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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
SPRING STREET COURTHOUSE

DEPT 10 HON. WILLIAM H. HIGHBERGER, JUDGE PRESIDING

SANTA BARBARA CHANNELKEEPER, a)
California non-profit corporation,)
)
Plaintiff,)
)
V.) No. 19STCP01176
)
STATE WATER RESOURCES CONTROL BOARD,)
et al.,)
)
Defendants.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, MARCH 15, 2021, 1:30 P.M.

Reported by:
ALEXANDER T. JOKO, CSR No. 12272
Court Reporter Pro Tem

1 IN-PERSON APPEARANCES OF COUNSEL:

2 FOR CITY OF VENTURA:
3

BEST BEST & KRIEGER LLP
4 BY: SHAWN D. HAGERTY
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7 FOR ROBIN BERNHOFT:

8 PACIFIC LEGAL FOUNDATION
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16 REMOTE LA COURTCONNECT APPEARANCES OF COUNSEL:

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18 FOR STATE WATER RESOURCES CONTROL BOARD:

19 OFFICE OF THE ATTORNEY GENERAL
20 BY: MARC N. MELNICK
NOAH GOLDEN-KRASNER

21
22 FOR THE CITY OF OJAI:

23 BARTKIEWICZ, KRONICK & SHANAAN
24 HOLLY J. JACOBSON, ESQ.

25 CROSS-DEFENDANT: CLAUDE R. BAGGERLY
26
27
28

I N D E X

(NONE)

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1 Case Number: 19STCP01176
2 Case Name: Santa Barbara Channelkeepers
3 vs. State Water Resources
4 Control Board, et al.
5 Los Angeles, California Monday, March 15, 2021
6 Department 10 Judge William H. Highberger
7 Appearances: (As heretofore noted.)
8 Reporter: Alexander Joko, CSR No. 12272
9 Time: 1:30 P.M.

10

11 (The following proceedings were held
12 in open court:)

13

14 THE COURT: We're on the record in
15 19STCP01176.

16 We've got various lawyers in the
17 courtroom. When they speak, they should announce
18 themselves the first time.

19 There are various things I'd like to
20 address, and then I will open it up to the lawyers.

21 I was pleased to go to the website for
22 the case, Venturariverwatershedadjudication.com and see
23 that there is now Cross Defendant Spreadsheet
24 information available, as well as Overlier Spreadsheet
25 information available.

26 And so I took a stab at dealing with some
27 of the stipulations, which I've been aggregating in my
28 office, of Mr. Hagerty.

1 One worked. Two of the first three I
2 looked at didn't.

3 The one that worked was for Kristi
4 Schoeld and Neil Jorgensen as to parcel number
5 020-0-080-310. The document indicated that the
6 property owner is not a listed cross-defendant. That
7 appeared to be true. The Overlier Spreadsheet is
8 sortable by the first letter of the first name or the
9 first letter or number associated with the fictitious
10 property owner. And while I didn't find it under "K"
11 for "Kristi," I did find it under "Neil" for "Neil
12 Jorgensen" with Kristi listed second, but that
13 otherwise was a fit. And I signed it.

14 MR. HAGERTY: Thank you, your Honor.

15 THE COURT: The first one I actually picked up
16 reported to be a Cross Defendant relative to parcel
17 number 009-0-070-185. The caption of the document says
18 that the stipulating parties are "Joseph Lynn
19 Bartheleny and Elvira Lilly Bartheleny, trustees of the
20 Joseph Lynn Bartheleny and Elvira Lily Bartheleny 2002
21 Family Trust."

22 So we go into the Cross Defendant
23 Spreadsheet and commence to sort it by party name. In
24 this case, the first letter of the party name. And I'm
25 repeating the exercise on the computer in front of me.

26 When I went into the party information on
27 the Superior Court's publicly-available website and put
28 in the surname "Bartheleny," there did come up

1 identification in our records that this party only was
2 named according to our records.

3 Bear with me, I'm repeating it on the
4 screen so I'm a hundred percent certain of what I'm
5 stating rather than by doing it by memory.

6 And because it's a huge database, it
7 takes a long time for this case to load as compared to
8 the case I called a few minutes ago, which, from a data
9 weight point of view, is de minimis and goes readily.

10 So I have opened up, in the public
11 website, this case and the party's tab. And I will
12 now, in the search function for the parties, enter the
13 surname "Bartheleny." And I get a match, but only to
14 Elvira Lily Bartheleny. No reference to trustee, no
15 reference to Joseph Lynn Bartheleny or anybody else.

16 And I haven't yet taken the time to dive
17 in and try to look at the face of the operative
18 cross-complaint to see what I find in the text if I
19 start looking for people named "Bartheleny."

20 But I know that when I go to the new
21 Cross Defendant Spreadsheet that has been provided to
22 me by counsel and start looking for either Joseph or
23 Elvira, I find the following:

24 First, as I understand it, I have to have
25 the patience to go into multiple different basins
26 because, when I have sorted this A to Z, it still comes
27 out as subsets and not a unitary list. I'm not sure
28 how many subsets there are. But when I went into the

1 second basin, as I perceived what was going on here, I
2 think I found the Bartheleny's. But it is confusing
3 and, dare I say, frustrating to discover this isn't a
4 unitary list of names, but apparently presented as
5 discreet subsets that have to be managed separately.

6 So for Joseph, I now find, as to a
7 different parcel, 010-0-220-040, that the spreadsheet
8 lists the party identity as follows, "Joseph Lynn
9 Bartheleny, Trustee of the Joseph Lynn Bartheleny and
10 Elvira Lily Bartheleny 2012 Family Trust," end quote.
11 And that's real close to what's on the papers, but the
12 papers present two trustees. It is not an identical
13 match.

14 Further, when I looked at this in
15 chambers -- and the parcels don't match.

16 When I looked at this in chambers, I sure
17 thought I came across parcel 085, but only Joseph was
18 listed, Joseph Lynn Bartheleny, to be precise. But
19 it's not coming up here. So I'll try to sort by parcel
20 numbers and see if that comes up with -- it's very odd
21 that the sort would have -- cause they were adjacent
22 lines when I checked the last time, but they're not
23 showing up this time, which is a bizarre aberration.

24 I've sorted the parcels number now. I'm
25 going to try to find it by parcel number.

26 Yeah, here it is. So now when I look at
27 this list sorted by parcel and go try to find
28 009-0-070-185, it earns two lines, one with a word

1 "Elvira Lily Bartheleny" and the next with the word
2 "Joseph Lynn Bartheleny," but no reference to "property
3 held as a trustee." That nomenclature associates with
4 the parcel that ends 070-020.

5 So, Mr. Hagerty, my problem is, there's
6 only so many hours I have in a day to be trying to
7 check this for correctness. I guess what I'm going to
8 have to do is push it back to Mr. Thrall to be checking
9 whether these things match the party names in our
10 records, which apparently hasn't happened before they
11 got to my desk because, when I do this, I'm having
12 these problems with the mismatch. And there's a --
13 this is not the highest and best uses of a judge's
14 time, but recognizing our limited clerical staff and
15 the importance of precision, at least on a test example
16 basis, I will, on occasion, test these, but I'm not
17 going to have the time to do that.

18 Then I have another example. This is the
19 third of the three I looked at. This is another
20 property owner not listed, but this one comes in as to
21 parcel 024-0-120-035. And, here, the property owner is
22 listed as "Gianetti Living Trust."

23 Now, I don't find any Gianetti Living
24 Trust in the Overlier Spreadsheet. But probably the
25 obvious answer to that is, it is not properly titled
26 real estate in the name of the living trust. As one
27 sees by looking at the Bartheleny example, if somebody
28 wants to own property as a trust, you have to title it

1 as Shawn Hagerty as trustee of the Shawn and Sally
2 Hagerty 1998 Living Trust." And that's how title would
3 be held.

4 And one wouldn't then try to show up on a
5 lawsuit by stipulation calling oneself "Hagerty Living
6 Trust" or "Gianetti Living Trust." So this is a
7 procedurally-defective document which got to my desk,
8 but is defective. So this a huge time suck of things
9 that will keep me from ever thinking about your
10 physical solution if I have to spend the next six
11 months of my life telling you about clerical errors.

12 MR. HAGERTY: Your Honor, we agree. We don't
13 wish the court to spend this time. We're happy to work
14 with -- and we have been working well in the last month
15 with your court staff and the court administration. We
16 will do everything to clean this up.

17 With regard to Bartheleny, they are a
18 named riparian and overlier and listed in paragraph 93
19 of the cross-complaint. And it is --

20 THE COURT: But the parcels aren't matching
21 up.

22 MR. HAGERTY: I think the issue, your Honor,
23 is, they are both an overlier, so they -- they have
24 property that isn't riparian. And they're named
25 because they are riparian. So they are a named party
26 because --

27 THE COURT: Are they trying to stipulate for
28 all their property or --

1 MR. HAGERTY: They're stipulating as the
2 cross-defendant, your Honor.

3 THE COURT: But not as to the overlier?

4 MR. HAGERTY: Correct. As you pointed out
5 correctly on multiple occasions, they don't have to do
6 anything as an overlier. They --

7 THE COURT: But I didn't find them on the
8 Overlier list. I found them twice to different parcel
9 numbers in the Cross Defendant list.

10 MR. HAGERTY: Your Honor, I can't --

11 THE COURT: You can come up here and look at
12 it if you want.

13 MR. HAGERTY: No, your honor.

14 Again, we're trying to -- we posted those
15 spreadsheets for the court and also for the parties who
16 wish to try to locate themselves. We will continue
17 to --

18 THE COURT: The parcel that ends "020" is not
19 the same as the parcel that ends "185." They're both
20 not even adjacent. And, yet, somebody with a
21 "Bartheleny" name associates with both parcels. One is
22 in the trustee form of ownership. The other without a
23 reference to trustee ownership.

24 MR. HAGERTY: Your Honor, we would like to
25 take this off the judge's burden because we agree that
26 it's not your job to micromanage these things.

27 THE COURT: I know my clerk's office doesn't
28 have the time, staff or excellence to do it. I have to

1 be the quality control unless I can somehow build a
2 process where the clerk's office will be able to invest
3 the tedious control and, frankly, working off our
4 database because of the dreadful inability to search it
5 effectively. You created something so massive that our
6 software doesn't make search function.

7 MR. HAGERTY: We're working on that too, your
8 honor. We're working on a new database that's going to
9 be more searchable. We are going to continue to make
10 this as easy as possible and as low burden for the
11 court and administration as possible.

12 THE COURT: I've signed one of three. I've
13 given that to Mr. Lim to file.

14 I'm giving all of these rejected
15 stipulations, which are probably 50 or more, to
16 Mr. Thrall. And insofar as you want them entered in
17 our lifetime, Mr. Hagerty, you are going to have to
18 follow up with him from time to time.

19 MR. HAGERTY: Yes, your Honor. We'll do that.

20 THE COURT: Ah, service advice related private
21 residences. If you hired the Ventura Sheriff to go
22 out, could he force his way into these properties?

23 MR. HAGERTY: We're going to look into
24 additional ways to do a forced entry, but we alerted
25 the court to this issue just because we really are
26 struggling with it. And in light of the court's
27 previous comments regarding publication, we wanted to
28 make it --

1 THE COURT: This is one time I would be happy
2 to let you get publication. Because if somebody is
3 hiding behind a locked house and you can't get through
4 a community guard shack, and that's the obstruction, I
5 think at that time -- now, if the sheriff, given a fee
6 or a request to function as your process server,
7 goes -- I would think they can -- if they wanted to
8 serve a search warrant, you know, for drugs or an
9 arrest warrant, presumably they wouldn't be deterred
10 all that long by somebody's locked gate. So,
11 presumably, you would think they can use the same force
12 of legal authority to get past a gate. So I want you
13 to check that out. I think it'll work.

14 But if for some reason it doesn't,
15 educate me. And at that point, I would be quite
16 comfortable with the idea that you would defer to
17 publication notice with the understanding that you're
18 sending some mail that's going to get through that
19 locked gate into the mailbox and DHL or Fed Ex that's
20 going to get there because you're not asking for
21 signatures. You're just unilaterally sending it there
22 and say, "Hey, since you won't cooperate with the
23 service of summons and complaint, we're using
24 substituted service via publication with the court's
25 approval." Because of those circumstances, I am not
26 troubled by that from a due process point of view.

27 MR. HAGERTY: Thank you, your Honor. That's
28 why we raised it. We appreciate that.

1 THE COURT: Okay. I double checked with our
2 administrator. And, yes, we're happy to work with you,
3 Mr. Hagerty, and your staff insofar as you can create a
4 parallel database of party names of appearance status
5 and the rest.

6 I assume that's going to be something
7 more than what just popped up on the website?

8 MR. HAGERTY: Yes, your Honor. It'll be --
9 our firm has used this in other adjudications. And
10 it's just a way to make sure that everyone has the most
11 immediate access to documents that have been filed.

12 THE COURT: From a party naming point of view,
13 it would be good, if it's possible, to sort it where
14 you do a full alpha sort and don't have these subsets
15 that I was stumbling across --

16 MR. HAGERTY: Yes, your Honor. That
17 spreadsheet is a starting point. It's not the end
18 point.

19 THE COURT: Okay. Do I have counsel for Santa
20 Barbara Channelkeepers with us this afternoon?

21 MR. MELNICK: Your Honor, this is Marc Melnick
22 from the Attorney General's Office. Mr. Cooper told us
23 a couple of hours ago that there was some technical
24 problems he was having with L.A. Court Connect, and he
25 wasn't able to arrange an appearance.

26 THE COURT: Who is trying to get the benefit
27 of the dismissal, is it the City of Ventura or the
28 State that's so eager --

1 MR. HAGERTY: No. We are, your Honor. It was
2 a hard fought negotiation to get that dismissal. And
3 so we're happy to work with --

4 THE COURT: Is there any reason to believe
5 that it has ever been lodged with the court or if our
6 dear friends from Mr. Cooper's office think that
7 service on File & ServeXpress is the end of the game?

8 MR. HAGERTY: We think it's the latter. And
9 we'll work with Mr. Cooper to have it filed.

10 We brought copies, if he were here and
11 would consent. We're happy to walk it over --

12 THE COURT: Are they signed by him?

13 MR. HAGERTY: He signed the version that is
14 served, yes.

15 But we'll -- your Honor --

16 THE COURT: Do you have a signed version that
17 you're authorized to leave with staff --

18 MR. HAGERTY: I would like to -- that's why I
19 was hoping he was on the line. I mean, he has served
20 it twice. And it's an obligation that he has, but I'm
21 happy to work with him --

22 THE COURT: How clear do I have to make it
23 that service on File & ServeXpress is not the same as
24 filing or lodging?

25 MR. HAGERTY: We understand, your Honor.

26 THE COURT: If you're going to practice in
27 this court, Mr. Cooper or anybody else ought to
28 understand that basic point or it's essentially a

1 malpractice.

2 MR. HAGERTY: We're work with Mr. Cooper to
3 get it on file, your Honor.

4 And the reason we raised it, it's
5 important facts to understand going forward as the
6 court considers some of these other issues. But we'll
7 clean that up with Mr. Cooper.

8 THE COURT: As soon as you got one that you're
9 authorized to tender, just get it by Pony Express or
10 e-mail or something to Mr. Sanchez and Mr. Lim, and we
11 can process it --

12 MR. HAGERTY: We will do that, your Honor.

13 THE COURT: Okay. Kick the site visit to
14 April 19th?

15 MR. HAGERTY: Yes.

16 And we have some ideas that we think
17 we'll discuss with the parties. We are meeting and
18 conferring again next week. And by April, we should
19 have some specific proposals that hopefully can address
20 all the parties' concerns.

21 THE COURT: Mr. Lim, we have to set a further
22 status conference on Monday, April 19th at 1:30 with a
23 joint report due on April 12th. And additional
24 supplemental report, reports of other parties as they
25 wish by the same deadline.

26 Okay. Mr. Thrall or Mr. Lim, anything we
27 want to say about the request for default that has just
28 started to hit our inbox?

1 MR. THRALL: We're receiving them, your Honor,
2 as groups and processing them as they start to come in.

3 The major work was trying to clean up the
4 party entries so that the parties are reflected on the
5 defaults.

6 THE COURT: That's a necessary first step.

7 Our staff is trying very hard on this,
8 Mr. Hagerty, but this is a totally, you know, out of
9 the normal run kind of case. So it is a crushing
10 burden on the clerical staff even apart from the Covid
11 problem.

12 MR. HAGERTY: We understand. We're working
13 hard to limit that burden, your Honor.

14 THE COURT: Okay. So the motion to set an
15 evidentiary hearing, obviously not ready for today.

16 MR. HAGERTY: Your Honor, at least with the
17 stay, we've had some general discussions. It's really
18 not ripe for discussion today because we think it's
19 important for the court to see the briefing. And we
20 understand the court's time constraints, so addressing
21 those issues in April is something that we're looking
22 forward to do.

23 THE COURT: As you can see by being at counsel
24 table as you are turned 90 degrees from its normal
25 place and then the podium having been pulled into the
26 center of the well, we're ready to start a jury trial
27 two weeks from today.

28 The intent will be to put the jury in the

1 gallery. The counsel will actually turn their backs to
2 the bench and sit facing out to the gallery, if you
3 want to get a sense of what it is before you leave here
4 today.

5 The witness will be on a raised barstool
6 at the podium facing out.

7 I'll be back here behind everybody.

8 The jury box will have tech support or
9 the third lawyer for a given team.

10 And we'll have a few chairs for the
11 public once we get done with the voir dire. And we
12 hope we can conduct an efficient jury trial with
13 appropriate social distancing under the circumstances.

14 But it's been a big time suck of my life
15 separate and apart from fumbling around with your
16 stipulations and the problems they presented.

17 MR. HAGERTY: Yes, your Honor.

18 THE COURT: What else, if anything, would you
19 like to address today, Mr. Hagerty?

20 MR. HAGERTY: The only other thing to mention
21 is, we have completed the notice process. And so under
22 the Code, we will be filing a notice explaining how
23 that process was completed. So expect that to come
24 through in the next week or so.

25 That's the only other thing, your Honor,
26 from the City's point of view.

27 THE COURT: What about Casitas Municipal Water
28 District, who is here for that party?

1 MR. COSGROVE: David Cosgrove appearing on
2 behalf of Casitas.

3 We have nothing further for you, your
4 Honor.

5 THE COURT: What about the Great State of
6 California through its multiple District Attorneys
7 General, Fish and Game, anything you want to say
8 through counsel?

9 MR. GOLDEN-KRASNER: Your Honor, Noah
10 Golden-Krasner.

11 I have nothing to add.

12 THE COURT: What about the Great State of
13 California through its State Water Resources Control
14 Board via the Attorney General?

15 MR. MELNICK: Thank you, your honor. Marc
16 Melnick.

17 And we just look forward to more
18 negotiations with the City on the physical solution.

19 THE COURT: Counsel for the City of Ojai, want
20 to be heard?

21 MS. JACOBSON: Yes, your Honor. We just look
22 forward to a more thorough discussion of the issues of
23 the sixth cause of action and physical solution
24 doctrine.

25 THE COURT: We need to know who is talking?

26 MS. JACOBSON: Holly Jacobson for the City of
27 Ojai.

28 THE COURT: Any other individual parties wish

1 to be heard this afternoon?

2 MR. BAGGERLY: Judge, this is Claude Baggerly.

3 THE COURT: Go ahead, sir.

4 MR. BAGGERLY: You're really busy. I'll save
5 mine for April 19th.

6 THE COURT: I am busy. This jury trial is a
7 big time consumption trying to get it done safely and
8 prudently.

9 Anybody else want to be heard?

10 Okay. Mr. Hagerty, you will give notice
11 of the next date?

12 MR. HAGERTY: Yes, your Honor.

13 THE COURT: And the report submit deadline.

14 With that, the court is in recess. You
15 are free to go.

16 MR. HAGERTY: Thank you, your Honor.

17 (End of Proceedings)

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 SPRING STREET COURTHOUSE

4
5 DEPT 10 HON. WILLIAM H. HIGHBERGER, JUDGE PRESIDING

6
7 SANTA BARBARA CHANNELKEEPER, a)
California non-profit corporation,)

8 Plaintiff,)

9 v.) No. 19STCP01176

10 STATE WATER RESOURCES CONTROL BOARD,)
11 et al.,)

12 Defendants.)
13 _____)

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19 I, ALEXANDER T. JOKO, court reporter pro tem,
20 of the Superior Court of the State of California, for
21 the County of Los Angeles, do hereby certify that the
22 foregoing pages comprise a full, true, and correct
23 transcript of the proceedings held in the
24 above-entitled matter on MARCH 15, 2021.

25 Dated this 16TH day of March, 2021.

26 

27
28 ALEXANDER T. JOKO

A	approval 12:25 April 15:14,18,22,23 16:21 19:5 arrange 13:25 arrest 12:9 asking 12:20 associated 5:9 associates 8:3 10:21 assume 13:6 Attorney 2:19 13:22 18:14 Attorneys 18:6 authority 12:12 authorized 14:17 15:9 available 4:24,25 Avenue 2:5	Board 1:10 2:18 4:4 18:14 20:10 box 17:8 briefing 16:19 brought 14:10 build 11:1 burden 10:25 11:10 16:10,13 busy 19:4,6	close 7:11 Code 17:22 come 5:28 10:11 16:2 17:23 comes 6:26 7:20 8:20 comfortable 12:16 coming 7:19 commence 5:23 comments 11:27 community 12:4 compared 6:7 complaint 12:23 completed 17:21,23 comprise 20:22 computer 5:25 concerns 15:20 conduct 17:12 conference 15:22 conferring 15:18 confusing 7:2 Connect 13:24 consent 14:11 considers 15:6 constraints 16:20 consumption 19:7 continue 10:16 11:9 control 1:10 2:18 4:4 11:1,3 18:13 20:10 Cooper 13:22 14:9,27 15:2,7 Cooper's 14:6 cooperate 12:22 copies 14:10 corporation 1:7 20:7 correct 10:4 20:22 correctly 10:5 correctness 8:7 Cosgrove 2:12 18:1,1 COSTA 2:14 counsel 2:1,16 6:22 13:19 16:23 17:1 18:8,19 County 1:2 20:2,21 couple 13:23 court 1:1,28 4:12,14 5:15 9:13,15,15,20 9:27 10:3,7,11,15,18
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