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CITY OF TEHACHAPI

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

TEHACHAPI-CUMMINGS COUNTY
WATER DISTRICT, a California water
district,

Petitioner,

v.

CITY OF TEHACHAPI, a California
municipal corporation; and DOES 1 through
20, inclusive,

Respondents.

GREENBRIAR CAPITAL
CORPORATION, a British Columbia
corporation; GREENBRIAR CAPITAL
HOLDCO, INC., a Delaware corporation;
GREENBRIAR CAPITAL (U.S.), LLC, a
Delaware limited liability company;
JEFFREY CIACHURSKI, an individual;
and DOES 21 through 40, inclusive,

Real Parties in Interest.

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

07/22/2025

By: R. Lopez Deputy

Case No. 34-2022-80003892-CU-WM-GDS

**CITY OF TEHACHAPI'S OPPOSITION
TO MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT**

[Filed Concurrently with:

1. Request for Judicial Notice

2. Declaration of Ginetta L. Giovinco

3. Evidentiary Objections to King Decl.]

Hearing

Date: August 4, 2025

Time: 9:00 a.m.

Dept.: 36

Assigned for All Purposes to the
Hon. Stephen Acquisto, Dept. 36

[Exempt from filing fees pursuant to Govt. Code § 610]

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I. INTRODUCTION

Through its motion for leave to file a supplemental complaint and petition, Petitioner Tehachapi-Cummings County Water District (“District”) seeks to challenge Respondent City of Tehachapi’s (“City”) adoption of its statutorily-required 6th Cycle Housing Element, a mandatory component of the City’s General Plan. The District’s proposed supplemental petition includes a direct challenge to the Housing Element brought under both the California Environmental Quality Act (“CEQA”) (Pub. Resources Code § 21000, *et seq.*) and Housing Element Law (Gov’t Code § 65580, *et seq.*) and asks the Court to issue a writ of mandate to set aside approvals for the adopted Housing Element and prevent the City from relying on it. In short, the District wants to import a standalone lawsuit regarding the Housing Element into the District’s pending fourth cause of action, which seeks declaratory relief related to the City’s CEQA review of development projects.

The Court should deny the District’s motion for several reasons.

First, the statute authorizing supplemental complaints does not stretch to encompass an entirely new legal challenge. Code of Civil Procedure section 464 allows for a supplemental complaint “alleging *facts* material to the case occurring after the former complaint or answer.” (Code Civ. Proc. § 464(a); emphasis added.) It does not envision a new challenge to a different matter, based on different laws, with a materially different prayer for relief (a writ of mandate versus declaratory relief).

Second, the City and other parties interested in the City’s Housing Element will be prejudiced by litigating an attack on the Housing Element in a pending lawsuit rather than as a discrete lawsuit. The supplemental petition directly challenges the Housing Element; the City likewise is entitled to directly defend itself, with the standalone record of proceedings that will be required for the challenge, separate briefing, and unencumbered by discovery issues related to the fourth cause of action. And, the City is not the only entity affected by the District’s effort to shoehorn a Housing Element challenge into the current lawsuit. Californians for Homeownership, a housing advocacy group, has indicated it intends to participate in support of the City in any challenge to the City’s adopted Housing

1 Element, which should be adjudicated on its own. (*See* concurrently-filed Declaration of
2 Ginetta L. Giovinco [“Giovinco Decl.”], ¶ 2, Exh. A [“The City’s compliance with housing
3 element law, and its compliance with CEQA during that process, are freshly ripe issues that
4 merit litigation in a dedicated case. And organizations like Californians for
5 Homeownership have a vested interest in participating. It is important that the issue of the
6 validity of the City’s housing element be litigated in a dedicated case and that organizations
7 like ours have the opportunity to intervene in that litigation at its outset.”].) In contrast, if
8 the Court denies the District’s motion, the District can file a separate lawsuit to challenge
9 the Housing Element – something the District already has indicated that it will do. (*See*
10 District’s Ex Parte Motion, filed July 10, 2025, p. 2:20-23 [“The District simply needs to
11 know whether it may file that challenge in this Court or must do so in a duplicative
12 proceeding under a separate case number before the time to file that challenge has
13 expired”].)

14 Third, judicial economy is not served by the District’s supplemental complaint and
15 petition. Any challenge to the Housing Element must be brought as a writ action, not a
16 declaratory relief action, which the fourth cause of action is. (*See* Gov’t Code §§ 65587(b);
17 65751.) A Housing Element challenge will require its own record of proceedings,
18 compliance with CEQA’s procedural requirements, and separate briefing. As indicated
19 above, the parties are also not likely to be congruent given that Californians for
20 Homeownership has indicated an interest in participating in any challenge to the City’s
21 Housing Element. (Giovinco Decl., ¶ 2, Exh. A.) Tethering the fourth cause of action to a
22 Housing Element challenge also presents timing issues and problems regarding the scope of
23 any potential judgment, both substantively and should additional parties be involved. The
24 District’s requested approach would lead to the Court in essence adjudicating two separate
25 lawsuits – the fourth cause of action on the District’s “pattern and practice” claim, and a
26 direct challenge to the Housing Element – concurrently, with different timeframes, issues,
27 laws, and parties. Judicial economy is not served by ballooning the fourth cause of action
28 in this manner.

The District is free to challenge City actions with which it disagrees but it is not entitled to use the fourth cause of action as a placeholder lawsuit, supplementing its pleadings each time a new substantive disagreement with the City arises. Nor is it appropriate for the District to treat this Court as a judicial hotline for each dispute the District has with the City rather than following proper statutory procedures to initiate litigation. The Court should deny the District’s motion, after which the District still can proceed as it should have in the first place and can file a separate lawsuit to pursue any challenge to the City’s adopted Housing Element.

II. BACKGROUND

A. Factual and Procedural Overview

The District filed this action on September 16, 2021, by way of a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. The District filed the operative Second Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Second Amended Complaint” or “SAC”) on April 24, 2023. The Second Amended Complaint contains four causes of action. (SAC, ¶¶ 50-103, 104-115, 116-120, 121-129.) The first three causes of action challenge the Sage Ranch residential development project and were adjudicated in favor of the District, as set forth in the Court’s June 18, 2024 Ruling on Submitted Matter. The fourth cause of action, discussed in greater detail below, seeks declaratory relief and alleges that the City “engages in a pattern and practice of CEQA violations in its analysis, review, and approval of land use and development projects with potentially significant adverse cumulative environmental effects....” (SAC, ¶ 122.) The development projects are listed in Exhibit D to the Second Amended Complaint. (SAC, ¶ 122.)

The Court stayed the fourth cause of action on March 27, 2023, pending adjudication of the causes of action related to the Sage Ranch project. After the stay was lifted, the District and the City requested, and the Court agreed, to again stay the fourth cause of action while the District and the City engaged in settlement discussions (which were unsuccessful). The fourth cause of action was ultimately stayed to January 7, 2025. The

1 City then filed a demurrer to and motion to strike portions of the fourth cause of action,
2 which the Court overruled on March 6, 2025.

3 **B. The Fourth Cause of Action in the Second Amended Complaint**

4 The fourth cause of action alleges that the City “has a pattern and practice of
5 misrepresenting the nature of the water supplies for the *various development projects* in its
6 environmental and planning documents” and “failing to accurately analyze the cumulative
7 impacts related to water resources and water supply *prior to approving development*
8 *projects....*” (SAC, ¶ 122, subparts (a) and (b), respectively; emphasis added.) The fourth
9 cause of action also claims the City has a pattern and practice of “failing to consult in good
10 faith with the District regarding water supply analysis in the EIRs [environmental impact
11 reports] and WSAs [water supply assessments] for the projects under review for City
12 approval, and disregarding the District’s concerns....” (SAC, ¶ 122, subpart (c).)

13 The fourth cause of action requests a declaration that the City “has no power *to*
14 *approve development projects* without first demonstrating the availability of an adequate
15 and reliable wet water supply that does not harm or impair the rights of other lawful water
16 users” and “requiring the City to identify and disclose the source and environmental
17 impacts of *each development project’s* reliable supply of wet water prior to project
18 approval” or to explain the impacts of projects proceeding without such reliable supply of
19 wet water. (SAC, ¶ 129; emphasis added.)

20 **C. The Proposed Supplemental Petition**

21 The District’s proposed, 110-paragraph First Supplemental Complaint and Petition
22 (“Supplemental Petition”) largely relates to the statutorily-mandated 6th Cycle Housing
23 Element which the City Council adopted on July 7, 2025. (*See* accompanying Request for
24 Judicial Notice, Exhibit A [City Council Resolution No. 25-25.]) As the City explained in
25 the Resolution, “the Housing Element is one of the State-mandated elements of the City of
26 Tehachapi General Plan that must be updated pursuant to Government Code 65588 for the
27 2023-2031 planning period[.]” (RJN, Exh. A, p. 4.) Further, “[t]he Housing Element is
28 strictly a policy document that does not provide entitlements to any specific development

1 projects and would not result in any direct or indirect physical changes to the environment.
2 The Housing Element establishes policies and a housing plan to accommodate the City's
3 6th Cycle Regional Housing Needs Allocation (RHNA), which is 902 residential units. The
4 City is not responsible for developing, building, or constructing any of these units itself."
5 (RJN, Exh. A, p. 5, § 5.A.)¹

6 Although labeled the "Fourth Cause of Action" (Supplemental Petition, p. 21:26),
7 the Supplemental Petition includes allegations under CEQA (¶¶ 69-84) and Housing
8 Element Law (¶¶ 85-96), followed by a "First Supplemental Petition for Writ of Mandate."
9 (Supplemental Petition, p. 33:9.) This "Supplemental Petition" includes what are in effect
10 two new causes of action specific to the adopted Housing Element – one arising under
11 CEQA (¶¶ 97-104) and a second under Housing Element Law (¶¶ 105-110).

12 The Supplemental Petition also seeks relief beyond the declaration requested in the
13 fourth cause of action in the Second Amended Complaint. The Supplemental Petition asks
14 the Court:

15 "3. For a writ of mandate or peremptory writ issued under the seal of this
16 Court and directing Respondent to:

17 a. Void and set aside Respondent's approval and/or adoption of
18 the Notice of Exemption for the Housing Element Update, and associated
19 actions and approvals;

20 b. Void and set aside any and all other discretionary approvals
21 pertaining to the Housing Element Update and any contracts entered into
22 pursuant to the project; and

23 c. Refrain from granting any further approvals, authorities, or
24 permits for or pursuant to the Housing Element Update unless and until
25 Respondent complies fully with the requirements of CEQA and the
26 Government Code."

27 (Supplemental Petition, p. 39:3-13.)

28 ¹ The District contends that the City is "seeking to evade" the Court's Ruling on the Sage
Ranch project "through a variety of procedural chicanery." (Motion, p. 3:24-25.) This
tactic is both disappointing and substantively incorrect. The City has not evaded the Ruling
in any regard. Instead, as required by state law (Gov't Code § 65583), the City adopted a
Housing Element that includes all required information and which the California
Department of Housing and Community Development indicated would substantially comply
with state law once adopted – a point that the District admits in its Supplemental Petition.
(Supplemental Petition, ¶ 63.)

In short, the Supplemental Petition introduces a new, standalone matter (the statutorily-mandated Housing Element); includes claims arising in part under a different body of law (Housing Element Law, Gov’t Code § 65580, *et seq.*); and seeks a writ of mandate directed at a specific approval, rather than the declaratory relief requested in the fourth cause of action.

III. LEGAL STANDARD

Code of Civil Procedure section 464 provides that the “plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging *facts* material to the case occurring after the former complaint or answer.” (Code Civ. Proc. § 464(a); emphasis added.) A motion for leave to file a supplemental complaint is properly denied when it seeks to expand the case. (*See, e.g., Flood v. Simpson* (1975) 45 Cal.App.3d 644, 647 [“the court properly denied the motion on the basis that the supplement to the complaint sought to introduce new causes of action”]; *Stephani v. Abbott* (1934) 137 Cal.App. 510, 516 [“Permission to file a supplemental complaint is in the discretion of the trial court [citations], provided it is in furtherance of and consistent with the original complaint and is not a new or independent cause of action”].)

Notably, while the District discusses at length the general standard for amended pleadings, the District does not present any authority to support its proposition that the policy favoring the liberal amendment of pleadings stretches to include a supplemental petition with different laws, different causes of action, and different requested relief.

IV. ARGUMENT

A. The Court Should Deny Leave to File the Supplemental Petition

The Court should deny the District’s motion seeking leave to file its Supplemental Petition. The Supplemental Petition goes beyond simply adding facts to its fourth cause of action and directly challenges the City’s Housing Element, including based on additional grounds and statutes, and seeks a remedy beyond declaratory relief. The City and interested parties will be prejudiced by litigating a direct challenge to the Housing Element under the umbrella of a “pattern and practice” declaratory relief cause of action, whereas the District

will not suffer any prejudice from filing a standalone lawsuit to challenge the Housing Element – the proper procedure in the first place. Finally, judicial economy is harmed, not served, by the District’s requested approach.

1. The Supplemental Petition Challenges a Discrete Approval, Based on Different Laws, and Seeks a Different Remedy

The District’s Supplemental Petition does not request only to add new facts to the operative fourth cause of action. Instead, the Supplemental Petition attempts to directly challenge a discrete approval, based in part on different law (Housing Element Law), and requests different relief (a writ of mandate) not sought in the fourth cause of action.

a. Contrary to the District’s Representations, the District Now Seeks to Challenge a Specific Approval

In opposing the City’s demurrer to the fourth cause of action, the District unequivocally stated, “The District’s Fourth Cause of Action does not challenge any specific project approvals.” (District’s Opp. to Demurrer, filed February 24, 2025, p. 13:8-9; *see also* p. 1:25-2:3 [“The City pretends the Fourth Cause of Action is something it is not – a writ challenge to multiple specific prior project approvals – and then posits that because this claim does not meet requirements applicable to those other kinds of claims, the Fourth Cause of Action fails”].) Despite this avowal, the District now seeks to do exactly that. As explained above, the Supplemental Petition seeks a writ of mandate to void the City’s determination that the Housing Element update was exempt from CEQA; to void any discretionary approvals pertaining to the Housing Element or any contracts entered into pursuant to the Housing Element; and to compel the City from granting any further approvals, authorities, or permits for or pursuant to the Housing Element update at this time. (Supplemental Petition, p. 39:3-13.) In other words, the District is now trying to do exactly what it promised this Court in its opposition to the City’s demurrer that it was not doing – using the fourth cause of action to attack and unwind discrete approvals.

The District’s request cannot be reconciled with the limited purpose of a supplemental complaint. “A supplemental complaint or answer is permissive in the sense

that no claims or defenses are lost by failure to file it. The rights of the parties will be concluded by a judgment only on matters necessarily in issue under the original pleadings.” (5 Witkin, Cal. Proc. 6th Plead § 1290 (2025).) The District plainly believes that it will lose claims if it cannot file the Supplemental Petition before the statute of limitations to challenge the Housing Element passes, as the District admitted in its ex parte request to advance the hearing on this motion. (District’s Ex Parte Motion, filed July 10, 2025, p. 2:20-23 [“The District simply needs to know whether it may file that challenge in this Court or must do so in a duplicative proceeding under a separate case number *before the time to file that challenge has expired*”]; emphasis added.) Indeed, if the District merely wanted to add facts to its fourth cause of action, there would be no urgency at all. The District has conceded that its Supplemental Petition goes beyond the allowable limits of a supplemental complaint set forth in Code of Civil Procedure section 464(a).

b. The Supplemental Petition Includes New Causes of Action Under Different Statutes

The District requests that the Court permit the filing of the Supplemental Petition because, according to the District, “the same parties will need to litigate the same facts under the same law as to the housing element in both causes of action.” (Motion, p. 6:7-8.) First, this appears to be a concession that the Supplemental Petition is in fact a new cause of action (or two). This alone is a basis to deny the motion. (*Flood v. Simpson* (1975) 45 Cal.App.3d 644, 647 [“Moreover, the court properly denied the motion on the basis that the supplement to the complaint sought to introduce new causes of action”].) Second, this assertion is incorrect. The fourth cause of action does not include any allegations related to Housing Element Law whereas the Supplemental Petition is replete with them. (Supplemental Petition, ¶¶ 85-96, 105-110.) Adjudication of the Supplemental Petition will turn not just on CEQA but on an additional body of law as well.

A supplemental complaint or petition must be “in furtherance of and consistent with the original complaint and is not a new or independent cause of action.” (*Stephani v. Abbott* (1934) 137 Cal.App. 510, 516 [holding trial court erred in allowing supplemental

complaint[.]) The District’s Supplemental Petition evidences a new cause of action (or two, if the CEQA and Housing Element claims are construed as separate causes of action) and therefore fails to meet this test.

c. The Supplemental Petition Seeks a Different Form of Relief

As the District has recognized, a challenge to a housing element must be brought as a writ action, not a declaratory relief action. (*See* Gov’t Code §§ 65587(b); 65751.) The Supplemental Petition thus includes a prayer for relief that seeks a writ of mandate to set aside approvals relating to the Housing Element and any actions in furtherance of it. (Supplemental Petition, p. 39:3-13.) This exceeds and is materially different from the declaratory relief sought in the fourth cause of action. And, based on its scope, the prayer for relief in the Supplemental Petition may be the subject of law and motion proceedings, further demonstrating that the Supplemental Petition does not simply add new facts to an existing cause of action.

2. The City and Other Interested Parties Will Be Prejudiced By the Supplemental Petition

The District summarily asserts that “the City has no cognizable prejudice from the Supplemental Petition.” (Motion, p. 6:12.) This is incorrect. The City should not be forced to defend its statutorily-required Housing Element as an add-on to an existing lawsuit given the issues that are involved.² Further, a challenge to the Housing Element will require a standalone record of proceedings and separate briefing. The fourth cause of action is well underway, and the City already has filed its answer. In contrast, a challenge to the Housing Element is at a markedly different procedural posture. As a result, either the

² As Californians for Homeownership states, “the City’s practices around the adoption of its housing element have nothing remotely to do with its practices around the approval of specific projects. The adoption of a housing element is a rare, once-every-eight-years process that is mandatory for every single city and county in the state. If a city or county fails to adopt a housing element, it becomes subject to a state law ‘builder’s remedy,’ which allows for nearly unchecked development. To characterize the City’s adoption of its housing element as part of a pattern of *shirking* obligations under CEQA is preposterous because it *increases* the City’s ability to engage in local control and environmental review of housing projects within its borders.” (Giovinco Decl., ¶ 2, Exh. A; emphasis original.)

fourth cause of action will be required to yield to the timing of the Housing Element challenge, or the City will be deprived of the ability to mount a full defense to the Housing Element challenge, including law and motion proceedings related to the Supplemental Petition. Either of these options results in prejudice.

And, the City is not the only entity affected by the District’s effort to shoehorn a Housing Element challenge into the current lawsuit. As noted above, Californians for Homeownership has indicated an interest in joining any litigation challenging the City’s Housing Element, and has indicated that it should be afforded the opportunity to do so at the outset of the case. (Giovinco Decl., ¶ 2, Exh. A [“The City’s compliance with housing element law, and its compliance with CEQA during that process, are freshly ripe issues that merit litigation in a dedicated case. ... It is important that the issue of the validity of the City’s housing element be litigated in a dedicated case and that organizations like ours have the opportunity to intervene in that litigation at its outset.”].)

In contrast, if the Court denies the District’s motion, the District can file a separate lawsuit to challenge the Housing Element – something it has already said it will do. (*See* District’s Ex Parte Motion, filed July 10, 2025, p. 2:20-23 [“The District simply needs to know whether it may file that challenge in this Court or must do so in a duplicative proceeding under a separate case number before the time to file that challenge has expired”].)

3. Judicial Economy Is Not Served By the Supplemental Petition

Judicial economy likewise is not served by the District’s approach. The Housing Element challenge will involve a discrete record of proceedings, compliance with CEQA’s procedural requirements and separate briefing. Given the allegations in the Supplemental Petition, there are likely to be separate law and motion proceedings on the Supplemental Petition. And, given the potential for another party (Californians for Homeownership) to be involved in the Housing Element challenge, the Supplemental Petition also presents timing issues and problems regarding the scope of any potential judgment. In sum, the Supplemental Petition will add to the Court’s burden, not reduce it.

B. The Court Should Deny Leave to File the Supplemental Complaint

While the City’s primary objections are to the Supplemental Petition, the Supplemental Complaint portion of the District’s document is also infirm. The Supplemental Complaint includes allegations regarding specific development projects (§§ 37-48), nearly all of which not only pre-date the filing of the Second Amended Complaint (§§ 37-43) but are expressly listed in Exhibit D to the Second Amended Complaint. As a result, these purported facts are not “occurring after the former complaint” as is required to properly be included in a supplemental complaint. (Code Civ. Proc. § 464, subd. (a).)

V. CONCLUSION

A supplemental complaint has a narrow purpose – to add material facts to an existing complaint. It decidedly does not exist to create a placeholder opportunity for a litigant who wishes to avoid what should be a separate legal challenge. The Court should deny the District’s motion, and the District still can file a separate legal challenge to the City’s Housing Element if it chooses.

Dated: July 22, 2025

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