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11 CITY OF SAN BUENAVENTURA

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 05 2019

Sherri R. Carter, Executive Officer/Clerk of Court  
By: Isaac Lovo, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

15 SANTA BARBARA CHANNELKEEPER,  
a California non-profit corporation,

16 Petitioner,

17 v.

18 STATE WATER RESOURCES  
19 CONTROL BOARD, a California State  
Agency, et al.,

20 Respondents.

Case No. 19STCP01176  
Judge: Honorable William F. Highberger

RESPONDENT AND CROSS-  
COMPLAINANT CITY OF SAN  
BUENAVENTURA'S NOTICE OF MOTION  
AND MOTION FOR APPROVAL OF  
NOTICE AND FORM ANSWER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES

[Filed with:  
1. Decl. of Sarah Christopher Foley; and  
2. [Proposed] Order]

23 CITY OF SAN BUENAVENTURA, a  
California municipal corporation,

24 Cross-Complainant,

25 v.

26 DUNCAN ABBOTT, an individual; et al.

27 Cross-Defendants.

Date: October 2, 2019  
Time: 10:00 a.m.  
Dept: 10

Action Filed: September 19, 2014  
Trial Date: Not Set

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
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1 NOTICE OF MOTION

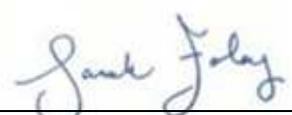
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3 TO ALL PARTIES AND THEIR ATTORNEYS:

4  
5 PLEASE TAKE NOTICE that on October 2, 2019 at 10:00 a.m., or as soon thereafter as  
6 the matter may be heard in Department 10 of the Los Angeles County Superior Court, Civil  
7 Complex Litigation Division, located at 312 North Spring Street, Los Angeles, California,  
8 Respondent and Cross-Complainant City of San Buenaventura (“City”), will move the Court for  
9 an order approving the Notice of Adjudication and Form Answer attached as Exhibit A to the  
10 Declaration of Sarah Christopher Foley, filed concurrently. City’s Motion is made pursuant to  
11 and as required by California Civil Procedure Code section 836(b).

12  
13 This Motion is based on this Notice, the attached Memorandum of Points and Authorities,  
14 the accompanying Declaration of Sarah Christopher Foley, the pleadings and papers on file in this  
15 action, and any other matters properly before the Court at the hearing on the Motion.

16  
17 Dated: September 5, 2019

BEST BEST & KRIEGER LLP

18  
19  
20 By: 

21 GENE TANAKA  
22 SHAWN HAGERTY  
23 SARAH CHRISTOPHER FOLEY  
24 DAKOTAH BENJAMIN  
25 Attorneys for Respondent and Cross-  
26 Complainant  
27 CITY OF SAN BUENAVENTURA  
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 1. INTRODUCTION

4  
5 Pursuant to California Civil Procedure Code section 836(b), Respondent and Cross-  
6 Complainant City of San Buenaventura (“City”) seeks the Court’s approval of a notice of  
7 commencement of groundwater adjudication (“Notice”) and a form answer (“Form Answer”),  
8 attached as Exhibit A to the Declaration of Sarah Christopher Foley (“Foley Decl.”). City  
9 initiated a comprehensive adjudication of the Ventura River Watershed when it filed its Second  
10 Amended Cross-Complaint (“Cross-Complaint”) on September 24, 2018. In its Cross-Complaint,  
11 City named approximately 100 cross-defendants who divert water from the Ventura River or  
12 pump groundwater from the Upper Ventura River, Lower Ventura River, Ojai Valley, and Upper  
13 Ojai Valley Groundwater Basins (collectively “Ventura Groundwater Basins”), which it contends  
14 affect the flow of water in the Ventura River. As an action that includes adjudication of the  
15 Ventura Groundwater Basins, the Cross-Complaint involves, among other things, the Streamlined  
16 Groundwater Adjudication Statutes. See Cal. Civ. Proc. Code §§ 830 – 852.

17  
18 As required by the Streamlined Groundwater Adjudication Statutes, when City filed its  
19 Cross-Complaint, it also lodged a draft Notice and a draft Form Answer to the Cross-Complaint.  
20 Foley Decl. ¶ 3, Ex. B. City has modified the draft Notice that it originally lodged to add this  
21 Court’s information and the time to respond to City’s Cross-Complaint consistent with the Order  
22 issued by Judge Karnow, dated November 15, 2018. Foley Decl. ¶ 4. The Notice also includes  
23 information clarifying that City’s Cross-Complaint seeks an adjudication of the surface waters  
24 and groundwater of the entire Ventura River Watershed, including the Ventura Groundwater  
25 Basins. Id. Finally, City modified the draft Form Answer that it originally lodged to include this  
26 Court’s information and additional identifying information to be filled out by each cross-  
27 defendant to facilitate case and party management. Foley Decl. ¶ 5.

1 Court approval of the Notice and Form Answer is necessary for City to serve landowners  
2 overlying the Ventura Groundwater Basins and to obtain information about persons reporting  
3 extractions and/or diversions from the Ventura Groundwater Basins.

4  
5 2. DISCUSSION

6  
7 A. GROUNDNS FOR MOTION

8  
9 California Civil Procedure Code section 836(a) requires that when a party files a  
10 comprehensive adjudication complaint, it must lodge with the court (1) a draft notice of  
11 commencement of groundwater basin adjudication and (2) a draft form answer to the adjudication  
12 complaint. Cal. Civ. Proc. Code §§ 836(a)(1), (2). City lodged the required documents on  
13 September 24, 2018, concurrently with the filing of its Cross-Complaint. Foley Decl. ¶ 3, Ex. B.  
14 The notice of commencement of groundwater basin adjudication and form answer to adjudication  
15 complaint must include specified language and be presented in specific form. Cal. Civ. Proc.  
16 Code §§ 836(a)(1), (2). City’s Notice and Form Answer include the required language and form.  
17 Foley Decl. ¶ 6. Accordingly, they comply with the requirements of California Civil Procedure  
18 Code section 836(a).

19  
20 The Streamlined Groundwater Adjudication Statutes require that upon assignment to a  
21 judge, the party who initiated the comprehensive adjudication complaint must file a motion for  
22 approval of the draft notice and draft form answer within thirty (30) days. Cal. Civ. Proc. Code §  
23 836(b). Before it was transferred to the present Court, this case was designated complex and  
24 assigned to Judge Karnow of the San Francisco Superior Court, Complex Division on November  
25 13, 2018. Foley Decl. ¶ 7. Accordingly, City previously filed a motion for approval of its notice  
26 of adjudication and form answer on December 10, 2018. Id. The parties subsequently jointly  
27 stipulated to transfer this matter to Los Angeles, and City took its motion off calendar. Id. Now  
28 that this matter has been assigned to Judge Highberger, City’s present Motion is made pursuant to

1 and as required by California Civil Procedure Code section 836(b).

2  
3 Court approval of the Notice and Form Answer will allow City to serve all landowners in  
4 overlying the Ventura Groundwater Basins by mail and/or publication. Cal. Civ. Proc. Code §  
5 836(c), (d)(1). It will further allow cross-defendants who have already been served to utilize the  
6 Form Answer to respond to City’s Cross-Complaint, if they so elect. Additionally, Court  
7 approval of the Notice and Form Answer will allow City to request groundwater pumping  
8 information from the State Water Resources Control Board and other local agencies with  
9 information regarding pumping and pumpers in the Ventura Groundwater Basins. Cal. Civ. Proc.  
10 Code § 836.5(a). Court approval of the Notice and Form Answer is also necessary so City can  
11 publish notice of the adjudication in the required newspapers of general circulation and for the  
12 California Department of Water Resources, Ventura County, and the applicable groundwater  
13 sustainability agencies to post notice on their websites. Cal. Civ. Proc. Code §§ 836(d)(1)(D),  
14 836(m). Finally, Court approval of the Notice and Form Answer will facilitate effective service  
15 of process of the Cross-Complaint, Notice, and Form Answer “on all interested parties of the  
16 comprehensive adjudication for purposes of establishing in rem jurisdiction and the  
17 comprehensive effect of the comprehensive adjudication.” Cal. Civ. Proc. Code § 836(j).

18  
19 B. PRIOR OBJECTIONS AND OPPOSITION

20  
21 Certain cross-defendants (Ventura River Water District, Meiners Oaks Water District,  
22 Casitas Municipal Water District, Rancho Matilija Mutual Water Company, Senior Canyon  
23 Mutual Water Company, the Thacher School, Krotona Institute of Theosophy, Friends’ Ranches,  
24 Inc., and Topa Topa Ranch Company, LLC (collectively, “Objecting Cross-Defendants”)  
25 previously objected to City’s prior motion for approval. Objecting Cross-Defendants argued that  
26 City cannot serve landowners holding only surface water rights under the procedures authorized  
27 by the Streamlined Groundwater Adjudication Statutes. Accordingly, City clarifies that by this  
28 Motion it seeks approval of the Notice and Form Answer for mail service only upon landowners

1 overlying and parties claiming rights to the Ventura Groundwater Basins, as authorized and  
2 required by California Civil Procedure Code section 836.

3  
4 The State Water Resources Control Board (“State Board”) previously objected to City’s  
5 prior motion for approval on the grounds that City has not served it on cross-defendants who have  
6 not yet appeared in this action, citing St. Paul Fire & Marine Ins. Co. v. Superior Court 156  
7 Cal.App. 3d 82, 85 (1984) (“St. Paul”). California Civil Procedure Code section 1014 provides  
8 “Where a defendant has not appeared, service of notice or papers need not be made upon the  
9 defendant.” The St. Paul case explains that “notice of motion must be given whenever the order  
10 sought may affect the rights of an adverse party” to protect the adverse party’s right to be heard  
11 on the matter as a matter of due process law. St. Paul Fire & Marine Ins. Co. v. Superior Court  
12 156 Cal.App. 3d 82, 85 (1984) (trial court erred re order terminating defense deposition of  
13 plaintiff without giving proper notice to defendants).

14  
15 This Motion will not affect the rights of cross-defendants who have not appeared nor  
16 prejudice them. It is statutorily required, must be filed within a specific time frame, and merely  
17 asks this Court to approve a notice and form answer, both containing statutorily required  
18 language. Its purpose is to facilitate providing notice of the case to all interested persons and to  
19 allow cross-defendants and others to efficiently answer City’s Cross-Complaint with an optional  
20 form answer. The Court’s order on this Motion will not affect the rights of cross-defendants, and  
21 the State Board has not suggested or shown how City’s failure to provide notice constitutes  
22 prejudice here. Nevertheless, as a matter of professional courtesy, City will serve this Motion by  
23 mail on named cross-defendants who have not appeared.

24  
25 C. TEMPORARY WAIVER OF APPEARANCE FEES

26  
27 City and certain cross-defendants are concerned about the problems facing the hundreds  
28 or thousands of new cross-defendants that may be joining this action. Many parties will be

1 landowners who do not pump groundwater, but nevertheless must be served because they are  
2 overlying the groundwater basins. Other parties will be those who are pumping a small amount  
3 of groundwater. These “non-pumpers” and “small pumpers” may be exempted as de minimis  
4 parties under Civil Procedure Code section 833(d). Accordingly, City proposes that payment of  
5 the initial appearance fee be suspended until the parties and Court have a better idea of the  
6 numbers of new cross-defendants involved, how many are likely to be de minimis parties that  
7 may be exempted from participating in the litigation, and what concerns the new cross-defendants  
8 have.

9  
10 The Court has the authority to grant this request pursuant to its inherent management  
11 authority. “[I]t is apparent that courts have the power to fashion a new procedure in a complex  
12 litigation case to manage and control the case before it. Although it is not possible to set forth  
13 precise guidelines as to when such an order can be issued or what other kinds of procedure can be  
14 used, we conclude that a court should consider the totality of the circumstances of the particular  
15 case in deciding how to manage a complex litigation case.” Cottle v. Superior Court, 3 Cal.App.  
16 4th 1367, 1380 (1992). Additionally, courts have the inherent power to waive filing fees “to  
17 accommodate indigents in civil litigation.” Jara v. Mun. Court, 21 Cal.3d 181, 184 (1978).

18  
19 The Supreme Court recently analyzed the line of cases excusing the payment of fees for  
20 indigent civil litigants to ensure meaningful access to the judicial process in a great variety of  
21 contexts. Jameson v. Desta, 5 Cal. 5th 594, 604 (2018). It determined that courts have inherent  
22 discretion of facilitate court access “even when the relevant statutory provisions that impose fees  
23 or other expenses do not themselves contain an exception for needy litigants.” Id. at  
24 605. Further, judicial authority to facilitate meaningful access to the courts extends not only to  
25 excusing statutorily imposed expenses but also “to devising alternative procedures ... so that  
26 litigants are not, as a practical matter, denied their day in court.” Id.

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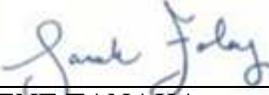
Here, City anticipates having to serve thousands of other persons and entities overlying the Ventura Groundwater Basins, and their property rights may be affected, but many may ultimately be exempted from participating in the litigation. A temporary fee waiver will ensure that access to court is not denied and will give the Court the flexibility to determine the totality of the litigants that will actually participate in this complex, comprehensive water rights adjudication and ensure that those who are able to pay fees will do so. See Cal. Gov't Code § 68630.

3. CONCLUSION

For the reasons stated herein, City respectfully requests that the Court approve the Notice and Form Answer attached as Exhibit A to the Foley Decl. and to authorize service of the Notice, Form Answer, and Cross-Complaint in accordance with California Civil Procedure Code section 836. City also requests that payment of the initial appearance fee be temporarily suspended.

Dated: September 5, 2019

BEST BEST & KRIEGER LLP

By:   
\_\_\_\_\_  
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