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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 GRANTING DEFENDANTS'
MOTION TO STAY**

Re: Dkt. No. 123

CITY OF OAKLAND,
Plaintiff,

v.

MONSANTO COMPANY, et al.,
Defendants.

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

Re: Dkt. No. 98

CITY OF BERKELEY,
Plaintiff,

v.

MONSANTO COMPANY, et al.,
Defendants.

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

Re: Dkt. No. 89

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 Before the Court is Monsanto’s motion to dismiss or stay the Cities’ first amended
9 complaints for failure to exhaust administrative remedies. Case No. 15-cv-3178, Dkt. No. 123;
10 Case No. 15-cv-5152, Dkt. No. 98; Case No. 16- cv-71, Dkt. No. 89 (together, “MTD”).
11 Monsanto’s motion will be GRANTED because the Cities are simultaneously seeking the same
12 relief before this Court and before the California Commission on State Mandates (the
13 “Commission”). As discussed below, the Cities’ actions in this Court will be stayed until after the
14 Cities’ next hearing before the Commission.

15 **I. BACKGROUND**

16 The Cities’ allegations are largely identical, with some variations regarding their use of
17 captured stormwater and their trusteeship of public land. Case No. 15-cv-3178, Dkt. No. 91; Case
18 No. 15-cv-5152, Dkt. No. 81; Case No. 16-cv-71, Dkt. No. 71 (“FACs”).¹

19 The Cities operate municipal stormwater and dry weather runoff systems, which collect
20 runoff and discharge it into the Bay. *Id.* ¶ 13. The Cities are required to obtain Municipal Regional
21 Stormwater Permits from the San Francisco Bay Regional Water Quality Control Board. *Id.* ¶ 13.
22 Each of the Cities has received such a permit, which includes limits on the amount of PCBs the
23 Cities may discharge into the Bay through stormwater. *Id.* ¶¶ 14–15. In 2015, the Water Quality
24 Control Board imposed a stricter PCB limit, which forced the Cities to spend money to meet the
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26 ¹ For a more detailed discussion of the factual and procedural background of the Cities’ actions,
27 see this Court’s order on Monsanto’s previous motion to dismiss. Case No. 15-cv-3178, Dkt. No.
28 121; Case No. 15-cv-5152, Dkt. No. 96; Case No. 16-cv-71, Dkt. No. 87.

1 new requirements. Id. ¶¶ 17–19. The Cities seek damages from Monsanto arising from their permit
2 compliance costs.

3 In their original complaints, the Cities alleged causes of action against Monsanto for public
4 nuisance and equitable indemnity. Case No. 15-cv-3178, Dkt. No. 1; Case No. 15-cv-5152, Dkt.
5 No. 1; Case No. 16-cv-71, Dkt. No. 1. This Court granted Monsanto’s motions to dismiss, finding
6 that (1) the Cities lacked standing to claim public nuisance because they failed to show that they
7 have a property interest in polluted stormwater, and (2) the Cities did not state a claim for
8 equitable indemnity because their costs arose from regulatory requirements rather than from an
9 adverse judgment. Case No. 15-cv-3178, Dkt. No. 85; Case No. 15-cv-5152, Dkt. No. 66; Case
10 No. 16-cv-71, Dkt. No. 56. The Court granted leave to amend only as to the cause of action for
11 nuisance. Id.

12 The Cities filed their FACs on September 13, 2016, each bringing a single cause of action
13 for public nuisance. Monsanto again moved to dismiss. Case No. 15-cv-3178, Dkt. No. 103; Case
14 No. 15-cv-5152, Dkt. No. 81; Case No. 16-cv-71, Dkt. No. 71. This Court denied the motion but
15 invited Monsanto to file a motion to dismiss (or, alternatively, to stay) on the basis that the Cities
16 have failed to exhaust their administrative remedies. Case No. 15-cv-3178, Dkt. No. 121; Case
17 No. 15-cv-5152, Dkt. No. 96; Case No. 16-cv-71, Dkt. No. 87. That motion is now before the
18 Court.

19 **II. LEGAL STANDARD**

20 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of claims
21 alleged in the complaint. Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir.
22 1995). Dismissal “is proper only where there is no cognizable legal theory or an absence of
23 sufficient facts alleged to support a cognizable legal theory.” Navarro v. Block, 250 F.3d 729, 732
24 (9th Cir. 2001). The complaint “must contain sufficient factual matter, accepted as true, to ‘state a
25 claim to relief that is plausible on its face.’ ” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
26 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). District courts have “discretion to decline
27 jurisdiction, or to stay proceedings,” pending exhaustion of administrative remedies. Morrison-

1 Knudsen Co. v. CHG Int'l, Inc., 811 F.2d 1209, 1223 (9th Cir. 1987).

2 **III. DISCUSSION**

3 In 2010, the City of Alameda filed a test claim with the Commission, contending that its
4 permit obligations constituted an unfunded state mandate for which the City was entitled to
5 reimbursement from the State. Defs.' Supp. Request for Judicial Notice Ex. 37, Case No. 15-cv-
6 3178, Dkt. No. 123; Case No. 15-cv-5152, Dkt. No. 99; Case No. 16-cv-71, Dkt. No. 90.²

7 Berkeley and Oakland joined as co-claimants, and San Jose filed a similar claim. Id. Exs.
8 11, 38. The Cities' claims were consolidated in 2016 and are currently pending before the
9 Commission. Id. Ex. 15. As the parties indicated during the hearing on this motion, the next
10 hearing before the Commission on the Cities' consolidated test claims is scheduled for January 26,
11 2018. The Cities filed their federal actions in 2015 and 2016.

12 Monsanto argues that the Cities' cases before this Court must be dismissed (or, at a
13 minimum, stayed) because the Cities have failed to exhaust their administrative remedies. MTD
14 9–12. “[W]here an administrative remedy is provided by statute, relief must be sought from the
15 administrative body and this remedy exhausted before the courts will act.” Abelleira v. Dist. Ct. of
16 Appeal, Third Dist., 17 Cal. 2d 280, 292 (1941). The California Legislature established the
17 Commission “as a quasi-judicial body to carry out a comprehensive administrative procedure for
18 resolving claims for reimbursement of state-mandated local costs.” MTD at 10 (quoting
19 Redevelopment Agency v. Comm’n on State Mandates, 43 Cal. App. 4th 1188, 1193 (1996)). In
20 their test claims before the Commission, the Cities seek to recover their permit compliance costs
21 on the theory that the permits constitute unfunded state mandates. Monsanto argues that the Cities
22 are seeking the same relief in their actions before this Court. See, e.g., FACs ¶ 16 (“Plaintiff has
23 spent money in efforts to reduce PCBs from stormwater and dry weather runoff to comply with
24 these state-mandated TMDL goals.”); id. ¶ 18 (“The City has incurred and will continue to incur
25 costs to comply with the new, stricter TMDL requirements in order to reduce PCBs from
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27 ² Monsanto’s request for judicial notice is GRANTED.

1 stormwater and dry weather runoff.”). Because relief for the Cities’ claims is available from the
2 Commission, Monsanto argues, the Cities must exhaust their test claims before their federal
3 actions can proceed.

4 In response, the Cities argue that the relief they seek before the Commission is unrelated to
5 the relief they seek in their federal actions. The Cities argue that their federal actions seek tort
6 damages under a public nuisance theory. See, e.g., Pls.’ Opp’n to Defs.’ Mot. to Dismiss 3 (“The
7 Cities seek to recover tort damages for the contamination of their properties including the past and
8 future costs of removing PCBs from their stormwater systems, because Monsanto’s PCBs are
9 toxic, cannot be contained to their original application, and do not biodegrade.”). No
10 administrative process exists to adjudicate public nuisance claims. Id. at 4 (“Nowhere does the
11 Code establish an administrative process for a public nuisance claim.”). Accordingly, the Cities
12 argue that they are free to pursue different theories in each forum, and there is no requirement to
13 exhaust their administrative claims before they can pursue tort claims in federal court.

14 The Court finds that there is substantial overlap between the costs the Cities seek to
15 recover in their test claims and in their federal actions. In both, the Cities seek damages to
16 compensate them for the cost of complying with state-mandated permit obligations—for instance,
17 costs associated with retrofitting their stormwater systems to filter out PCBs. Compare FACs ¶ 16
18 (“Plaintiff has spent money in efforts to reduce PCBs from stormwater and dry weather runoff to
19 comply with these state-mandated TMDL goals.”), with RJN Ex. 37 at 1–2 (“The City of Alameda
20 [and its co-claimants] seek[] the Commissioner’s approval of claims to recover costs associated
21 with obligations mandated by a handful of provisions of the Municipal Regional Stormwater
22 Permit issued . . . by the California Regional Water Quality Control Board,” including
23 “stormwater pollution controls”). Although the Cities frame their federal actions as claims for
24 public nuisance, the Cities seek the same recovery for the same injury before the Commission. As
25 such, the Cities must exhaust their administrative remedies before they can seek relief from the
26 courts.

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IV. CONCLUSION

Monsanto's motion to stay is GRANTED. The Cities' actions are STAYED until February 8, 2018. The parties shall appear for a status conference at **10:00 a.m. on February 8, 2018**. The parties shall file a joint status report, not to exceed five pages of text, by **February 1, 2018**.

IT IS SO ORDERED.

Dated: August 4, 2017



EDWARD J. DAVILA
United States District Judge