



1 LOA. E BLISS
2 DAVID A. GILBERT
3 9030 Ojai Santa Paula Rd.
4 Ojai, CA 93023

5 Trustees,
6 Loa E. Bliss 2006 Revocable Trust

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES

9 SANTA BARBARA CHANNELKEEPER,
10 a California non-profit corporation,

11 Petitioner,

12 v.

13 STATE WATER RESOURCES
14 CONTROL BOARD, etc., et al.,

15 Respondents.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

STATUS CONFERENCE REPORT

Date: February 9, 2021

Time: 1:30 p.m.

Dept: SS10

Action Filed: Sept. 19, 2014

Trial Date: Not Set

16 CITY OF SAN BUENAVENTURA, etc.,

17 Cross-Complainant

18 v.

19 DUNCAN ABBOTT, an individual, et al.

20 Cross-Defendants.

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1 request by the City for the Court to lift the stay of discovery on March 1, 2021 is also premature.

2 b. Similarly, the dates proposed by the City in its Exhibit A are premature.

3 c. In light of the foregoing and given that the Bliss Trust has been informed that
4 additional reports relevant to the status of the Upper Ojai basin are purportedly forthcoming, the
5 Bliss Trust believes the meet and confer process needs to run its course and the imposition of all
6 the foregoing deadlines is unnecessary and should be revisited at a later time.

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8 2. OUTSTANDING ISSUES

9 In addition to the specific issues raised above, the Bliss Trust also asserts the following
10 facts, observations, and issues:

11 The City has stated neither remotely compelling facts nor law that would bring the Upper
12 Ojai basin under the umbrella of SGMA.

13 The City has stated neither remotely compelling facts nor law that would bring the Upper
14 Ojai basin under the umbrella of the public trust doctrine.

15 There is no present controversy concerning extraction of the Upper Ojai basin waters, nor
16 any stated concern over any human consumption interfering in the natural flow of Upper Ojai
17 surface waters (Lion Creek).

18 The imposition of a Physical Solution for the Upper Ojai basin is not necessary or
19 required. (See Code Civ. Proc. § 849.)

20 Certainly, the litigation process should start with a required clear factual and legal
21 statement or pleadings by the City to explain the necessity. This, to date, is nowhere to be found.
22 The Parties need to know the exact parameters of the litigation, if it comes to that, before being
23 burdened with the considerable expense and time that litigation or negotiation would require.

24 Simply put, any Proposed Physical Solution opens the door indefinitely to the unnecessary
25 control and management of both surface water and ground water in the Upper Ojai and allows the
26 City to have these rights to the Upper Ojai basin waters in perpetuity, including the City's rights
27 for domestic use, without the necessity of the City proving any such rights.

28 The Bliss Trust restates its concerns as originally set out in correspondence to City

1 counsel on November 5, 2020 and provided to the Court for the November 16, 2020 status
2 conference. Specifically, that correspondence raised issues of subject matter jurisdiction, serious
3 issues with applying the Proposed Physical Solution to the Upper Ojai, the burden and
4 complexity of Upper Ojai individuals to organize, and the public unavailability of certain reports,
5 findings, and opinions held by the City.

6 In accordance with the City's statement to identify areas of dispute, and in the present
7 absence of facts or law to justify imposition of a Proposed Physical Solution, the Bliss Trust
8 offers the following to the best of its knowledge and belief:

- 9 1. The Upper Ojai basin is a stand-alone basin.
- 10 2. The Upper Ojai basin is a stable basin—no overdraft. (Bulletin 118.)
- 11 3. There is no alleged or actual adverse impact on the fishery or elsewhere based on
12 any extraction of waters from the Upper Ojai basin.
- 13 4. Lion Creek, a non-navigable waterway when it flows (rarely), flows as a narrow
14 stream over the basin (about 5.5 miles), exits the basin and then traverses Lion Canyon (4-5
15 stream miles), at the end of which it joins/meets San Antonio Creek. San Antonio Creek meets
16 the Ventura River 5-6 stream miles farther.
- 17 5. There is no diversion or damming of Lion Creek.
- 18 6. There is no movement of water in Lion Creek unless there is heavy rainfall and,
19 even then, the movement is *de minimis* except perhaps in the immediate aftermath of
20 extraordinary rainfall (and the City has offered no facts or measurements of any kind, as it must,
21 to support its assertion). Absent significant rainfall, Lion Creek is dry and/or stationary.
- 22 7. Any alleged seepage of groundwater into Lion Creek does not create flow.
- 23 8. Any alleged seepage has not been measured or proved.
- 24 9. The sporadic flow of Lion Creek has not been measured where it exits the Upper
25 Ojai basin and enters Lion Canyon, nor at the junction of Lion Canyon and San Antonio Creek.
- 26 10. The seepage of groundwater, if it indeed it exists, is insignificant.
- 27 11. Whatever seepage may enter Lion Creek is most likely lost and/or diminished as
28 the seepage exits the Upper Ojai basin and flows in its bed down Lion Canyon.

12. There is no negative impact on any navigable waterway from the continued natural operation of Lion Creek.

Any Proposed Physical Solution, if applicable, needs to be written to take into account the above or otherwise exclude entirely the Bliss Trust and Upper Ojai basin. Any provision of a PPS that (i) assumes the City has proven water rights that have not, in fact, been established, or (ii) relieves the City of any obligation to prove its rights is not acceptable and turns “due process” on its head. Further, a “take it or leave it” stance with respect to any PPS leaves too many unaddressed concerns with respect to the Upper Ojai basin. Such a PPS would ignore the City’s preliminary responsibility to prove even the fundamentals of the City’s case—scientifically or otherwise. There is no reason to impose any PPS on the Upper Ojai basin or the Bliss Trust.

The VenturaWatershed.Org website reports that 2.83 inches of rain fell on the Upper Ojai during the five (5) days ending at 3:00 PST on Monday, February 1, 2021. Notwithstanding this substantial rainfall during this 5-day period and based on careful observation by the Trustees of the Bliss Trust at approximately 1:00 pm PST on both Saturday, January 30, 2021 and Monday, February 1, 2021, there was barely a trickle of water moving in Lion Creek. Based on several observations by the Trustees in the weeks prior to the recent rain event, no water was moving in Lion Creek. The City’s unsupported claims to the contrary bear no relevance to reality.

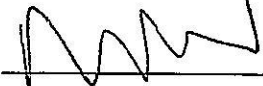
3. CONCLUSION AND SUMMARY OF REQUESTS

Based on the above Report, the Bliss Trust request that the Court consider taking the following actions:

- Maintain the current stay of the discovery.
- Order the parties to continue to meet and confer regarding the terms of the Proposed Physical Solution.
- Allow any site visit to include Lion Creek.
- Recognize that there is no reason to expedite the resolution of the Upper Ojai basin since there is no adverse effect on the fishery.

1 Dated: February 2, 2020

2 By: 

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4 LOA E. BLISS
5 DAVID A. GILBERT
6 Trustees,
7 The Loa E. Bliss 2006 Revocable Trust