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LOA. E BLISS
DAVID A. GILBERT
9030 Ojai Santa Paula Rd.
Ojai, CA 93023

Trustees,
Loa E. Bliss 2006 Revocable Trust

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,
a California non-profit corporation,

Petitioner,

v.

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

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

CITY OF SAN BUENAVENTURA, etc.,

Cross-Complainant

v.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

1 STATUS CONFERENCE REPORT

2 The Loa E. Bliss 2006 Revocable Trust (the "Bliss Trust") submits this Status Conference
3 Report ("Report") in advance of the Status Conference scheduled for February 9, 2021 at
4 1:30 p.m. The Bliss Trust files this submission after requesting the City of San Buenaventura (the
5 "City") to incorporate the issues set forth herein, which the City declined to do.

6 This Report is submitted in advance of the Status Conference scheduled for February 9,
7 2021 at 1:30 p.m. The Bliss Trust made a good faith effort to provide and solicit input from the
8 City prior to submission of this Report. Specifically, the Bliss Trust sent the issues contained in
9 this Report as a letter attachment via email on January 29, 2021 to the City and all individuals or
10 entities included on the City's email of January 26, 2021 providing its draft Status Conference
11 Report. On February 1, 2021, the City informed the Bliss Trust that the City would not
12 incorporate any of the issues raised in the Bliss Trust's letter in the draft Status Conference
13 Report the City previously circulated. The Bliss Trust therefore files this separate report.

14
15 1. PROPOSED SCHEDULE

16 With regard to the City's proposed Further Status Conference Report:

17 (1) The Bliss Trust agrees that a version, perhaps even in draft form, of the Proposed
18 Physical Solution (sometimes referred to hereinafter as the "Solution" or "PPS") should
19 eventually be reviewed by the Court.

20 a. Meet and confer processes should continue after any submission to the Court of a
21 Proposed Physical Solution. As the City's version is currently worded, it appears the meet and
22 confer process would cease as of February 26, 2021.

23 b. It is unclear that the City will have properly completed service to all appropriate
24 potential/interested parties by that date. Such potential parties may wish to engage in the meet and
25 confer process regarding the Proposed Physical Solution. It is premature to require submission of
26 a draft Solution before all potential parties have been properly served.

27 (2) Dates proposed in the City's Report and Exhibit A.

28 a. Because proper service on all potential/interested parties is not yet complete, the

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.

7
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.

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

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

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

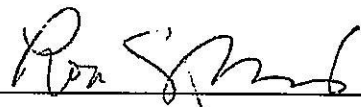
18 3. CONCLUSION AND SUMMARY OF REQUESTS

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

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

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Dated: February 2, 2020

By:  _____

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LOA E. BLISS
DAVID A. GILBERT
Trustees,
The Loa E. Bliss 2006 Revocable Trust