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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

1 dismissal motions were scheduled for hearing on September 10,  
2 2015. The transfer order vacated the September 10, 2015, hearing  
3 scheduled on each dismissal motion and instructed the parties to  
4 "re-file and/or re-notice" the motions in this Court "pursuant to  
5 the Eastern District's Local Rules and/or the [undersigned  
6 judge's] instructions." (Id. at 20:1-3.) The moving defendants  
7 subsequently re-noticed their dismissal motions for hearing on  
8 October 19, 2015. (See ECF Nos. 109, 110, 112-115.)

9 On September 28, 2015, Plaintiffs filed an ex parte  
10 application, essentially seeking to continue the hearing date on  
11 the re-noticed dismissal motions until a time after which the  
12 Court could consider "whether to grant Plaintiffs leave to file a  
13 Second Amended Complaint." In the alternative, Plaintiffs request  
14 a two week "extension of time under Local Rule 144 to respond to  
15 Defendants' re-noticed Motions to Dismiss." (Pls.' Ex Parte Appl.  
16 1:5-13, ECF No. 116.) Plaintiffs state:

17 On September 22, 2015, Plaintiffs[] sent  
18 a letter to Defendants, . . . seeking  
19 Defendants' agreement to stipulate to a  
20 request for leave to amend and included a  
copy of the proposed Second Amended  
Complaint.

21 On September 24, 2015, Mitchell Rishe  
22 wrote that the State Defendants refused to  
23 stipulate to the filing of the SAC, stating  
that Plaintiffs' SAC includes "confidential  
attorney-client privileged  
information." . . .

24 . . . .

25 Plaintiffs' counsel . . . then sought  
26 guidance from ethics counsel who could not  
27 understand the basis for the alleged  
assertion of privilege by the State  
28 Defendants. He further sought clarification  
[from] the State Defendants - that request  
went unanswered.

1 . . . .

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

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

8 Plaintiffs argue:

9 [T]he privilege issues makes it impossible  
10 for Plaintiffs to address in their  
11 oppositions why the Court should deny each of  
12 the six re-noticed motions to dismiss. These  
13 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.

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

16 . . . [T]his is the most efficient and  
17 fair way to proceed for the Court and all  
18 parties. It will narrow the issues in  
19 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.

20  
21 (Id. at 2:4-19.)

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

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25 <sup>1</sup> On September 29, 2015, Plaintiffs submitted for in camera consideration  
26 a Request to Seal Documents, declaration in support thereof, proposed order,  
27 and an unredacted copy of Plaintiffs' proposed Second Amended Complaint, which  
28 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'n<sup>2</sup> 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.

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<sup>2</sup> 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.)

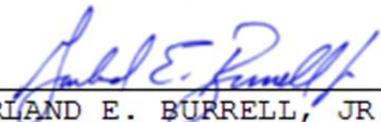
1           Plaintiffs have not shown sufficient justification for  
2 the requested extensions. Therefore, Plaintiffs' ex parte  
3 application is DENIED.

4 Dated: October 1, 2015

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

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