring fluctuations in groundwater levels, quality of underground waters, or the concentration of contaminants** of underground waters." To support its claim of a disputed issue of fact, San Joaquin's Additional Material Fact No. 35 states: "The [Mitigated Negative Declaration ("MND")] states that 'select geotechnical drill holes may be completed as groundwater monitoring wells." But the MND covers vast stretches of land in six counties and gives no support that any such well would be placed on the properties in question in San Joaquin County. Indeed, it instead tends to show that most geotechnical drill holes would not be groundwater monitoring wells.

In both of these instances, the County argues that intent is irrelevant and that simply interacting with groundwater or recording the findings of a CPT or geotechnical drilling is sufficient to support a finding that a CPT or drill hole falls within the County's purview.

The County argues:

> "DWR's intent when it conducts soil borings and CPTs is irrelevant to the question of whether DWR's activities will, in fact, monitor or extract groundwater." *Opposition Memo, 8:15-16.*

The drillings authorized by the Court's Entry Order in this case are not "for the purpose of extracting water from, or injecting water into, the underground" or for any of the other purposes listed in Sections 13710. Likewise, they are not for the water monitoring purpose of Section 13712. DWR has attested so, and there is no evidence to the contrary. Any incidental capture of water while removing a core sample or

recording CPT or geotechnical data is irrelevant or else "for the purpose of" would be rendered of no effect.

The County of San Joaquin relies on a county ordinance to expand regulation to include test drilling of the kind in question that is not for the purpose of extracting or injecting water into the underground. Water Code §13801(c) states that "each county ... shall adopt a water well, cathodic protection well and monitoring ... ordinance with standards no less stringent than those contained in DWR Bulletin 74-81." (Emphasis added.) "Every person shall comply with this chapter ... in addition to standards adopted by any city or county ...." Water Code § 13755. San Joaquin County's Well Standards are said to include some requirements that pertain to the state, but the County has not cited in its opposition any particular provisions of the Well Ordinance. Likewise, the declarations do not cite particular provisions that include the state.

Nevertheless, we address the question of whether the County may lawfully regulate the State in this manner.

Waivers Strictly Construed: The general rule is that the County may not regulate the State under the doctrine of sovereign immunity *unless the Legislature has expressly waived immunity in express words of a statute.*

> "Because the 'state's immunity from local regulations is merely an extension of the concept of sovereign immunity' [citation] the consent to waive the immunity must be stated in 'express words' [citation] in a statute [citation]."
>
> *Del Norte Disposal, Inc. v. Department of Corrections (1994) 26 Cal.App. 4th 1009, 1013.*

The first issue is whether the County may by ordinance *expand the scope or subject matter* over which the State by Water Code sections 13050 and 13755 has waived its sovereign immunity. This is not simply a county ordinance fleshing out authority granted by statute. Instead it changes and defeats the limited definition of "water well" to eliminate the restriction of "...for the purpose of extracting water from, or injecting water into, the underground..." and broadens **not the standards but the scope** of the waiver to include test borings. *Water C. § 13750.5.*

Waivers of state immunity are not liberally construed. A waiver must be *explicit in a statute. Del Norte Disposal, Inc., ibid.* This is especially true in the instant case involving the basic governmental authority to "...enter upon property to make photographs, studies, surveys, examination, tests, soundings, borings....reasonably related to the acquisition or use of property..." *Cal. Code Civ. Proc. § 1245.010.* Borings and drillings are a necessary part of any planning for or construction of reservoirs, dams, and other major public works. To include such in what would otherwise be a limited area of local water well regulation would be a giant leap. We would not read a limited statute to authorize county intrusion into a fundamental sovereign power of the State.

The analysis does not change because a State Board recommended a model ordinance pursuant to Water Code section 13801(b) which adds "observation well, monitoring well or any other excavation that may intersect ground water" to the list of matters for which a county permit may be required. [1] The question of the State Board's authority to expand the matters for which a private person or entities other than the State would be required to get a County permit is not before this court. A State Board's recommendation of a model county ordinance does not substitute for the requirement that a waiver of sovereignty as to the State can only be by the express words of a statute. When the words used in a statute are clear and unambiguous (as they are in the provisions allowing county regulation of water wells) there is no further investigation or interpretation to undertake. *MacIssac v. Waste Management (2005) 134 Cal.App.4th 1076, 1082-83; see also California Groundwater Ass'n v. Semitropic Water Storage District (2009) 178 Cal.App. 4th 1460, 1469.*

The County also relies on the Sustainable Groundwater Management Act ("SGMA") (Water Code §§ 10720 *et seq.*) as some support for its claim that the state

[1] Water Code section 13801 required a county to adopt, by January 15, 1990, a well drilling and abandonment ordinance meeting or exceeding the standards set forth in DWR's Bulletin 74-81, based on a report provided by DWR to the county's Regional Water Quality Control Board. Section 13803 requires any such adopted county ordinance to be transmitted to DWR for its review and comments.

has waived sovereign immunity with respect apparently to any act that intersects the water table. But no express waiver of sovereign immunity by the state is identified anywhere in SGMA and no section is even suggested for such. The expansion of county powers would thus normally be read to apply to non-state actors. The borings in question and CPT do not even appear to be necessarily covered. In fact, under SGMA, a person "who extracts for domestic purposes, two acre feet or less of groundwater per year" is a "*de minimis* extractor." *Water Code §§ 10721(a).*

The fact that CalTrans may have chosen to seek permits rather than perhaps delay state road construction in San Joaquin County in order to contest the County permit ordinance tells us nothing about the lawfulness of the permit requirement as to the DWR project in question. It may to a minimal extent evidence that in some circumstances the permit process is not overly time-consuming.

Another issue is that the application of the county ordinance as it pertains to the State in this case cannot be justified under some claim of authority as a "county affair". Indeed the County is not currently arguing such. As noted earlier, San Joaquin County does not possess the broader police power of a charter city. In the case of San Francisco, which has the combined powers of a charter city and county, the Court upheld an ordinance requiring a state parking lot which charged for parking to collect a city tax imposed on the person parking. The Court viewed the tax as a core "municipal affair" and the collection as "unobtrusive" "one that does no more than require assistance in collecting a concededly valid tax on third parties." *San Francisco v. Regents, supra, 7 Cal. 5th at 553.*

The Court in *San Francisco v. Regents* reviewed approvingly two cases, one of which held that an ordinance requiring plumber certification could not apply to a state employee doing work for the State (*In re Means (1939) 14 Cal.2d 254)* and another holding that a school district organized under State laws was exempt from building regulations of a non-chartered city. (*Hall v. City of Taft (1956) 47 Cal.2d 177.)* The Supreme Court in *San Francisco v. Regents* reasoned:

> "This line of cases ...concern substantive requirements that interfered with the state's substantive judgments about how to perform its assigned functions.

> *Means* and *Hall* tell us that in the event of a conflict between a municipality's view of, say, how best to build a parking lot, and the state's ability to decide for itself what sort of parking lot would best serve its needs, the state's prerogatives must prevail."

San Francisco v. Regents, supra, 7 Cal. 5th 536, at 553.

In this case, the County wishes to supervise and direct how and perhaps where the State can perform tests for a statewide project. This is clear interference with the State's substantive judgments on the state's water resources.

The "Unregulated Perils". County seems to argue that if DWR is not regulated by the County all sorts of bad things may happen to the water resources of the State, though none are actually identified. However, the general rule is that counties cannot impose regulations on the state. In *Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist. (1986) 185 Cal. App. 3d 997* the court held that the defendant rapid transit district was a state entity and did not have to comply with general plans of a city or county adopted pursuant to specific statutory authority. *Gov. Code §§ 65300 and 65700.*

Similarly, the code and the cases make clear that the state and its entities are not bound by county or city building codes or zoning ordinances. Government Code section 53090, *et seq.* addresses the application of city and county ordinances to 'local agencies' defined as "an agency of the state for the local performance of governmental or proprietary function within limited boundaries." The state is specifically excluded from the definition of "local agency," as are cities, counties and publicly-established and managed rapid transit districts. *Gov. C. §§ 53090(a).*

City of Lafayette v. East Bay Mun. Utility Dist. (1993) 16 Cal.App.4th 1005, 1013-1014 reads section 53091(d)'s prohibition on the application of county building ordinances to the construction of water transmission facilities as an "absolute exemption" based on the Legislature's intent to "strike a balance between the value of local zoning control by cities and counties and the state interest in efficient storage and transmission of water. [Citations.]" *Ibid.*

DWR is vested with the authority to plan and construct water transmission facilities for the benefit of the entire state and its people. Water transmission facilities are specifically exempted from municipal building ordinances, and DWR's intent is not to drill water wells but to plan, design and construct a water conveyance system, therefore, San Joaquin's Well Standards cannot be enforced against the particular activities authorized under the Entry Order as part of DWR's water transmission project.

There is no reason to liberally construe a limited waiver of immunity as to specific enumerated topics such as a water well in order to avoid the supposed evils of an unregulated DWR drilling.

CEQA Filings v. Entry Order. The court's Entry Order governs the actual geologic activities on the parcels in question. The Project IS/MND was adopted prior to the hearings and the resulting Entry Order. While DWR may choose to do less than it was authorized by the Entry Order, it cannot do more than authorized by the Entry Order regardless of what may be in the IS/MND. There is no evidence that DWR intends to exceed the provisions of the Entry Order and indeed, DWR has sworn it will not do so. The IS/MND raises no triable material fact.

Entry Order Did Not Rule on Issue of County Permit. The Court agrees that its Entry Order did not address whether DWR was obligated to comply with county permitting requirements. The issue was not raised at the time of the Entry Order and therefore the lawfulness of any alleged county requirement that the State obtain a County drilling permit was not ruled on at that time.

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Order Limited to State. In reaching the conclusions in this Order, this court addresses only the rights and powers of the State of California. It does not consider or rule on the validity of the County's ordinance as to private parties or entities other than the State.

Therefore, the court **HEREBY ORDERS** as follows:

1. The Motion for Summary Adjudication of Issues filed by DWR is granted for the reasons stated above, including that the court finds no triable issue of material fact as set out in DWR's Statement of Undisputed Facts.
2. County has dismissed its second and third causes of action in the operative First Amended Complaint;
3. This renders DWR's Motion for Summary Adjudication dispositive;
4. DWR is to submit a proposed Judgment, per court rules.

Dated: October 2, 2020

Hon. John P. Farrell
Judge of the Superior Court

EXHIBIT B

SJC-4

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

Coordination Proceeding Special Title: IN RE: DEPARTMENT OF WATER RESOURCES CASES JCCP 4594 *County of San Joaquin v. DWR*	COORDINATED ACTION: JCCP 4594 ORDER ON EVIDENTIARY OBJECTIONS AND REQUESTS FOR JUDICIAL NOTICE RE: DWR's MOTION FOR SUMMARY ADJUDICATION HEARING DATE: October 2, 2020 Time: 10:00 a.m. Dept.: 8D Hon. John P. Farrell

RULINGS ON EVIDENCE

DWR's Requests for Judicial Notice within the Garske Declaration:

Requests 1 through 5, 8 – 11, 13. Granted. *Evid. C. § 452(d)(1)*
Request 6 – Granted. *Evid. C. § 452(h)*
Request 7—Denied. Complaint superceded by First Amended Complaint.

County of San Joaquin's Objections to DWR's Evidence

Overruled. Rules of Court Rule 3.1345. Also, Davis' statement of intent is part of the *res gestae.*

DWR's Objections to San Joaquin's Evidence

Objections to the Meserve Declaration

1. Overruled.
2. Different MND attached to court's copy.
3. through 5. Sustained

6. a. through s. Sustained as to each.
7. Overruled
8. Overruled
9. Sustained

Objections to the Zidar Declaration

10 – Sustained as to paragraph 7,

11 – Sustained
12 – Sustained as to last sentence only.
13 – Overruled as to first sentence, otherwise sustained.

Objections to the Neudeck Declaration

14 – Sustained, irrelevant as to paragraph 7
15 – Overruled
16 – Sustained
17 – Overruled
18 – Overruled
19 – Overruled, except as to "are used to"
20 – Overruled
21 – Sustained
22 – Sustained
23 – Sustained
24 – Overruled
25 -- Sustained
26 – Sustained – Document speaks for itself
27 -- Sustained
28 – Sustained
29 – Sustained
30 – Sustained

IT IS SO ORDERED.

Dated: October 2, 2020

Hon. John P. Farrell
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

Coordination Proceeding Special Title (Rule 3.550) DEPARTMENT OF WATER RESOURCES CASES *County of Sacramento v. California Department of Water Resources*	CASE NO.: JCCP 4594 **DECLARATION OF SERVICE**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the **United States Postal Service** with postage thereon fully prepaid that same day in the ordinary course of business.

On October 7, 2020, I served the attached:

NOTICE OF ENTRY OF ORDERS

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California, the foregoing is true and correct and that this declaration was executed on **October 7, 2020**, at Sacramento, California.

/s/ Crissy Rojas
Crissy Rojas

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