

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 11/01/2022                      EVENT TIME: 08:20:00 AM                      DEPT.: 40  
JUDICIAL OFFICER: Mark Borrell

CASE NUM: 56-2022-00567385-CU-WM-VTA  
CASE TITLE: VANE VS. OJAI VALLEY SANITARY DISTRICT

CASE CATEGORY:    Civil - Unlimited    CASE TYPE:    Writ of Mandate

EVENT TYPE:    Demurrer (CLM) - to Verified Petition for Writ of Administrative Mandate  
CAUSAL DOCUMENT/DATE FILED:    Demurrer, 08/25/2022

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The following is a statement of the court's tentative ruling. The court may adopt, modify or reject the tentative ruling after considering the parties' oral arguments. The tentative ruling will have no legal effect unless adopted by the court.

No notice of intent to appear is required. If you wish to submit on the tentative decision, you may send a telefax to Judge Borrell's secretary, Tammy Brantner, at 805-477-5894, stating that you submit on the tentative. A copy of the telefax must be sent to all opposing parties contemporaneous with transmission to the court. Please include the hearing date, the case name and case number on your telefax. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence.

PLEASE NOTE: The court will not approve any request to appear by Court Call made after 4:30 p.m. on the court day prior to the scheduled hearing.

Respondent, Ojai Valley Sanitation District, demurs to the petition for administrative writ of mandate. The demurrer is opposed.

The demurrer is **OVERRULED**. The face of the petition does not show that the petition for writ of mandate is completely time-barred because there are no facts alleged to show that it is time barred under Code of Civil Procedure section 1094.6, subdivision (d). Respondent's demurrer only addresses Code of Civil Procedure section 1094.6, subdivision (b). Judicial review may be had if the petition is filed within either time limit. (See Code Civ. Proc., § 1094.6, subd. (a).)

The court has considered the arguments raised in the supplemental reply. For purposes of this demurrer, those arguments are not persuasive. It is well-established that the defect must appear "clearly and affirmatively" on the face of the complaint; a demurrer based on the statute of limitations will not lie where the action may be, but is not necessarily, barred. (E.g., *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 781.) Here, the face of the petition does not suggest that Petitioner failed to request a complete record of proceedings, and therefore the facts affirmatively pleaded do not show that the limitations period stated in subdivision (d) is inapplicable.

Nor is the court persuaded that it should take judicial notice of the non-occurrence of a material fact under these circumstances.

None of this is to suggest that the action may not be time barred. But if it is, that will need to be shown through the

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introduction of evidence at trial or at an evidence-based motion.

Respondent has filed an answer to the petition. If desired, respondent shall have 14 days in which to file an amended answer, otherwise the action will proceed on the answer on file.