

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE

SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT CORPORATION,))
) SUPERIOR COURT
) PLAINIFF,) CASE NO.
) 19STCP01176
)
) VS.)
)
) STATE WATER RESOURCES CONTROL)
) BOARD, A CALIFORNIA STATE AGENCY,)
) ET AL.,)
) DEFENDANTS.)
)
)
)
) AND RELATED CROSS-ACTION.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, FEBRUARY 8, 2022

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TUESDAY, FEBRUARY 8, 2022

ALPHABETICAL/CHRONOLOGICAL LIST OF WITNESSES

(NONE)

E X H I B I T S

(NONE)

1 CASE NUMBER: 19STCP01176
2 CASE NAME: CHANNELKEEPER VS. WATER CONTROL
3 LOS ANGELES, CA TUESDAY, FEBRUARY 8, 2022
4 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE
5 REPORTER: FELIPE CARRILLO, CSR NO. 9555
6 TIME: P.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)

8 ***
9

10 THE COURT: WE'RE ON THE RECORD IN
11 19STCP01176. MY APOLOGIES FOR THE TYPO IN TODAY'S
12 TENTATIVE. I LEFT OFF THE LAST DIGIT.

13 DO I HAVE MR. WHITMAN WITH US THIS
14 AFTERNOON?

15 MR. WHITMAN: YES, YOUR HONOR.

16 THE COURT: GREETINGS.

17 AND FOR VENTURA CITY, MR. HAGERTY?

18 MR. HAGERTY: SHAWN HAGERTY FOR THE CITY OF
19 VENTURA.

20 THE COURT: MR. WHITMAN, IT'S YOUR MOTION.
21 YOU MAY PROCEED.

22 MR. WHITMAN: OKAY. YOUR HONOR, I THINK
23 IT'S BEEN BROUGHT OUT THAT I CHALLENGED ONLY THE
24 SIXTH CAUSE OF ACTION, AND THERE ACTUALLY IS A VERY
25 SPECIFIC REASON FOR THAT. THE SIXTH CAUSE OF
26 ACTION IS A STATUTORY CLAIM, AND THE PLEADING RULES
27 ARE DIFFERENT FOR A STATUTORY CLAIM THAN THEY ARE
28 FOR THE OTHER COMMON LAW CLAIMS THAT THE -- THAT

1 THE CITY HAS BROUGHT IN ITS CROSS-COMPLAINT.

2 THE RULE OF LAW IS THAT IN PLEADING A
3 STATUTORY CLAIM EVERY FACT ESSENTIAL TO THE CLAIM
4 MUST BE PLED, PLED WITH SPECIFICITY. YOU CANNOT
5 PLEAD THE CONCLUSION. NOTICE PLEADING IS
6 INADEQUATE. THEY'RE REQUIRED TO SET FORTH EVERY
7 FACT THAT IS REQUIRED IN THE COMPLAINT.

8 AND THAT WAS OUR BASIS FOR MOTION FOR
9 JUDGMENT ON THE PLEADINGS. THE COMPLAINT IS
10 WOEFULLY SHORT ON SPECIFYING A FACTUAL BASIS FOR
11 THE CITY OF VENTURA HAVING ANY RIGHTS WITH RESPECT
12 TO THE RIGHTS OF THE CROSS-DEFENDANTS I REPRESENT,
13 WHICH ARE OVERLYING LANDOWNERS.

14 I'LL DRAW THE COURT'S ATTENTION
15 SPECIFICALLY TO THE ALLEGATION THAT'S IMPORTANT IN
16 THIS CASE, IS PARAGRAPH 107 OF THE THIRD AMENDED
17 COMPLAINT. AND IT SAYS THE CITY IS INFORMED AND
18 BELIEVES AND THEREUPON ALLEGES THAT IT HAS PUEBLO,
19 PRESCRIPTIVE, AND OTHER AND/OR APPROPRIATE RIGHTS
20 IN THE WATER -- IN THE WATERSHED.

21 SO, YOU KNOW, FIRST OF ALL, THE CITY IS NOT
22 ALLEGING IN ANY RESPECT HOW IT HAS ACQUIRED PUEBLO
23 WATER RIGHTS, AND ON THAT BASIS ALONE IT'S
24 DEFICIENT. I'M GOING TO LEAVE TO THE SIDE THE
25 PRESCRIPTIVE -- POTENTIAL FOR PRESCRIPTIVE WATER
26 RIGHTS OR APPROPRIATE WATER RIGHTS AND JUST FOCUS
27 ON THIS PUEBLO ISSUE. THEY HAVEN'T ALLEGED THAT
28 THEY'RE A PUEBLO, AND THEY HAVEN'T ALLEGED HOW THEY

1 ACQUIRED PUEBLO WATER RIGHTS. AND IF YOU READ
2 EVERY WORD OF THE HISTORY OF CALIFORNIA, OF THE
3 CITY OF VENTURA, THE CITY OF VENTURA'S WEBSITE IN
4 WHICH TALKS ABOUT ITS HISTORY, THE MISSION HISTORY
5 OF VENTURA AND WHICH TALKS ABOUT ITS HISTORY, THERE
6 IS NOT A SINGLE WORD ASSERTED THAT THE CITY OF
7 VENTURA HAS EVER BEEN A PUEBLO.

8 BUT THAT'S REALLY NEITHER HERE NOR THERE
9 BECAUSE IT IS INSUFFICIENT FOR THEM TO ALLEGE THAT
10 THEY HAVE PUEBLO RIGHTS WITHOUT ASSERTING THE
11 FACTUAL BASIS FOR HAVING ACQUIRED THOSE PUEBLO
12 RIGHT, AND THEY HAVE NOT DONE THIS ANYWHERE WITHIN
13 THE THIRD AMENDED COMPLAINT.

14 I WILL CITE FOR THE COURT A CALIFORNIA
15 SUPREME COURT CASE. IT INVOLVES A COMPLETELY
16 DIFFERENT ISSUE. IT INVOLVES AN AREA OF LAW WHERE
17 I PRACTICE SO I DEAL WITH THIS ISSUE ALL THE TIME.
18 BUT IT'S THE AREA OF HEALTHCARE LAW, AND I
19 REPRESENT CLIENTS WHO ARE ACCUSED OF MEDICAL
20 NEGLIGENCE, WHICH IS A COMMON LAW THEORY OF
21 LIABILITY, AND MY CLIENTS ARE ACCUSED OF ELDER
22 ABUSE, WHICH IS A STATUTORY THEORY OF LIABILITY.

23 AND SO I'M FREQUENTLY IN A POSITION OF
24 ALLOWING THE COMMON LAW CAUSE OF ACTION TO GO
25 UNDISTURBED VIA DEMURRER, BUT IN CHALLENGING THE
26 CAUSE OF ACTION WHICH IS MY CLIENT IS GUILTY OF
27 ELDER ABUSE, AND THIS LAW CLEARLY PROVIDES THAT FOR
28 STATUTORY LIABILITY THE COMPLAINT MUST ASSERT ALL

1 OF THE FACTS WHICH SUPPORT THAT CLAIM, CAN'T BE
2 ASSERTED IN CONCLUSORY FASHION.

3 I'M GOING TO CITE YOUR HONOR TO COVENANT
4 CARE VS. SUPERIOR COURT, 2004, 32 CAL.4TH 771 AT
5 3790. THE SUPERIOR COURT STATES, "IN LIGHT OF THE
6 GENERAL RULE THAT STATUTORY CAUSES OF ACTION MUST
7 BE PLEAD WITH PARTICULARITY," IT CITES TO LOPEZ VS.
8 SOUTHERN CALIFORNIA, A CASE I CITED IN MY MOVING
9 PAPERS, "WHEN CONSIDERING SECTION 425 APPLICATION
10 TO COMMON LAW INTENTIONAL TORTS, THE LEGISLATURE
11 INTENDED THE STATUTE TO APPLY IN AN ACTION UNDER
12 THE ELDER ABUSE ACT." SO CLEARLY THE SUPREME
13 COURTS HOLDS THE VIEW THAT IF IT'S A STATUTORY
14 THEORY OF LIABILITY, THEN THE COMPLAINT MUST ASSERT
15 EACH FACT NECESSARY TO ESTABLISH THE CLAIM.

16 THE NEXT PART THAT I'M GOING TO ADDRESS,
17 YOUR HONOR, IS THE FACT THAT THE CITY ALLEGES THAT
18 IT HAS PUEBLO RIGHTS BASED UPON INFORMATION AND
19 BELIEF. THAT'S IMPROPER PLEADING. THEY CANNOT
20 PLEAD SOMETHING ON INFORMATION AND BELIEF WHEN THEY
21 ARE THE HOLDER OF THE FACTS. THEY ASSERT THEY HAVE
22 THE RIGHTS, THEY HOLD THE FACTS, THEY'RE REQUIRED
23 TO ASSERT THAT FACTUAL BASIS. THEY HAVEN'T DONE
24 THAT IN THE CASE.

25 I'LL CITE YOUR HONOR TO CASE OF SEARCY VS.
26 HEMET, 1986, 177 CAL.APP.3D, 792. THE COURT SAYS,
27 "IN THE FIRST PLACE ENACTMENTS ARE GENERALLY A
28 PUBLIC RECORD, AND FACTS THAT ARE ASCERTAINABLE

1 FROM PUBLIC RECORDS MAY NOT PROPERLY BE PLEADED ON
2 INFORMATION AND BELIEF." THAT DISSERTATION HAS
3 SIGNIFICANT APPLICATION IN THIS CASE.

4 IF, IN FACT, THE CITY HOLDS PUEBLO RIGHTS,
5 THEN BY NECESSITY THERE MUST HAVE BEEN SOME ACT BY
6 THE GOVERNMENT OF SPAIN OR THE GOVERNMENT OF MEXICO
7 UNDER WHICH PUEBLO STATUS WAS CONFERRED UPON THE
8 CITY OF SAN BUENAVENTURA, BUT THEY HAVE NOT ALLEGED
9 THAT AND THAT'S BECAUSE IT NEVER HAPPENED. AS I
10 SAID, YOU CAN READ EVERY WORD OF THE HISTORY IN THE
11 STATE OF CALIFORNIA, AND THE PREDECESSOR, AND THERE
12 WILL NOT BE ONE WORD MENTIONED OF THE PUEBLO'S
13 HANDLING OF VENTURA.

14 IN ADDITION, THE CITY WOULD HAVE HAD TO
15 TAKE THOSE PRE...PRE...I'M GOING TO TRY TO USE THE
16 RIGHT WORD, BUT SUCCESSION DOCUMENTS SHOWING THEIR
17 PRE -- YOU KNOW, SHOWING THAT PRIOR TO CALIFORNIA
18 BECOMING A STATE OR THE TERRITORY BECOMING PART OF
19 THE UNITED STATES, THAT THEY WERE GRANTED THESE
20 RIGHTS, THEY WERE THEN REQUIRED TO SUBMIT THEM TO A
21 COMMISSION CREATED BY CONGRESS. AND IF THEY DID
22 NOT SUBMIT TO THE COMMISSION, THEN THOSE RIGHTS
23 DISSOLVE, THEY'RE WAIVED, THEY DO NOT EXIST.

24 SO AT A MINIMUM, THE CITY WAS REQUIRED TO
25 PLEAD WITHIN THIS PLEADING THAT IT TOOK ITS, YOU
26 KNOW, QUOTE-UNQUOTE, PUEBLO RIGHTS, WHEREVER THOSE
27 MIGHT COME FROM, AND PRESENTED THOSE TO A
28 COMMISSION SO THAT THE COMMISSION COULD RULE ON

1 WHETHER THOSE RIGHTS WERE PRESERVED OR NOT. IT
2 NEVER HAPPENED. IT'S NOT IN THE PLEADING. THEY
3 CAN'T ASSERT PUEBLO RIGHTS. THEY HAVEN'T ASSERTED
4 PUEBLO RIGHTS IN ANY FASHION THAT THEY'RE REQUIRED.

5 NOW, WITH RESPECT TO PRESCRIPTIVE RIGHTS,
6 THEY'VE ALLEGED THAT THEY HAVE PRESCRIPTIVE RIGHTS
7 WITH RESPECT TO WATERSHED, BUT THE ISSUE HERE IS
8 WHETHER THEY'VE ALLEGED PRESCRIPTIVE RIGHTS WITH
9 RESPECT TO THE GROUNDWATER BASIN. I REPRESENT
10 PARTIES BOTH WITHIN THE LOWER GROUNDWATER BASIN AND
11 THE UPPER GROUNDWATER BASIN. THERE ISN'T WORD ONE
12 ABOUT HOW THEY HAVE PRESCRIPTIVE RIGHTS WITH
13 RESPECT TO THE OJAI GROUNDWATER BASIN OR HOW THEY
14 ACQUIRED RESTRICTIVE RIGHTS WITH RESPECT TO THE
15 UPPER OJAI GROUNDWATER BASIN.

16 WE KNOW FROM READING THE CHANNELKEEPER CASE
17 THAT THE CITY'S SOURCE OF CLEAN WATER IS NOT BY
18 PUMPING OUT OF THE GROUNDWATER BASINS, WHICH IS HOW
19 YOU WOULD HAVE TO ESTABLISH OPEN AND NOTORIOUS USE
20 OF THE WATER THAT'S REQUIRED OF PRESCRIPTIVE
21 RIGHTS. THEY HAVEN'T ALLEGED ANY OF THAT.

22 WITH RESPECT TO APPROPRIATE LAND RIGHTS
23 IT'S A LITTLE MORE COMPLICATED, BUT IT REALLY
24 SHOULDN'T BE TOO COMPLICATED BECAUSE IF THE
25 CROSS-DEFENDANT HAPPENS TO BE AN OVERLYING
26 GROUNDWATER USER, THEN THEY HAVE PRIORITY SENIORITY
27 RIGHTS AND THE APPROPRIATIVE RIGHTS ARE JUNIOR TO
28 THOSE SENIOR RIGHTS. AND SO THE CITY HAS ALLEGED

1 NO BASIS, WHATSOEVER, FOR ASSERTING RIGHTS AS
2 AGAINST THOSE OVERLYING GROUNDWATER USERS. THEY
3 DON'T HAVE IT. THEY'RE A JUNIOR TO THE OVERLYING
4 GROUNDWATER USERS.

5 I KNOW YOUR HONOR HAS CONCERN THAT YOU
6 CAN'T ISSUE A JUDGMENT BASED UPON THIS TYPE OF
7 MOTION. IF IT'S NOT CLEAR AS A MATTER OF LAW THAT
8 THE CITY OF VENTURA IS WRONG, I ASSERTED WHY I
9 THINK THAT ANALYSIS IS INCORRECT. BUT YOUR HONOR'S
10 APPROPRIATE REMEDY IS TO ALLOW THE CITY LEAVE TO
11 AMEND, ALLOW THEM TO STATE THE FACTUAL BASIS FOR
12 HOW THEY ACQUIRED PUEBLO RIGHTS, ALLOW THEM TO
13 STATE THE FACTUAL BASIS FOR HOW THEY'VE ACQUIRED
14 PRESCRIPTIVE WATER RIGHTS TO THE GROUNDWATER BASIN,
15 NOT TO THE WATERSHED BUT TO THE WATERSHED BASIN.
16 AND IF THEY CAN ASSERT THOSE FACTS, THEN, YOU KNOW,
17 WE CAN TEST THEM AGAIN.

18 BUT THE SLIM ALLEGATIONS WITHIN PARAGRAPH
19 107 DO NOT ESTABLISH THAT THEY HAVE ALL OF THE
20 ELEMENTS THAT ALLOW THEM TO SEEK ADJUDICATION
21 AGAINST OVERLYING GROUNDWATER USERS, AND ON THAT
22 BASIS THE COMPLAINT FAILS TO STATE A CAUSE OF
23 ACTION THEY MUST BE REQUIRED TO ASSERT WITH FACTUAL
24 SPECIFICITY AS THE LAW REQUIRES.

25 AND WITH THAT I'LL SUBMIT.

26 THE COURT: THANK YOU.

27 GIVE ME A MOMENT, MR. HAGERTY.

28 I DO HAVE THE THIRD AMENDED CROSS-COMPLAINT

1 IN FRONT OF ME. PARAGRAPH 107 IS IN FRONT OF ME.
2 MR. WHITMAN MADE CERTAIN ARGUMENTS THAT I DIDN'T
3 ADDRESS IN MY TENTATIVE. I'M GOING TO TAKE A
4 RECESS TO LOOK AT SOME OF THESE CASES, BOTH CITED
5 IN THE BRIEF AND THE TWO YOU JUST CITED ORALLY.

6 DO I HAVE MR. GIVNER WITH US, THE PARTIES
7 OF THE JOINDER? NO RESPONSE.

8 DO I HAVE MR. BAGGERLY WITH US THIS
9 AFTERNOON?

10 MR. BAGGERLY: YES, YOUR HONOR.

11 THE COURT: MR. BAGGERLY, I'VE STILL FOUND
12 NO EVIDENCE THAT YOUR JOINDER HAD EVER BEEN
13 SUCCESSFULLY FILED WITH THE CLERK OF OUR COURT.

14 DO YOU HAVE A CONTRARY SHOWING?

15 MR. BAGGERLY: WELL, NO, YOUR HONOR. I
16 FAXED IT TO THE OLD FAX NUMBER AND IT WAS ACCEPTED
17 AND I GOT A CONFIRMATION, BUT OBVIOUSLY THAT WAS NO
18 LONGER IN SERVICE. SO IT WASN'T FILED PROPERLY.

19 THE COURT: OKAY. I'M GOING TO TAKE A
20 RECESS --

21 MR. BAGGERLY: -- WE BEGIN.

22 THE COURT: OKAY. WELL, FRANKLY,
23 MR. WHITMAN HAS MADE THE ARGUMENT, SO THE OUTCOME
24 IS NOT GOING TO DEPEND ON WHETHER YOUR JOINDER IS
25 FILED, MR. BAGGERLY. SO IN THAT SENSE YOU
26 SHOULDN'T LOSE SLEEP ABOUT THAT.

27 I'LL TAKE A RECESS.

28 MR. HAGERTY: MAY I MAKE ONE COMMENT BEFORE

1 YOU RECESS?

2 IF YOU'RE GOING TO GO BACK AND LOOK AT SOME
3 ISSUES, YOU SHOULD LOOK AT PARAGRAPHS 124 AND 125,
4 AND I CAN ADDRESS EVERYTHING IF THE COURT NEEDS TO.

5 WE ARE PREPARED TO SUBMIT ON THE TENTATIVE.
6 THE COURT: THANK YOU.

7 I'M GOING TO GO INTO CHAMBERS FOR A MINUTE.
8 (BRIEF PAUSE.)

9 THE COURT: OKAY. MR. WHITMAN AND
10 MR. HAGERTY, THIS HAS BEEN AN EDUCATIONAL
11 INTERLUDE.

12 I'LL BE A FEW MINUTES, MR. HAGERTY.

13 I HAVE LOOKED AT YOUR CASES, MR. WHITMAN.
14 THE ONES INVOLVING ELDER ABUSE INVOLVE A STATUTE
15 THAT ALLOWS, ESSENTIALLY, QUASI-PUNITIVE DAMAGES
16 CONTRARY TO COMMON LAW. AND IN COVENANT CARE THEY
17 WERE DIRECTLY TALKING ABOUT AN ATTEMPT TO SPECIALLY
18 PLEAD AN ACTUAL CLAIM FOR PUNITIVE DAMAGES. AND IT
19 IS CERTAINLY TRUE THAT YOU HAVE TO PLEAD THE
20 FACTUAL BASIS FOR PUNITIVE DAMAGES WITH
21 PARTICULARITY AND BE PREPARED TO PROVE IT WITH
22 PARTICULARITY, WITH CLEAR AND CONVINCING EVIDENCE
23 IF YOU HAVE ANY HOPES OF GETTING PUNITIVES, THAT
24 INCLUDES PLEADING ALLEGATIONS. AND THE ELDER ABUSE
25 APPEARS TO HAVE HAD A PARALLEL INTERPRETATION, AND
26 AS A MATTER OF STATUTORY INTERPRETATION, BECAUSE IT
27 HAS SIMILAR PURPOSES TO JUDICIAL COMMON LAW
28 PUNITIVE DAMAGES. SO I TEND TO CABIN THOSE AND

1 DON'T FIND THAT PARTICULARLY COMPELLING.

2 THE LOPEZ --

3 MR. WHITMAN: YOU'VE MISUNDERSTOOD THE
4 CASE, YOUR HONOR.

5 THE COURT: BEAR WITH ME. I'M GOING TO
6 KEEP TALKING AND THEN I'LL LET YOU TALK,
7 MR. WHITMAN.

8 MR. WHITMAN: OKAY.

9 THE COURT: THE LOPEZ V. SOUTHERN
10 CALIFORNIA RAPID TRANSIT DISTRICT WAS A GOVERNMENT
11 TORT CLAIM AND INVOLVED COMMON CARRIER LIABILITY.
12 THE UNDERLYING ISSUE WAS APPARENTLY A FIGHT ON A
13 BUS THAT THE DRIVER DIDN'T TRY TO STOP CAUSING
14 INJURY TO PLAINTIFF LOPEZ, AND HE SUED, AND ON
15 APPEAL THEY FOUND THAT HIS PLEADING WAS ACTUALLY
16 QUITE SUFFICIENT, FRANKLY, WITHOUT HAVING TO GO
17 INTO FURTHER DETAIL AS TO WHAT THE DRIVER COULD
18 HAVE DONE OR SHOULD HAVE DONE, AND ALSO REJECTING
19 THE TRIAL COURT'S EXCESSIVE EAGERNESS TO APPLY
20 GOVERNMENTAL IMMUNITY TO THE DEFENDANT TO ITS
21 BENEFIT, AND SO THE CLAIM WAS ACTUALLY REINSTATED.
22 SO THE COMMENTS THAT ARE ARTICULATED THERE REALLY
23 HAVE TO DO WITH WHAT'S SUFFICIENT TO MAKE A PROPER
24 CLAIM OF THE GOVERNMENT TORT CLAIMS STATUTE.

25 FISHER V. SAN PEDRO PENINSULA HOSPITAL
26 AROSE IN A LINE OF WORK THAT I DID AS A LAWYER
27 DEFENDING EMPLOYERS FROM STATUTORY CLAIMS UNDER THE
28 CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT AS WELL

1 AS UNDER THE FEDERAL TITLE VII STATUTE, AND THERE
2 WHAT THEY WERE REALLY DECIDING WAS WHETHER IT'S
3 SUFFICIENT PLEADING FOR ENVIRONMENTAL SEX
4 HARASSMENT, WHICH IS RATHER CABINED. SO I THINK
5 THE BROADER STATEMENT THAT ANY TIME YOU HAVE A
6 STATUTORY CLAIM YOU HAVE TO DO SOMETHING EQUIVALENT
7 TO FRAUD PLEADING IS JUST NOT THE STATE OF THE LAW
8 AS I UNDERSTAND IT.

9 AGAIN, HAVING PRACTICED ON THE DEFENSE SIDE
10 FOR DECADES, IF I COULD HAVE COME UP WITH THAT
11 THEORY SOONER, I SHOULD HAVE. AND I NEVER
12 UNDERSTOOD THAT TO BE A GENERAL PROPOSITION THAT
13 JUST BECAUSE YOU HAVE A STATUTORY CLAIM YOU'VE GOT
14 TO SORT OF STAND UP AND DO SOMETHING EQUIVALENT TO
15 FRAUD PLEADINGS.

16 WHEN I TURN TO THE INFORMATION AND BELIEF
17 IN YOUR CITE TO SEARCY, S-E-A-R-C-Y, V. CITY OF
18 HEMET, 177 CAL.APP.3D 792, I THINK YOU'VE GOT
19 SOMETHING GOING THERE, TO BE HONEST, MR. WHITMAN.
20 THE PROBLEM IS WHEN I LOOK AT YOUR MOTION FOR
21 JUDGMENT ON THE PLEADINGS I DON'T SEE ANY SPECIFIC
22 ARGUMENT THAT THE ALLEGATIONS ABOUT PUEBLO RIGHTS
23 WERE IMPROPERLY MADE ON INFORMATION AND BELIEF AND
24 THAT SHOULD NOT BE ALLOWED TO HAPPEN.

25 I'M GLAD TO TAKE A MOMENT HERE,
26 MR. WHITMAN, AND HAVE YOU EDUCATE ME WHERE THE CITY
27 OF SAN BUENAVENTURA WAS PUT ON FAIR NOTICE BY YOUR
28 MOTION PAPERS FOR THIS ARGUMENT. IF I DENY YOUR

1 MOTION TODAY, IT WILL BE WITHOUT PREJUDICE TO
2 RENEWING THE MOTION ON THE GROUNDS OF PUEBLO RIGHTS
3 CAN'T BE PLED ON INFORMATION AND BELIEF BECAUSE THE
4 AUTHORITY OF SEARCY WOULD SEEM TO SUPPORT THAT
5 PROPOSITION, MR. WHITMAN.

6 FIRST, TELL ME WHERE YOU THINK YOU DO FIND
7 IN THE PAPERS THAT ARE ALREADY PROPERLY IN FRONT OF
8 ME SPECIFIC TO TRYING TO ADVANCE PUEBLO RIGHTS ON
9 MERE INFORMATION AND BELIEF.

10 MR. WHITMAN: OKAY. AND I ALSO WANT TO
11 ADDRESS YOUR INCORRECT ASSERTION THAT IT ISN'T JUST
12 A GENERAL RULE OF LAW THAT STATUTORY CAUSES OF
13 ACTION MUST BE PLEADED WITH PARTICULARITY, BUT I'LL
14 ADDRESS THAT ISSUE FIRST.

15 NUMBER ONE, MY MOTION FOR JUDGMENT ON THE
16 PLEADINGS IS BASED UPON THE PROPOSITION THAT THE
17 PLAINTIFF MUST PLEAD EVERY BASIS FOR THE STATUTORY
18 LIABILITY WITH FACTUAL SPECIFICITY.

19 THE COURT: ON THAT I'M PREPARED TO SAY I
20 DISAGREE WITH YOU, AND I DON'T THINK THAT'S THE
21 STATE OF THE LAW, A NOTICE PLEADING ADEQUATE IN
22 UNDERSTANDING THE CASES YOU'VE CITED. IF YOU HAVE
23 A DIFFERENT CITE, I'LL TAKE A LOOK AT IT, BUT I
24 JUST DON'T UNDERSTAND --

25 MR. WHITMAN: I'LL GET TO THAT, BUT LET ME
26 CONTINUE AND STATE THAT WHEN THE PLAINTIFF TURNED
27 AROUND AND ASSERTED THIS IS A PUEBLO RIGHTS CASE, I
28 CITED IN MY REPLY BRIEF THE SEARCY CASE, THE ONE

1 THAT I'VE ASKED YOU TO LOOK AT. IT SAID THE
2 PROBLEM WITH THEIR ARGUING PUEBLO RIGHTS IS BECAUSE
3 THEY HAVEN'T STATED IT, THEY STATED IT ON
4 INFORMATION AND BELIEF, AND I GO INTO GREAT DETAIL
5 ABOUT THAT.

6 I ALSO GO INTO DETAIL ABOUT THE FACT THAT
7 ON RULING ON A DEMURRER, THE COURT'S ARE -- ONLY
8 THE FACTUAL ALLEGATIONS ARE CONSIDERED FOR THE
9 RULING, BUT THE COURT MUST DISREGARD CONTENTION,
10 DEDUCTION AND CONCLUSION OF FACT OR LAW.

11 I'LL GIVE YOU SOME CITES FOR THAT. THERE'S
12 HUNDREDS OF THEM. FOR INSTANCE, EXPARZA VS. COUNTY
13 OF LOS ANGELES, 2014, 224 CAL.APP.4TH 452, 459,
14 "THE COURT MAY NOT CONSIDER CONTENTIONS, DEDUCTIONS
15 OR CONCLUSIONS OF FACTS OF LAW."

16 THE COURT: WHAT'S THAT CITE AGAIN, SIR?

17 MR. WHITMAN: ESPARZA, E-S-P-A-R-Z-A, VS.
18 COUNT OF L.A., 2014, 224 CAL.APP.4TH 452, 459.

19 THE COURT: THANK YOU.

20 MR. WHITMAN: I HAVE A HANDFUL OF OTHERS IF
21 YOU WANT TO READ THEM, BUT THEY'RE THE SAME EFFECT.

22 THE COURT: IT'S GOING TO TAKE A SECOND OR
23 THIRD CITE BECAUSE I'M CABINING YOUR PRIOR
24 AUTHORITY. SO I'M OPEN TO MORE CITES.

25 MR. WHITMAN: OKAY. MCBRIDE VS. SMITH,
26 2018, 18 CAL.APP.5TH 1160, "BECAUSE ONLY FACTUAL
27 ALLEGATIONS ARE CONSIDERED ON DEMURRER, COURTS MUST
28 DISREGARD ANY CONTENTIONS, DEDUCTIONS OR

1 CONCLUSIONS OF FACT OR LAW ALLEGED IN THE COMPLAINT
2 IN CONSIDERING A DEMURRER."

3 THE COURT: OKAY.

4 NOW, DO YOU TAKE THIS BEYOND THE PUEBLO
5 RIGHTS OR IS THIS PARTICULARLY IN SUPPORT OF THE
6 ARGUMENT THAT THE PUEBLO RIGHTS PORTION OF THE
7 PLEADING FAILS?

8 MR. WHITMAN: WELL, DOWN THE ROAD, YOUR
9 HONOR, YOU HAVE GOT TO LOOK AT WHAT THE CITY -- I
10 MEAN, THIS IS THREE STEPS DOWN THE ROAD SO I DON'T
11 WANT TO GO TOO FAR ASTRAY AT THIS POINT. BUT IF
12 YOU START LOOKING AT WHAT THE COURT OF APPEAL SAID
13 THE CITY OF VENTURA COULD DO, IT SAID IT COULD --
14 IF IT'S BEING BLAMED FOR EXCESSIVE USE OF WATER, IT
15 CAN BLAME OTHERS WHO ARE EXCEEDING THEIR REASONABLE
16 USE OF WATER.

17 AND WHAT'S ALSO MISSING FROM THE COMPLAINT
18 IS ALLEGATION THAT PEOPLE WHO ARE SITUATED LIKE MY
19 CLIENT, MY CLIENTS, AND ESSENTIALLY ANY OTHER
20 PERSON WHO IS IN THIS SUIT BECAUSE OF THEY ARE AN
21 OVERLYING USER OF THE GROUNDWATER IN THE OJAI OR
22 UPPER OJAI BASIN, THAT WHATEVER PARTICULAR USE THEY
23 MAKE IS UNREASONABLE.

24 NOW, I CAN'T ASSERT THE FACT THAT I
25 PERSONALLY DON'T EXTRACT ANY WATER, BUT I CAN
26 ASSERT THE FACT THAT THERE'S NO ALLEGATION IN THE
27 COMPLAINT THAT I ACTUALLY DO. THERE'S AN
28 ALLEGATION THAT I THREATEN TO DO THAT IN THE

1 FUTURE, AND THAT AS A MATTER OF LAW IS NOT A BASIS
2 FOR A RIGHT TO ADJUDICATE MY RIGHTS. THERE'S CASE
3 LAW I CITED IN MY MOVING PAPERS THAT THE COURT
4 CANNOT DETERMINE MY FUTURE RIGHT TO USE WATER IN
5 ANY FORM OF ADJUDICATION.

6 THERE MAY BE AN EXCEPTION TO THAT RULE WHEN
7 IT HAS BEEN DETERMINED THAT THE GROUNDWATER BASIN
8 IS IN OVERDRAFT AND THE COURT IS ENGAGING IN SOME
9 TYPE OF MEASURES TO RESTRICT THE RIGHTS OF
10 EVERYBODY ON SOME PRO RATA BASIS, BUT WE DON'T HAVE
11 THAT HERE. WE DON'T HAVE A DETERMINATION BY THE
12 GROUNDWATER BASIN MANAGEMENT DISTRICT, THE DISTRICT
13 THAT'S IN OVERDRAFT. IN FACT, BULLETIN 118 SAYS
14 THAT WATER IN THE OJAI GROUNDWATER BASIN IS
15 ACTUALLY RISING.

16 BUT THE OTHER POINT THAT I WANTED TO
17 ADDRESS, YOUR HONOR, IS THE IDEA THAT MY REFERENCE
18 TO THE COVENANT CARE CASE IS NOT APPLICABLE IN THIS
19 CASE BECAUSE IT INVOLVES HEALTHCARE AND IT INVOLVES
20 WHAT FACTS MUST BE ASSERTED IN THE PLEADING TO
21 ASSERT PUNITIVE DAMAGES BECAUSE THAT ISN'T WHAT THE
22 COVENANT CARE CASE ADDRESSED.

23 THE COVENANT CARE CASE ADDRESSED A STATUTE
24 WHICH REQUIRES THAT IF YOU ARE GOING TO PLEAD
25 PUNITIVE DAMAGES AGAINST A HEALTHCARE PROVIDER THAT
26 YOU ARE REQUIRED TO BRING A MOTION AND SET FORTH
27 ALL OF YOUR FACTS IN DETAIL, ESSENTIALLY A SUMMARY
28 JUDGMENT MOTION IN REVERSE. IN FACT, IT'S BEEN

1 CALLED THAT BY THE COURTS.

2 AND WHAT THE COURT OF APPEAL -- AND SO
3 THERE WAS AN ASSERTION THAT THE PLAINTIFF IN THE
4 CASE HAD TO BRING SUCH A MOTION IN ORDER TO ASSERT
5 PUNITIVE DAMAGES. AND THERE WAS A CASE, THE
6 CENTRAL PATHOLOGY CASE, IN WHICH IT WAS HELD THAT A
7 PLAINTIFF WOULD HAVE TO BRING SUCH A MOTION BEFORE
8 PLEADING PUNITIVE DAMAGES, BUT WHAT THE COURT OF --
9 THE SUPREME COURT IN THE COVENANT CARE CASE POINTED
10 OUT WAS THAT THAT CASE WAS ADDRESSING COMMON LAW
11 TORT, AND, THEREFORE, THE RULE APPLIED, BUT IN THE
12 COVENANT CARE CASE THEY WERE ADDRESSING THE
13 STATUTORY CLAIM FOR ELDER ABUSE, NOT PUNITIVE
14 DAMAGES BUT ELDER ABUSE.

15 AND THE COURT STATED, I QUOTE, "IN LIGHT OF
16 THE GENERAL RULE THE STATUTORY CAUSES OF ACTION
17 MUST BE PLEADED WITH PARTICULARITY." THEY GO ON TO
18 SAY THAT THE, ESSENTIALLY, THE NEED AND PURPOSE FOR
19 THAT DECLARATION OR THAT MOTION, WHICH WOULD SPELL
20 OUT THE EVIDENCE, AS A PROTECTION FOR HEALTHCARE
21 PROVIDERS WOULD BE INUNDATED WITH CLAIMS FOR
22 PUNITIVE DAMAGES, WAS NOT NECESSARY IN THAT CASE
23 BECAUSE THE PLAINTIFF WOULD HAVE TO PLEAD THE
24 COMPLAINT AS IF THEY WERE MAKING THAT MOTION; IN
25 OTHER WORDS, ALL THE FACTS WOULD HAVE TO BE
26 ASSERTED.

27 THE COURT: WELL, THEY SAID THAT PLEADING
28 WAS ADEQUATE. AT THE END OF THE DAY THEY LIKED THE

1 PLEADING THEY SAW. THEY DIDN'T CRITICIZE IT.

2 MR. WHITMAN: THAT'S BECAUSE THERE WAS
3 EXTENSIVE DETAIL IN THE COMPLAINT ABOUT WHAT WAS
4 DONE TO CONSTITUTE THE TYPE OF A CONSCIOUS
5 DISREGARD AND CORPORATE RATIFICATION (PHONETIC)
6 THAT'S REQUIRED OF THE ELDER ABUSE STATUTE.

7 THE COURT: OKAY. I'M GOING TO TAKE A
8 LOOK --

9 MR. WHITMAN: WHAT WE HAVE HERE --

10 THE COURT: OKAY. SIR.

11 MR. WHITMAN: WHAT WE'VE GOT HERE --

12 THE COURT: YOU'VE GOT ONE MINUTE,
13 ONE MINUTE, MR. WHITMAN.

14 MR. WHITMAN: OKAY. WELL, I DO WANT TO
15 ADDRESS WHAT PLAINTIFF COUNSEL ADDRESSED JUST
16 BEFORE YOU WENT ON YOUR BREAK, WHICH IS THAT HE
17 THINKS THAT HIS PLEADINGS ARE ADEQUATE BECAUSE OF
18 WHAT'S IN PARAGRAPH 124 AND 125.

19 MAY I ADDRESS THAT?

20 THE COURT: BRIEFLY.

21 MR. HAGERTY: AND, YOUR HONOR, I'D LIKE TO
22 BE HEARD AT SOME POINT.

23 THE COURT: I'M GOING TO HEAR YOU. IF WE
24 HAVE TO CONCLUDE ANOTHER DAY, BIG DEAL, BUT
25 MR. WHITMAN IS GOING ON AT GREATER LENGTH THAN IS
26 USEFUL TO HIS POSITION.

27 GO AHEAD, MR. WHITMAN.

28 MR. WHITMAN: OKAY.

1 OKAY. YOUR HONOR, PARAGRAPHS 124 AND 125
2 DO NOT ASSIST THE PLAINTIFF. I'VE ADDRESSED THAT
3 IN DETAIL IN MY REPLY BRIEF, BUT IN THE FIRST
4 INSTANCE EVERYTHING IN 124 AND 125 IS A CONCLUSION
5 OF FACT.

6 IN THE SECOND PLACE, A COUPLE OF CASES THAT
7 DESTROY THE POSITION THAT BECAUSE YOU WERE FORMERLY
8 A MISSION YOU NOW HAVE WATER RIGHTS. THAT CASE IS
9 CITY OF SAN DIEGO. IT'S IN MY BRIEF. AND THAT
10 CASE THEN GOES ON TO SAY, EVEN IF THOSE RIGHTS
11 EXISTED; IN OTHER WORDS, THE FACT THAT IT WAS A
12 MISSION, SOMEHOW IT COULD PURCHASE WATER RIGHTS,
13 EVEN IF IT EXISTED EITHER PRIOR TO OR SUBSEQUENT TO
14 THE SECULARIZATION OF THE MISSION, THAT RIGHT
15 CEASED TO EXIST FOR THE ADDITIONAL REASON THAT SUCH
16 CLAIM WAS NEVER PRESENTED TO THE BOARD OF LAND
17 COMMISSIONERS AS REQUIRED BY THE ACT OF CONGRESS OF
18 MARCH 3, 1851, AND THEREFORE HAS CEASED TO EXIST
19 UNDER AUTHORITY AS INN VS. SANTA CRUZ AND BUTLER
20 VS. DOMINGUEZ. THESE ARE PAGE 7 OF MY REPLY BRIEF.

21 AND HELD THAT EVERY PROPERTY RIGHT CLAIM
22 THAT ORIGINATED UNDER SPANISH-MEXICAN RULE WAS
23 REQUIRED TO BE PRESENTED FOR CONFIRMATION UNDER THE
24 ACT OF CONGRESS. BUTLER VS. DOMINGUEZ HELD THAT NO
25 TITLE FOR LAND IN CALIFORNIA DEPENDED ON SPANISH OR
26 MEXICAN LAND GRANTS CAN BE OF ANY VALIDITY UNLESS
27 PRESENTED TO -- AND CONFIRMED BY THE BOARD OF LAND
28 COMMISSIONERS WITHIN THE TIME PERMITTED BY THE

1 UNITED STATES AND CONGRESS. NONE OF THAT HAS BEEN
2 ASSERTED BY THE COMPLAINT.

3 SO THEY'RE ASSERTING CONCLUSIONS THAT THEY
4 HOLD THESE RIGHTS --

5 THE COURT: THANK YOU, SIR. I'M IN RECESS.
6 I'M GOING TO TAKE A LOOK AT THOSE CASES THAT YOU
7 JUST CITED.

8 I'M GOING TO LOOK AT MCBRIDE AND ESPARZA.

9 MR. WHITMAN: THANK YOU.

10 (PAUSE.)

11 THE COURT: WE'RE BACK ON THE RECORD.

12 I'VE LOOKED AT MR. WHITMAN'S FURTHER TWO
13 CITES. THEY DON'T PERSUADE ME THAT AS A GENERAL
14 PROPOSITION OF LAW CLAIMS UNDER THE COMPETENCE OF
15 GROUNDWATER ADJUDICATION STATUTE ARE HEIGHTENED --
16 ARE SUBJECT TO A HEIGHTENED PLEADING STANDARD.

17 I AM DISPOSED BASED ON WHAT MR. WHITMAN
18 SAID IN REFERENCE TO HIS REPLY BRIEF THAT AS THE
19 MOTION FOR JUDGEMENT ON THE PLEADINGS INVOLVED
20 THERE MAY BE A WELL-TAKEN ARGUMENT THAT THE CITY OF
21 SAN BUENAVENTURA NEEDS TO RE-PLEAD IT'S THIRD
22 AMENDED CROSS-COMPLAINT TO DELETE REFERENCES TO
23 INFORMATION AND BELIEF IN REGARD TO PUEBLO RIGHTS
24 AND TO OTHERWISE PLEAD THEM WITH ADEQUATE
25 SPECIFICITY. BECAUSE IT DOES APPEAR UNDER SEARCY
26 AGAINST THE CITY OF HEMET THAT THIS IS NOT A TOPIC
27 ON WHICH SOMEBODY SITUATED AS THE CITY OF
28 SAN BUENAVENTURA IS SHOULD PLAY HIDE THE BALL.

1 SO WITH THAT AS THE REVISED TENTATIVE,
2 MR. HAGERTY, YOU HAVE THE FLOOR.

3 MR. HAGERTY: THANK YOU, YOUR HONOR.

4 THE COURT: I WOULD NOT VACATE THE TRIAL.
5 I WOULD KEEP THE PHASE 1 TRIAL ON, GIVE YOU TIME TO
6 FILE A AMENDED PLEADING, BUT PROCEED NEVERTHELESS
7 WITH THE TRIAL EVEN THOUGH IT MAY NOT BE
8 TECHNICALLY AT ISSUE.

9 MR. HAGERTY: WELL, I GUESS THE REAL ISSUE,
10 YOUR HONOR, IS THAT THAT ISSUE IS NOT DISPOSITIVE
11 OR RELEVANT TO THE SIXTH CAUSE OF ACTION. IT MAY
12 BE RELEVANT TO THE THIRD CLAIM FOR RELIEF, AND
13 MAYBE WE CAN...

14 THE COURT: HAS IT BEEN INCORPORATED BY
15 REFERENCE IN THE SIXTH CAUSE OF ACTION?

16 MR. HAGERTY: WELL, YOUR HONOR, THE SIXTH
17 CAUSE OF ACTION, REMEMBER, IS JUST GENERAL
18 ADJUDICATION UNDER THE STATUTE. AND WE
19 UNEQUIVOCALLY, THE PLAINTIFF, MR. WHITMAN ADMITS --

20 THE COURT: BEAR WITH ME. BEAR WITH ME.

21 YOU ONLY INCORPORATE PARAGRAPHS 1 THROUGH
22 110 IN THE SIX CAUSE OF ACTION. SO YOU ONLY
23 INCORPORATE 124 AND 125.

24 WHAT WAS THE OTHER NUMBER?

25 MR. HAGERTY: WELL, IT'S 98 THROUGH 110,
26 YOUR HONOR, WHICH IS THE MATERIAL FACTUAL
27 ALLEGATIONS.

28 THE COURT: WELL, SOME OF THAT, THAT IS 98

1 THROUGH 110 IS INCORPORATED INTO THE SIXTH CAUSE OF
2 ACTION.

3 MR. HAGERTY: THAT'S RIGHT.

4 THE COURT: 107 MAKES THE PUEBLO
5 ALLEGATION.

6 MR. HAGERTY: RIGHT. AND THAT'S WHERE WE
7 MAKE A ALLEGATION OF HYDROLOGICAL CONNECTION, WE
8 ALLEGE OUR RIGHTS...

9 THE COURT: IT'S INCORPORATED IN THE SIXTH
10 CAUSE OF ACTION SO I THINK THE MOTION FOR JUDGMENT
11 ON THE PLEADINGS WOULD BE WELL TAKEN ON THAT
12 REGARD.

13 MR. HAGERTY: WELL, BUT I THINK HERE'S THE
14 ISSUE, YOUR HONOR. JUST AGAIN, WHAT I WOULD
15 PROPOSE THEN IS THAT WE CONSIDER AMENDING AFTER THE
16 FIRST PHASE IS CONCLUDED, BECAUSE IT IS NOT
17 RELEVANT TO -- WE HAVE SUFFICIENT BASIS ALREADY AS
18 ALLEGED TO MOVE FORWARD ON THE SIXTH CAUSE OF
19 ACTION.

20 SO THE MOTION SHOULD BE DENIED NOW WITHOUT
21 PREJUDICE. IF THE ISSUE NEEDS TO BE REVISITED
22 AFTER THE PHASE 1 TRIAL WITH REGARD TO THE SIXTH
23 CAUSE OF ACTION OR THE THIRD CAUSE OF ACTION...

24 THE COURT: TO PROVE CONNECTEDNESS. YOU
25 DON'T NEED TO PROVE PUEBLO RIGHTS.

26 MR. HAGERTY: THAT'S THE POINT, YOUR HONOR.
27 SO PHASE 1 IS JUST ABOUT CONNECTION. THERE'S NO
28 CONNECTION ABOUT OUR RIGHTS. THERE IS A QUESTION,

1 AS EVERYONE IS COMPLAINING ABOUT, ABOUT HOW FAR OUR
2 RIGHTS EXTEND AND WHETHER WE CAN CLAIM THAT THE
3 UPSTREAM USERS ARE HURTING OUR RIGHTS. SO ON THAT
4 BASIS ALONE THE COURT SHOULD DENY THE MOTION.

5 AND THEN AS WE GET THROUGH THE PHASE 1
6 TRIAL, WE SHOULD -- WE WILL RECONSIDER, AND I'M
7 ALMOST CERTAINLY GOING TO HAVE TO AMEND THE
8 CROSS-COMPLAINT AFTER THE PHASE 1 TRIAL, YOU KNOW,
9 DEPENDING UPON THE RULINGS.

10 AND SO THAT WOULD BE -- RATHER THAN DOING
11 IT NOW...

12 THE COURT: I WOULD BE MORE INCLINED TO
13 GRANT THE MOTION AS TO THE PUEBLO PLEADINGS ON
14 INFORMATION AND BELIEF THAN GIVE YOU UNTIL SAY
15 APRIL 15TH TO FILE AN AMENDED PLEADING, WHICH I
16 TRUST WILL BE AT THE FAR END OF THE TRIAL.

17 MR. HAGERTY: BUT, YOUR HONOR, THE PROBLEM
18 I'M HAVING IS THAT THAT'S JUST A MOTION TO STRIKE
19 MORE THAN ANYTHING. I MEAN, THERE WAS A MOTION FOR
20 JUDGMENT ON THE PLEADINGS. THE PLEADINGS ATTACK
21 THE SIXTH CAUSE OF ACTION --

22 THE COURT: YOU'RE RIGHT, IT DOESN'T GET
23 RID OF THE WHOLE CAUSE OF ACTION.

24 MR. HAGERTY: RIGHT. SO I MEAN --

25 THE COURT: WE BETTER TAKE IT AS A MOTION
26 TO STRIKE, AND BACK TO MR. WHITMAN OR CITY OF OJAI
27 OR WHOEVER LIKES THE ARGUMENT, JUST BRING IT.
28 BECAUSE IT LOOKS LIKE IT WORKS.

1 MR. HAGERTY: WE SHOULD CLEAN THAT ALL UP
2 AFTER THE FIRST PHASE. BECAUSE IT DOESN'T DISPOSE
3 OF THE SIXTH CAUSE OF ACTION.

4 THE COURT: YOU ARE RIGHT ABOUT THAT, IT
5 DOES NOT FULLY RESOLVE THE SIXTH CAUSE OF ACTION.

6 MR. HAGERTY: SO STICKING WITH THE
7 TENTATIVE IS APPROPRIATE --

8 MR. WHITMAN: YOUR HONOR, IT DOES FULLY
9 RESOLVE THE SIXTH CAUSE OF ACTION AS TO PERSONS WHO
10 ARE OVERLYING LAND USERS BECAUSE UNDER CORRELATIVE
11 RIGHTS IF THEY'RE ATTACKING -- IF THEY'RE PURSUING
12 GROUNDWATER RIGHTS, UNDER CORRELATIVE RIGHTS THEY
13 ARE A JUNIOR.

14 MR. HAGERTY: YOUR HONOR.

15 THE COURT: I CAN'T FIND THAT ON THIS
16 RECORD, MR. WHITMAN. I'M TALKING TO MR. HAGERTY
17 NOW, MR. WHITMAN, PLEASE DON'T INTRUDE.

18 MR. HAGERTY: I WILL LOOK AT THAT CASE.
19 WE'LL LOOK AT THAT.

20 AND I THINK THE REASON WE HAD ALLEGED
21 CERTAIN THINGS ON INFORMATION AND BELIEF IS A COURT
22 HAS NOT DETERMINED WE HAVE TREATY RIGHTS OR PUEBLO
23 RIGHTS. YOU KNOW, THERE ARE FACTUAL ALLEGATIONS
24 THAT WE THINK WE PUT AT ISSUE. WE'LL DEAL WITH
25 THAT WHEN WE GET TO THOSE ISSUES. IF WE NEED TO
26 CLEAN THAT UP, WE CERTAINLY WILL.

27 BUT THE QUESTION HERE IS, DOES THIS DISPOSE
28 OF THE SIX CAUSES OF ACTION?

1 THE COURT: IT DOES NOT. I'VE HEARD ENOUGH
2 AT THIS TIME. I'M MAKING THE FOLLOWING RULING:

3 THE TENTATIVE IS ADOPTED. I'M GOING TO
4 REVISE IT TO THIS CASE. THE "1" DISAPPEARED WHEN I
5 EDITED, AND THERE'S A TYPO ABOUT THE CASE. SO
6 THERE WILL BE A RULING ON THE MATTER COMING ALONG
7 PROBABLY FIRST THING TOMORROW.

8 THIS IS WITHOUT PREJUDICE, HOWEVER,
9 MR. WHITMAN, AND CITY OF OJAI AND OTHERS, IF
10 ANYBODY WANTS TO BRING A MOTION TO STRIKE AS TO THE
11 ALLEGATIONS ABOUT PUEBLO RIGHTS, WHICH I THINK
12 PROBABLY ARE DEFECTIVE.

13 SO THAT'S A VICTORY FOR TODAY, MR. WHITMAN.
14 YOU SHOULD BE QUITE HAPPY, I THINK, BECAUSE YOU
15 LANDED THE TARGET BETTER THAN MOST OF THE OTHER
16 CROSS-DEFENDANTS. SO BE HAPPY.

17 HOW ARE WE DOING MEANWHILE IN REGARDS TO
18 MR. WHITMAN'S DESIRE TO HAVE ACCESS TO YOUR MODEL?

19 MR. HAGERTY: WE'VE AGREED THAT HE CAN HAVE
20 ACCESS TO IT. HE NEEDS TO BECOME PART OF THE
21 PROTECTIVE ORDER.

22 THERE IS AN ISSUE, WE'RE GOING TO HAVE TO
23 WORK WITH MR. WHITMAN ON THIS, TO USE THE MODEL YOU
24 HAVE TO HAVE UNIQUE SOFTWARE.

25 MR. WHITMAN: I UNDERSTAND THAT. I'M
26 WILLING TO SUBJECT -- SEND ME A PROTECTIVE ORDER.
27 I'LL SIGN IT. AND I WILL DECIDE WHETHER I'M GOING
28 TO PUT IT ON MY COMPUTER OR WHETHER WE'RE GOING TO

1 HIRE SOMEBODY AND PUT IT ON THEIRS.

2 BUT FIRST STEP IS TO SEND ME THE PROTECTIVE
3 ORDER AND THEN WE CAN ADDRESS GETTING ME THE COPY
4 THAT I CAN HAVE ACCESS TO.

5 THE COURT: THE ORDER TO SHOW CAUSE THAT'S
6 ON CALENDAR TODAY IS DISCHARGED ON THE GROUNDS THE
7 PARTIES HAVE WORKED OUT THEIR PROBLEMS.

8 WE DON'T HAVE A NEXT DATE, TO MY
9 UNDERSTANDING, BEFORE THE FINAL STATUS CONFERENCE
10 ON MARCH 11, BUT I WILL SAY AS A CAVEAT --

11 MR. HAGERTY: I'M SORRY, YOUR HONOR. WE'RE
12 GOING NEXT WEEK.

13 THE COURT: I THOUGHT WE WERE, BUT WE
14 DIDN'T GET IT IN OUR OFFICIAL RECORDS.

15 WHERE DID WE FAIL TO MAKE A MINUTE ORDER
16 THAT SHOULD HAVE SET IT ON CALENDAR FOR MONDAY?
17 IT'S IN MY UNOFFICIAL RECORDS FOR MONDAY THE 14TH,
18 BUT OUR OFFICIAL RECORDS TOTALLY FAILED TO REFLECT
19 ANY SUCH MATTER BEING SET.

20 MR. HAGERTY: YOUR HONOR, I'M SORRY TO
21 INTERRUPT. WE DO HAVE IT ON OUR CALENDAR. IT'S ON
22 OUR SCHEDULING ORDER. WE'VE ALREADY SUBMITTED A
23 TRIAL READINESS STATEMENT.

24 THE COURT: WHEN DO YOU THINK YOU HAVE IT
25 SET? BY WHAT MEANS? ON WHAT DATE?

26 MR. HAGERTY: I DON'T HAVE THAT
27 SPECIFICALLY IN FRONT OF ME, BUT WHEN WE WERE LAST
28 HERE ON THE 20TH, I BELIEVE, THAT'S WHEN WE SET...

1 THE COURT: I LOOKED AT THE NOTICE OF
2 RULING FOR THE 20TH AND IT DIDN'T REFER TO THE
3 14TH. I LOOKED AT THE MINUTE ORDER OF THE 20TH AND
4 IT DIDN'T REFER TO THE 14TH, BUT MY UNOFFICIAL
5 CALENDAR HAS IT. SO I TOTALLY BELIEVE YOU, BUT WE
6 NEED TO FIX UP THE ERRORS WE MADE IN OUR RECORD.
7 I'M ASKING YOU TO HELP ME FIGURE IT OUT, BUT IT
8 WASN'T EVEN IN THE NOTICE OF RULING.

9 MR. HAGERTY: I THINK, YOUR HONOR, THIS IS
10 WHERE IT IS. I APOLOGIZE, I DON'T HAVE THE
11 EXECUTED COPY, BUT IF YOU RECALL AFTER WE HEARD THE
12 TWO MOTIONS, THE COURT RULED ON THE TRIAL
13 CONTINUANCE INCLUDING TO MARCH 16TH, AND THEN THE
14 REST OF THE PARTIES TO MEET AND CONFER ON THE
15 SCHEDULE.

16 WE DID THAT. WE SUBMITTED AN ORDER WITH A
17 SCHEDULE THAT HAS THE TRIAL READINESS STATEMENT
18 BEING DUE ON THE 10TH AND THE TRIAL CHECKING IN
19 TRIAL READINESS ON THE 14TH.

20 THE COURT: BEAR WITH ME.

21 SO IT APPEARS THAT THE -- WAS THE ORDER
22 FILED JANUARY 26 SET IT, BUT WHEN THAT ORDER AS A
23 WORD DOCUMENT -- WELL, AS A E-FILING SIGNED BY THE
24 JUDGE ELECTRONICALLY GOT FILED, IT NEEDED A
25 CALENDAR ENTRY THAT FLOWED FROM THE PROVISIONS AT
26 PAGE 2, LINE 11. SO WE NEED TO MAKE THOSE NOW.

27 BECAUSE THE ORDER THAT IS PART OF OUR
28 PUBLIC RECORDS FROM JANUARY 26TH DOES INDEED SET

1 THE EVENT FOR FEBRUARY 14, BUT WE DID NOT OTHERWISE
2 GET IT INTO OUR SYSTEM.

3 WE'LL DO THAT.

4 SO I'LL SEE YOU MONDAY AFTERNOON. I'VE
5 CLEARED THE CALENDAR. THAT'S ALL GOOD.

6 MR. HAGERTY: OKAY. AND WE'RE PREPARED TO
7 HAVE OUR TRIAL READINESS SUBMITTED ON THE 10TH, AND
8 WE'VE IDENTIFIED A FEW ISSUES THAT WE'LL DISCUSS
9 WITH THE COURT ABOUT THE TRIAL PROCESS AND RELATED
10 ISSUES.

11 THE COURT: OKAY. GREAT.

12 MR. WHITMAN, ANYTHING ELSE?

13 MR. WHITMAN: NO, YOUR HONOR.

14 THE COURT: OKAY. AND I ENJOYED THE
15 ARGUMENT AND THE DIALOG WITH YOU. I HAVE THE
16 HIGHEST RESPECT FOR YOU, MR. WHITMAN AS WELL AS
17 MR. HAGERTY. I'M SORRY TO CUT YOU OFF IN TIME, BUT
18 WE'RE ALMOST AT 4:30, AND WE DO HAVE TO TRY TO BE
19 RESPECTFUL OF THE LABOR PARTNERSHIP THE COURT HAS
20 TO OPERATE UNDER.

21 MR. HAGERTY: THANK YOU, YOUR HONOR.

22 THE COURT: OKAY. CITY OF VENTURA TO GIVE
23 NOTICE.

24 THE COURT IS IN RECESS.

25 MR. HAGERTY: THANK YOU, YOUR HONOR.

26 (WHEREUPON AT THE HOUR OF 4:21 P.M.,
27 THE PROCEEDINGS ADJOURNED.)

28 ***

TRANSCRIPT OF PROCEEDINGS

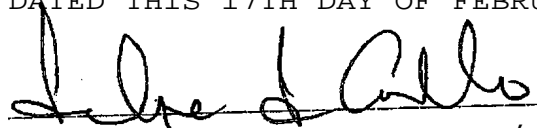
February 08, 2022

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF LOS ANGELES
3 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE
4

5 SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT CORPORATION,))
6 PLAINTIFF,) SUPERIOR COURT
7) CASE NO.
VS.) 19STCP01176
8)
STATE WATER RESOURCES CONTROL) REPORTER'S
9 BOARD, A CALIFORNIA STATE AGENCY,) CERTIFICATE
ET AL.,)
10 DEFENDANTS.)
_____)
11)
AND RELATED CROSS-ACTION.)
12 _____)

13
14
15 I, FELIPE CARRILLO, OFFICIAL REPORTER PRO
16 TEMPORE OF THE SUPERIOR COURT OF THE STATE OF
17 CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO
18 HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH
19 27, COMPRISE A TRUE AND CORRECT TRANSCRIPT OF THE
20 PROCEEDINGS TAKEN IN THE ABOVE-ENTITLED CAUSE ON
21 TUESDAY, FEBRUARY 8, 2022.

22
23 DATED THIS 17TH DAY OF FEBRUARY, 2022.

24 
25 _____

, CSR 9555

26 FELIPE F. CARRILLO
27 OFFICIAL REPORTER PRO TEMPORE
28

TRANSCRIPT OF PROCEEDINGS

February 08, 2022

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