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 CITY OF SAN BUENAVENTURA

EXEMPT FROM FILING FEES PURSUANT
 TO GOVERNMENT CODE SECTION 6103

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, et al,

Respondents.

CITY OF SAN BUENAVENTURA, et al.,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger

**DEFENDANT AND CROSS-
 COMPLAINANT CITY OF SAN
 BUENAVENTURA'S PHASE ONE
 TRIAL BRIEF**

Dept.: 10

Action Filed: Sept. 19, 2014

Trial Date: March 16, 2022

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Defendant and Cross-Complainant City of San Buenaventura (Ventura) submits this trial brief on the Phase One issue of interconnection.

I. INTRODUCTION

The sole issue for Phase One is whether surface water and groundwater in the Ventura River Watershed (Watershed) is interconnected such that a consideration of both surface water¹ rights and uses and groundwater rights and uses is necessary for a fair and effective determination of rights within the Watershed, including within the boundaries of its four groundwater basins. The Court has already determined the boundaries of the Watershed and the boundaries of the four groundwater basins² and has denied challenges to its jurisdiction to hear this case. The only remaining question for Phase One is whether the different parts of the Watershed are connected such that the Court should consider the entire system as a whole, either for purposes of a physical solution or, if necessary, prior to determining rights or assessing reasonable uses within the different contributory parts of the system in future phases of trial.

The Phase One evidence, much of which is undisputed, will demonstrate this interconnection. Specifically, the evidence will demonstrate that surface water and groundwater are interconnected in the Watershed and must therefore be considered as one common source or system. For example, the evidence will establish that San Antonio Creek and its tributaries interconnect with and replenish groundwater in the Ojai Valley Groundwater Basin (Ojai Basin) and that groundwater from the Ojai Basin is then discharged back to San Antonio Creek, which then flows into the Ventura River. The evidence will also establish that because of this interconnection, downstream consumptive water users and instream uses such as the endangered Southern California Steelhead (Steelhead) must be considered when assessing, in future phases of

¹ To avoid unnecessary complexity, Ventura uses the term “surface water” to include both water flowing in surface water bodies (rivers, streams, creeks etc.) and water in subterranean streams flowing through known and definite channels. (See Cal. Wat. Code, § 2500 [“stream system” includes stream, lake, or other body of water, and tributaries and contributory sources, but does not include an underground water supply other than a subterranean stream flowing through known and definite channels].)

² See Order Establishing Watershed and Basin Boundaries, attached hereto as Exhibit C. Ventura originally asked the Court to set Phase One to address the Watershed boundaries, the Basin boundaries and interconnectivity. The Order resolves the first two questions, leaving only interconnection to be determined.

1 trial, pumping and diversion activities within the Ojai Basin. This connectivity exists throughout
 2 the Watershed and within all four groundwater basins in the Watershed. Thus, this Court must
 3 consider the entire system as a whole before considering a physical solution or determining the
 4 rights, uses, and obligations within each part of the system, as may be required in future phases of
 5 trial.

6 Surprisingly, some of the Cross-Defendants who oppose Ventura in Phase One appear to
 7 misconstrue the sole remaining threshold issue of interconnection to be addressed in Phase One.
 8 These Cross-Defendants seek to negate the carefully crafted phased approach that is required in
 9 water law cases, as reflected in Ventura's granted motion to bifurcate, by trying to convert Phase
 10 One into a tort case on individual responsibility and individual causation. As explained in more
 11 detail in this trial brief, the sole remaining bifurcated issue for Phase One is interconnection, not
 12 individual responsibility or individual causation. And in fact, pursuant to the Court's order on
 13 Ventura's motion to bifurcate, all other matters in this case remain stayed.³ Only after the
 14 threshold question of interconnection is decided in Phase One will the Court and the parties be in
 15 a position during future phases of trial to address individual water rights and issues such as
 16 reasonable use and public trust impacts. To address individual liability in Phase One would
 17 nullify the Court's decision to grant Ventura's motion to bifurcate, would be inconsistent with the
 18 entire concept of phasing in water law cases, and would be premature because the factual
 19 predicate to this entire Watershed case—interconnection—has not yet even been established.

20 The Phase One trial is the first step in what could (but need not) be a multi-phased process
 21 to restore the health and sustainability of this Watershed that is so critical to both humans and
 22 other species, including the Steelhead. Ventura and its four proposing partners⁴ recommend that
 23 after Phase One, the parties collaboratively negotiate a physical solution to protect existing water
 24 rights, stabilize the water supply, and address the challenges to the Steelhead. The Phase One
 25 establishment of the interconnection between groundwater and surface water in the Watershed
 26

27 ³ See Exhibit E hereto at ¶ 9.

28 ⁴ In addition to Ventura, the proposing parties are Cross-Defendants Ventura River Water
 District, Meiners Oaks Water District, the Wood-Claeysens Foundation, and Rancho Matilija
 Mutual Water Company.
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will provide the factual basis for such a future physical solution or will, at least, create the framework for future phases of trial. In either case, the answer to Phase One's threshold question of interconnection will help shape future solutions to the Watershed's challenges.

II. THE WATERSHED AND ITS FOUR GROUNDWATER BASINS

The Watershed is located primarily in Ventura County with a small portion located in Santa Barbara County. (Attached hereto as Exhibit A are two illustrative maps of the Watershed, Ventura Trial Exs. 1, 4.) The Watershed covers an area of approximately 226 square miles and is a fan-shaped catchment that drains water from lands over 6,000 feet in elevation down to sea level. The Watershed is one of the smallest coastal watersheds in California. The Court has already fixed the boundaries of the Watershed using the U.S. Geological Survey's National Hydrography Dataset and Watershed Boundary Dataset and the 10-digit Hydrologic Unit Code 1807010101. (See Exhibit C.)

The Ventura River and its tributaries drain the Watershed. The Ventura River runs through the middle of the Watershed and stretches from its headwaters in the Transverse Range to the Pacific Ocean. Major tributaries of the Ventura River include Matilija Creek, North Fork Matilija Creek, San Antonio Creek, Cañada Larga Creek, and Coyote Creek. For purposes of the Phase One trial, San Antonio Creek and its tributaries constitutes the surface water subject to dispute. San Antonio Creek runs through the Ojai Basin and connects with the Ventura River at Casitas Springs north of Foster Park. Important tributaries to San Antonio Creek include Thacher Creek, Reeves Creek, McNeill Creek, Senior Canyon Creek, Gridley Canyon Creek, Fox Canyon Barranca, and Stewart Canyon Creek in the Ojai Basin and Lion Canyon Creek, which drains the Upper Ojai Valley Groundwater Basin.

There are four state-defined groundwater basins or sub-basins located fully or partially within the Watershed. Those basins or sub-basins are:

- (1) Basin 4-1, the Upper Ojai Valley Groundwater Basin (Upper Ojai Basin);
- (2) Basin 4-2, the Ojai Valley Groundwater Basin (Ojai Basin);
- (3) Basin 4-3.01, the Ventura River Valley—Upper Ventura River Groundwater Sub-Basin (Upper Ventura Basin); and

(4) Basin 4-3.02, the Ventura River Valley—Lower Ventura River Groundwater Sub-Basin (Lower Ventura Basin).

(Attached hereto as Exhibit B are maps of the four groundwater basins in the Watershed, Ventura Trial Exs. 5-8; see also Exhibit C hereto.) The Court has already fixed the boundaries of the four groundwater basins located fully or partially in the Watershed using the Department of Water Resources’ (DWR) Bulletin 118, with a recognition that portions of the Upper Ojai Basin are located outside of the Ventura River Watershed and inside the adjacent Santa Clara River Watershed. For purposes of the Phase One trial, the dispute regarding interconnection focuses exclusively on the Ojai and Upper Ojai Basins.⁵

III. INTERCONNECTION IS A FACT-SPECIFIC, CASE-BY-CASE DETERMINATION FOR THE COURT

There is no “bright line” legal standard for this Court to use to determine interconnection in this Phase One trial. (*See, e.g., Hudson v. Dailey* (1909) 156 Cal. 617, 627-628 (*Dailey*) [“There will always be great difficulty in fixing a line, beyond which the water in the sands and gravels over which a stream flows, and which supply or uphold the stream, ceases to be a part thereof and becomes what is called ‘percolating water.’”].) Whether groundwater and surface water are interconnected is a fact-specific, case-by-case, determination. However, the Court may refer to several sources, including statutory, regulatory, and common law, to help guide its factual determination on the issue of interconnection. The Phase One evidence will establish interconnection consistent with these different sources.

1. Common Usage

The Court may employ common usage to help assess interconnection. (*See California v. Altus Finance* (2005) 36 Cal.4th 1284, 1295-1296; *People v. Loera* (1984) 159 Cal.App.3d 992, 1002.) Most dictionaries define “interconnect” or an “interconnection” to mean “a mutual

⁵ No party has contested interconnection in the Lower Ventura Basin or the Upper Ventura Basin in Phase One. No party has submitted expert opinions or reports disputing interconnection in these basins for Phase One, although Cross-Defendant Aera Energy has reserved for future phases its position regarding its oil and gas operations in the “exempt aquifer.” A stipulation that would confirm interconnection for purposes of Phase One in these two basins has been circulated, but certain Cross-Defendants have not yet been willing to agree to the stipulation or to provide any edits to the proposed draft.

1 connection between two or more things” or a “connection between multiple things.” (Oxford
 2 Dictionary, www.yourdictionary.com, www.lexico.com). Under its common usage, people
 3 would generally understand the word “interconnect” to mean to “connect,” “touch,” or
 4 “interrelate.” Therefore, an interconnection between surface water and groundwater would
 5 commonly be understood to mean that the surface water and groundwater connect or touch at a
 6 point or at certain points, or at times or certain times.

7 For example, surface water might connect with groundwater when the groundwater table
 8 is at or above the level of the surface water and is therefore in balance with the groundwater table,
 9 is adding to groundwater (losing), or is receiving water from groundwater (gaining). Or
 10 groundwater might connect with surface water at a point where a basin terminates and discharges
 11 groundwater to a stream. Finally, groundwater and surface water may connect when groundwater
 12 pumping causes more surface water to percolate into the groundwater basin. The undisputed
 13 Phase One evidence will establish that all of these conditions exist at various points and times in
 14 the Ojai and Upper Ojai Basins, as well as in the Upper Ventura and Lower Ventura Basins,
 15 which is all that is required for purposes of Phase One.

16 2. Regulatory Definition

17 The Court should also consider relevant regulations that define interconnection. DWR has
 18 developed regulations to implement the Sustainable Groundwater Management Act (SGMA),
 19 including a specific regulatory definition of the term “interconnected surface water.” DWR
 20 defines “interconnected surface water” to mean “surface water that is hydraulically connected *at*
 21 *any point* by a continuous saturated zone to the underlying aquifer and the overlying surface
 22 water is not completely depleted.” (23 Cal. Code Regs. § 351, subd. (o), emphasis added.) This
 23 definition generally describes what hydrologists refer to as “balanced,” “gaining connected,” or
 24 “losing connected” conditions—i.e., situations where surface water is balanced with the
 25 groundwater table, gaining water from the underlying aquifer, or losing water to the underlying
 26 aquifer. The undisputed Phase One evidence will demonstrate that all of these connections exist
 27 at various points in time and at various locations in the Ojai and Upper Ojai Basins. Thus, San
 28 Antonio Creek (and its tributaries) and Lion Canyon Creek (and its tributaries) are interconnected

1 surface waters for the Ojai and Upper Ojai Basins, respectively.

2 3. Comprehensive Adjudication Statute

3 The Comprehensive Adjudication Statute, Code of Civil Procedure section 830, et seq.
4 (Statute), also provides guidance to the Court regarding when it is appropriate to consider surface
5 water and groundwater together. Code of Civil Procedure section 833, subdivision (c) provides
6 that such joint consideration is appropriate when consideration of rights and uses in “an
7 interconnected surface water body” is “necessary for the fair and effective determination of
8 groundwater rights in a basin” The Phase One evidence will establish that to fairly and
9 effectively determine groundwater and surface water rights in the Watershed and its four basins,
10 the Court must consider the interrelationship between groundwater and surface water in the
11 Watershed and how each one affects the other. As part of its Phase One decision, it would be
12 appropriate for the Court to make this finding under Code of Civil Procedure section 833,
13 subdivision (c). Although such a finding is not necessary procedurally because Ventura has
14 already named and personally served all known surface water claimants, such a finding would be
15 appropriate under Ventura’s independent Sixth Cause of Action, which uses the notice procedures
16 in the Statute.

17 As part of its consideration of interconnection under Section 833, subdivision (c), it is
18 critical to recall the position that the City of Ojai has repeatedly taken and emphasized in this
19 case, a position which served as the basis for Ojai’s Motion for Judgment on the Pleading, which
20 the Court has denied. The Statute defines the term basin by reference to DWR’s Bulletin 118.
21 (Code Civ. Proc., § 832, subd. (a); Wat. Code, § 10721.) The Court has confirmed the boundaries
22 of the Ojai and Upper Ojai Basins using DWR’s Bulletin 118. The parties must use these
23 boundaries to define the basins unless DWR changes them and the Court revises them. (Code
24 Civ. Proc., § 841 subds. (a)-(c).) Therefore, all that is required under 833, subdivision (c) is that
25 surface waters interconnect with a basin as defined by DWR at any point within the basin
26 boundaries. Here, the undisputed evidence is that portions of the Ojai and Upper Ojai Basins
27 interconnect with surface water at certain points within the Basins, as defined. This is all that is
28 required to make the finding under Section 833, subdivision (c). Parties may not redraw the basin

boundaries by seeking to segment the portions of the basin that they admit are connected from the portions of the basin that they contend may not be connected. Interconnection must be assessed in the basin as a whole for purposes of Section 833, subdivision (c) and the Phase One trial.

4. Common Law

California water law originally employed hydrologically artificial distinctions between surface water, including water in subterranean streams flowing through known and definite channels, on the one hand, and percolating groundwater on the other. (*See, e.g., Katz v. Walkinshaw* (1903) 141 Cal. 116.) While general distinctions between surface water and groundwater continue to play an important role in the regulation of California's water, the initial strict application of these distinctions led to absurd results that were inconsistent with the reasonable use of water in this arid state. Therefore, through Article X, section 2 of the California Constitution, and through multiple court decisions, these artificial distinctions between surface water and groundwater have been changed in meaningful ways to better reflect hydrological realities and the needs of those who use the interconnected waters.

One critical example of this evolution of the law is the "common source doctrine." "[I]t has been recognized by California decisions that a percolating groundwater supply, although not part of the flow of a stream, may nevertheless be hydrologically connected with it, with the result that the extraction of water from either source diminishes the amount of water in the other. In such a situation, the percolating groundwater and the stream are regarded as one common water supply" (*United States v. Fallbrook* (S.D. Cal. 1958) 165 F.Supp. 806, 847, citations omitted.) Where groundwater and surface waters are hydrologically interconnected, the "common source" doctrine applies and integrates these sources by eliminating artificial distinctions between them. (*Dailey, supra*, 156 Cal. at 627-628.)

Some of the earliest "common source" cases involved individual surface water and groundwater rights holders disputing their individual rights to the common source. For example, in the seminal water rights case of *Katz v. Walkinshaw* (1903) 141 Cal. 116, the Court considered a dispute involving a defendant who diverted water from an artesian belt of percolating groundwater that the plaintiff had traditionally relied on for domestic and irrigation purposes. (*Id.*

1 at 138.) Among other things, the Supreme Court in *Katz* used this dispute to minimize the
 2 distinction between percolating groundwater and an underground stream. It held that this
 3 distinction was inapplicable to what was really a common source, “provided the fact be
 4 established that their extraction from the ground diminished to that extent, or to some substantial
 5 extent, the waters flowing in the stream.” (*See id.*; *see also, McClintock v. Hudson* (1903) 141
 6 Cal. 275, 281 (1903) (summarizing this rule as expressed in *Katz*).)

7 More recent “common source” cases address these issues on a larger, watershed-wide
 8 scale. *City of Barstow v. Mojave Water Agency (Mojave)* (2000) 23 Cal.4th 1224 provides what
 9 is possibly the most relevant example of this broader application of the common source doctrine.
 10 There, the Supreme Court explained that “[b]ecause these basins are interconnected, some of the
 11 surface inflow to one basin is outflow from another. The groundwater and surface water within
 12 the entire Mojave River Basin constitute a single interrelated source.” (*Id.* at 1234.) Like the
 13 facts in *Mojave*, the Phase One evidence will demonstrate that groundwater and surface water
 14 within the Watershed constitute a common interrelated source. This is particularly true in this
 15 Watershed, which is one of the smallest coastal watersheds in California, and which is highly
 16 interconnected.

17 There are also numerous common law cases, involving reasonable use and public trust,
 18 that provide guidance on issues of interconnection. In both *National Audubon Society v. Superior*
 19 *Court* (1983) 33 Cal.3d 419 and *Environmental Law Foundation v. State Water Resources*
 20 *Control Board* (2018) 26 Cal.App.5th 844, the public trust doctrine was applied to surface water
 21 that was interconnected to either non-navigable tributaries (*Audubon*) or to groundwater
 22 (*Environmental Law Foundation*). Because the uses of these interconnected sources mattered to
 23 public trust resources in the surface water, it was appropriate to consider the interconnected
 24 waters together. Similarly, when assessing reasonable use under Article X, section 2 of the
 25 California Constitution, courts should consider all users drawing from a common source.
 26 Assessment of reasonable use requires that a court consider “all the needs of those in the
 27 particular water field.” (*Tulare Irrigation District v. Lindsay-Strathmore Irrigation District*
 28 (1935) 3 Cal.2d 489, 524-525.) And here, the Court of Appeal has already determined that *if*

1 interconnection is established, this Court must consider the other users of any interconnected
 2 waters (groundwater or surface water) in the Watershed as part of a future determination of
 3 Ventura’s reasonable use cause of action. (*Santa Barbara Channelkeeper v. City of San*
 4 *Buenaventura* (2018) 19 Cal.App.5th 1176, 1193.)

5 5. Human Made Connections

6 In addition to natural hydrological conditions, courts have recognized that humans may
 7 change natural conditions in a manner that should be considered in the process of determining
 8 water rights. In *Chowchilla Farms v. Martin* (1933) 219 Cal. 1, the California Supreme Court
 9 considered the human made changes to the natural conditions of the San Joaquin River in Madera
 10 and Merced Counties. The Supreme Court held that a water course “although originally
 11 constructed artificially, may from the circumstances under which it originated and by long-
 12 continued use and acquiescence by persons interested therein become and be held to be a natural
 13 watercourse” (*Id.* at 18.) The Court quoted with approval several cases from California and
 14 other states and countries that follow this rule, including the following relevant statement: “where
 15 such waters did not originally collect and flow down the channel, if through the instrumentality of
 16 man they have been made to do so and, through years of so flowing have acquired a permanent
 17 character as the natural drainage of the watershed, the original manner of the creation of the
 18 stream is immaterial; it is a ‘water-course’ with all the attributes of one wholly natural.” (*Id.* at
 19 14, citations omitted.) The court concluded, based on this doctrine, that “the channel now
 20 connecting Kings River with Fresno Slough has all the attributes of a natural channel, and for the
 21 purpose of determining the respective rights of the parties thereto the water flowing therein, said
 22 channel must be regarded and treated as a natural channel.” (*Id.* at 26.)

23 In Phase One, Ventura will present evidence that, in addition to natural hydraulic
 24 connectivity, over the course of many decades, humans have directly connected the Ventura River
 25 with the Ojai and Upper Ojai Basins in significant ways. This evidence includes construction of
 26 Matilija Dam and conduits that brought water from the Dam to recharge the Ojai Basin for many
 27 years, construction of the Robles Diversion and Lake Casitas, and connections between Lake
 28 Casitas and the Ojai and Upper Ojai Basins. This evidence is relevant to the consideration of

whether the Watershed serves as (or has been modified to serve as) one unified, common system. The evidence will establish that the Watershed is not only naturally one system, but also that humans have augmented this connectivity by making artificial connections between the Ventura River and all four groundwater basins, including the Ojai and Upper Ojai Basins. The evidence will also show that these human-made connections have significantly diminished steelhead habitat, demonstrating the importance of San Antonio Creek to the fishery. Ultimate rights to water that may be brought to the basins is a separate consideration for later phases of trial, and therefore Water Code section 7075 is not relevant to the Phase One issue.⁶ Questions regarding rights to imported water do not prevent the Court from considering these artificial connections when assessing overall interconnection between surface water and groundwater in the Watershed during Phase One.

6. Summary of Legal Guidance on Interconnection

As reflected above, neither courts nor the Legislature have established a “bright line” test regarding the interconnection between surface water and groundwater. Therefore, whether a single molecule of connected water is sufficient or whether more is required will be within the judgment of the Court. What is clear is that courts have taken a practical approach to such questions and have not permitted artificial distinctions to drive results that are inconsistent with comprehensively addressing challenges in a unified system. The Watershed is such a unified system, and the Ojai and Upper Ojai Basin significantly contribute to the health of the system by contributing water to the downstream system (well more than a molecule), as the evidence summarized below will demonstrate. It is therefore appropriate to consider the Watershed comprehensively as one system to best address all of its challenges and opportunities based upon the undisputed fact that surface and groundwater systems in the Watershed are interconnected.

⁶ Based on previous briefing, Ventura anticipates that the City of Ojai will raise Water Code section 7075 and claim that human made connections are irrelevant based on that statute. Water Code section 7075 addresses the reclamation of water that has been appropriated and turned into the channel of another stream, mingled with its water, and then reclaimed. This statute is irrelevant to the question of how human made interconnections augment natural interconnections, although it may be relevant to future determinations of rights.

1 **IV. WHAT PHASE ONE IS NOT ABOUT**

2 As noted in the introduction to this trial brief, certain Cross-Defendants have misconstrued
3 the scope of Phase One. These Cross-Defendants appear at this late stage to be seeking to convert
4 Phase One into a tort trial on causation related to their individual responsibility for the challenges
5 facing the Watershed. This is not the sole remaining bifurcated issue in Phase One.

6 On May 11, 2021, Ventura filed its motion to bifurcate issues for this first phase of
7 trial. Ventura's motion asked the Court to bifurcate the following three issues: (1) watershed
8 boundaries; (2) basin boundaries; and (3) interconnection, specifically "a determination of the
9 interconnection between the surface water and groundwater in the Watershed, including the
10 interconnection between surface water and the four groundwater basins, and the interconnection
11 between those groundwater basins and the Ventura River, and its tributaries." (See Ventura's
12 May 11, 2021 Memorandum of Points and Authorities, p. 5, attached hereto as Exhibit D.) On
13 June 21, 2021, the Court granted Ventura's motion, and set an initial Phase One trial date for
14 February 14, 2022 regarding the basin and watershed boundaries and interconnectivity. (See
15 Notice of Ruling for June 21, 2021, p. 3, ¶ 9, attached hereto as Exhibit E.)

16 On January 13, 2022, the Court signed an Order Establishing Watershed and Basin
17 Boundaries. (See Exhibit C hereto.) This Order resolved issues (1) and (2) above in the Phase
18 One trial. Therefore, the sole issue remaining to be tried in Phase One is interconnection as
19 defined above. As stated in Ventura's May 11, 2021 moving papers: "it is appropriate for the
20 Court to determine whether the different sources of water within the Watershed are
21 interconnected such that the water within the system may be considered one source." (See
22 Ventura's May 11, 2021 Memorandum of Points and Authorities, p. 10-11, attached hereto as
23 Exhibit D.) No other party has filed a motion to bifurcate issues, so what the City bifurcated is all
24 that is before the Court in Phase One. Importantly, as bifurcated, Phase One does not address any
25 individual pumper or diverter or any individual rights and impacts, and the case remains stayed as
26 to matters outside of this scope. Phase One thus focuses solely on the bifurcated question of
27 interconnection.
28

1 Cross-Defendants in the East Ojai Group appear to be ignoring this threshold question,
 2 jumping way ahead to what may be issues for later phases of this trial, and they also appear to
 3 fundamentally misread how the Court of Appeal’s decision in *Santa Barbara Channelkeeper v.*
 4 *City of San Buenaventura*, *supra*, 19 Cal.App.5th 1176 relates to Phase One. The only issue to be
 5 tried in Phase One is actually the threshold factual issue that the Court of Appeal decision
 6 *assumed to be true* for purposes of its analysis of whether Ventura could file its Cross-
 7 Complaint. Phase One will now address this factual predicate—interconnection—that the Court
 8 of Appeal took for granted based on the procedural posture of that case. Because the Court of
 9 Appeal assumed the Phase One issue of interconnection to be true, it did not (and could not)
 10 speak at all to the burden of proof on the issue of interconnection, since it assumed
 11 interconnection to exist. Rather, the Court of Appeal analyzed as a matter of law whether the
 12 Cross-Complaint arose out of the same transaction or occurrence or involved the same property
 13 right that was alleged in the underlying Santa Barbara Channelkeeper Complaint per Code of
 14 Civil Procedure section 428.10, subdivision (b). Assuming interconnection to exist based on the
 15 allegations in the Cross-Complaint and the underlying Complaint, the Court of Appeal found that
 16 the City’s Cross-Complaint satisfied both prongs of Section 428.10, subdivision (b)
 17 (transaction/occurrence and property), and therefore it held that the trial court erred in striking the
 18 Cross-Complaint. (See, e.g., *Santa Barbara Channelkeeper*, *supra*, 19 Cal.App.5th at 1193
 19 [“Because the water sources on which all users draw *are alleged to be hydrologically connected*,
 20 the water that the Cross-Defendants are using and which is the subject of the City’s Cross-
 21 Complaint is the same water that the City is using, which is the subject of the Complaint”],
 22 emphasis added.) Phase One now answers the question of interconnection, which the Court of
 23 Appeal assumed to be true—nothing more. Any argument or evidence to the contrary is beyond
 24 the scope of Phase One and would nullify the carefully phased approach to establishing the
 25 threshold question of interconnection that the Court established when it granted Ventura’s motion
 26 to bifurcate.
 27
 28

V. **THE EXPERT TESTIMONY WILL DEMONSTRATE THAT GROUNDWATER AND SURFACE WATER ARE INTERCONNECTED IN THE WATERSHED AND THAT DOWNSTREAM CONSUMPTIVE AND INSTREAM USES MUST BE CONSIDERED**

The Phase One trial will almost exclusively involve expert testimony. This expert testimony will focus on the Ojai and Upper Ojai Basins and their tributary streams, which are the only disputed areas for Phase One.⁷ Although there are certain disputed facts, the undisputed expert testimony from not only Ventura's experts, but from all the experts, will demonstrate that:

- (1) groundwater from at least portions of the Ojai Basin provides a perennial source of baseflow to San Antonio Creek;
- (2) groundwater in the Ojai Basin "daylights" through "seeps" in the upper portion of the basin at certain times and under certain conditions;
- (3) San Antonio Creek and its tributaries demonstrate balanced, gaining connected, or losing connected conditions at certain times and under certain conditions;
- (4) the Upper Ojai Basin discharges to Lion Canyon Creek; and
- (5) conditions similar to (1)-(3) above exist in Lion Canyon Creek and the Upper Ojai Basin at certain times and under certain conditions.

This undisputed evidence is sufficient to establish connectivity for Phase One.

A. **The Phase One Experts**

In Phase One, up to eleven (11) different expert witnesses will testify about interconnection. These experts are briefly introduced below, and their opinions are summarized in the following section.

Ventura will present the expert opinions and testimony of the following four experts: (1) Dr. Claire Archer, who holds a Ph.D in hydrogeology from the University of Nevada and a Master of Science in Geoscience from the University of California, San Diego and who is a hydrogeologist at Cardno; (2) Tamara Klug, a senior principal botanist at Cardno; (3) Dr. Charles H. Hanson, a senior fisheries biologist and owner of Hanson Environmental, Inc.; and (4) Dr.

⁷ Ventura will also offer evidence regarding the Upper and Lower Ventura Basins, if a stipulation cannot be reached, but no party has offered any evidence disputing interconnection in these Basins.

1 Douglas Littlefield, an historian and owner of Littlefield Historical Research.

2 Ventura anticipates that other parties will seek to present expert opinions and testimony
3 from at least seven additional experts. The State Water Resources Control Board (State Board)
4 will present the expert testimony of (5) Dr. Al Preston and (6) Dr. Gregory Schnaar regarding
5 hydrology and hydrogeology in the Watershed. The California Department of Fish and Wildlife
6 (CDFW) will present the testimony of (7) Kyle Evans, an Environmental Scientist at CDFW, who
7 will address factors related to Steelhead in the Watershed.

8 Ventura also expects that the City of Ojai and other parties will seek to present the
9 testimony of (8) Jordan Kear,⁸ a professional geologist and certified hydrogeologist; that the East
10 Ojai Group will seek to present the testimony of (9) Anthony Brown⁹ of Aquilogic, Inc.; and that
11 Casitas Municipal Water District (Casitas) will seek to present the testimony of (10) Dr. Jim
12 McCord of Lynker-Intel, LLC, and (11) Randall T. Hanson of One-Water Hydrologic, LLC.

13 The relevant opinions and testimony of these experts are addressed in the remainder of
14 this trial brief.

15 **B. The Expert Testimony will Demonstrate that Groundwater and Surface**
16 **Water are Hydrologically Interconnected in the Watershed**

17 The testimony from all of the experts will demonstrate that groundwater and surface water
18 in the Watershed are interconnected, at least at certain points and times, and to certain degrees.
19 Factual disputes exist regarding *how much* certain portions of the Ojai and Upper Ojai Basins
20 contribute to surface water flow in San Antonio Creek, or *how much* groundwater pumping in
21 certain portions of these Basins affect surface water flow. While questions regarding the *extent* of
22 connection in certain portions of these Basins may be relevant to future water management
23 decisions, they are not relevant to the Phase One issue of determining interconnection. Phase One
24 is focused on the *fact* of interconnection between the Basins as a whole, as defined, and surface
25 waters, not the exact *extent* of interconnection or individualized impacts at specific locations in
26 the Basins.¹⁰ The undisputed evidence demonstrates interconnection between surface and

27 ⁸ Ventura has filed motions in limine to exclude all or part of Mr. Kear's testimony.

28 ⁹ Ventura has filed a motion in limine regarding parts of Mr. Brown's testimony.

¹⁰ Ventura has filed a motion in limine to exclude evidence of individualized impacts.
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1 groundwater in the Watershed, including in the Ojai and Upper Ojai Basins, as confirmed by all
2 the expert testimony.

3 1. Opinions and Testimony of Dr. Claire Archer

4 Ventura will present the opinions and testimony of Dr. Claire Archer regarding the
5 interconnection between surface water and groundwater in the Watershed. Dr. Archer will
6 express the opinion that the “four groundwater basins within the Ventura River Watershed
7 (Watershed) are hydrologically connected to the Ventura River in a substantial and material way,
8 and within each groundwater basin surface water and groundwater are also hydrologically
9 connected in a substantial and material way. Within each basin, and within the watershed as a
10 whole, extractions from either groundwater or surface water materially diminish and could
11 adversely impact the uses of the other such that the water within the Watershed constitutes one
12 common supply.”

13 Dr. Archer’s opinion is based on multiple lines of evidence regarding each basin and the
14 Watershed. These lines of evidence include, but are not limited to, the geologic and
15 hydrogeologic structure of each basin, existing studies and analyses, surface water/groundwater
16 interaction field studies, streamflow gage data, groundwater level analysis, vegetation and
17 groundwater dependent ecosystems (including field studies and analysis by Ms. Tamara Klug),
18 anthropogenic groundwater/surface water connections, and groundwater modeling results.

19 2. Opinions and Testimony of Dr. Al Preston and Dr. Gregory Schnaar

20 Ventura anticipates that the State Board will present the opinions and testimony of Dr. Al
21 Preston and Dr. Gregory Schnaar. Dr. Preston and Dr. Schnaar were integral in the development
22 of the State Board’s integrated surface-water/groundwater model of the Ventura River Watershed
23 (State Board Model). Dr. Preston led documentation of the surface water and watershed
24 components of the State Board Model, and Dr. Schnaar led documentation of the groundwater
25 components of the State Board Model and the groundwater/surface water connection and
26 streamflow depletion analyses. In addition, Dr. Schnaar has performed regional-scale hydrologic
27 studies within the Watershed for the last twelve years, including work on the development of the
28 Ojai Basin Groundwater Model for the Ojai Basin Groundwater Management Agency, and the

development of groundwater budgets for the Upper and Lower Ventura River Basins.

Dr. Preston and Dr. Schnaar will express the following opinions: (1) that surface water and groundwater are connected in the Ventura River watershed; (2) that most groundwater pumping causes streamflow depletion in the Ventura River watershed; and (3) that groundwater pumping in areas distant from the Ventura River and its tributaries impacts streamflow.

3. Opinions and Testimony of Mr. Jordan Kear

Ventura anticipates that the City of Ojai will present the opinions and testimony of Mr. Jordan Kear regarding surface water and groundwater interconnection in the Ojai Basin. Ventura also expects that the Upper Ojai Group will present the opinions and testimony of Mr. Kear regarding surface water and groundwater interconnection in the Upper Ojai Basin.

a. Ojai Basin

Based on his expert report and deposition testimony, Mr. Kear will express the opinion that *parts* of the Ojai Basin are not *materially* interconnected to surface water. Stated differently, Mr. Kear will express the opinion that parts of the Ojai Basin are interconnected to surface water. This is all that is required for interconnection in Phase One. Therefore, even Mr. Kear's opinion and testimony support a finding of interconnection between the Ojai Basin and the surface waters of the Watershed.

Specially, Mr. Kear admits to at least two separate ways in which surface water and groundwater connect in the Ojai Basin. First, Mr. Kear admits that surface flow observed in San Antonio Creek emerges from groundwater stored in what Mr. Kear refers to as the "perched aquifer system" in the Ojai Basin. (Kear Deposition, December 15, 2021 (Volume I)¹¹, 68: 7-21.) In Mr. Kear's expert report, he phrases this opinion as follows: "Except for during very flashy events and/or water escaping from flowing artesian wells, water from the Ojai Basin that consistently discharges to San Antonio Creek emerges primarily from the perched aquifer system." (Kear Expert Report¹² dated September 24, 2021, pages 12-13.) In deposition, Mr. Kear stated on several occasions that the "perched aquifer" is located in the Ojai Basin, as defined

¹¹ Hereinafter deposition testimony will be cited as Kear Depo. Vol. I, relevant portions are attached hereto as Exhibit F.

¹² Relevant portions attached hereto as Exhibit G.
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1 by DWR, that groundwater stored within the “perched aquifer” exfiltrates to San Antonio Creek,
2 and specifically that the “perched aquifer of the Ojai Basin is materially connected with the
3 surface flows in San Antonio Creek.” (Kear Depo. Vol. I, 73:2-5; 154:2-18; 206:13-19.)

4 According to Mr. Kear, the exact extent of the “perched aquifer system” is undefined but is
5 estimated to cover a large portion of the southwestern part of the Ojai Basin.

6 Mr. Kear also admitted in his deposition that San Antonio Creek and its tributaries
7 Thacher and Reeves Creeks experience balanced, gaining connected, and losing connected
8 conditions relative to the groundwater table in the Ojai Basin at certain times and at certain
9 locations. (Kear Depo Vol. I, 139:1-143:23.) This means that the surface waters and the
10 groundwater levels are connected for at least some period of time at these locations and
11 establishes the conditions to satisfy DWR’s regulatory definition of interconnected surface water
12 as used in SGMA. Therefore, the opinions of Mr. Kear alone are sufficient to demonstrate the
13 interconnection between surface water and groundwater in the Ojai Basin and in San Antonio
14 Creek.

15 Mr. Kear’s main opinion appears to be that management of groundwater pumping in the
16 Ojai Basin’s “main” aquifers will not result in a material difference in discharge to San Antonio
17 Creek and the Ventura River because the deeper “main production aquifers” are disconnected
18 from the “perched aquifer” by a 100-ft thick confining clay unit, and it is the “perched aquifer”
19 that is primarily interconnected. (Kear Depo Vol. I, 76:8-77:18.) The exact extent of this
20 “perched aquifer” and its underlying clay layer is unknown, and Mr. Kear can only estimate its
21 location. (*Id.*) While Mr. Kear’s opinion on this disconnection of the two aquifers he alleges
22 make up the basin is disputed, for purposes of Phase One, however, the validity of this opinion is
23 irrelevant because Mr. Kear admits that there is interconnection between the surface water and
24 groundwater in the Ojai Basin at least at some locations and at some points in time. In addition,
25 as will be explained by Dr. Archer, and as supported by the opinions of Dr. Schnaar and Dr.
26 Preston, there is no evidence of a uniform confining clay layer that completely separates the so
27 called “perched aquifer” from the so called “production aquifers” in the Ojai Basin. In fact, the
28 evidence is to the contrary.

1 Even though such evidence is not necessary to prove interconnection for purposes of
 2 Phase One, the evidence also shows that pumping in the deep aquifers in the Ojai Basin does
 3 impact streamflow within the Basin and in San Antonio Creek and ultimately, the Ventura River.
 4 For example, Dr. Archer will testify that when all pumping in the Ojai Basin is “turned off,” flow
 5 in San Antonio Creek where it exits the Ojai Basin is approximately 6-10 cubic feet per second
 6 (CFS) (i.e., over 4,000 acre feet per year) greater on average than with well pumping. Dr.
 7 Schnaar, Dr. Preston, and even Mr. Brown will express similar opinions.

8 It is common in water cases for people to argue that clay layers, such as Mr. Kear’s
 9 purported 100-ft thick “confining unit,” create a disconnection between groundwater and surface
 10 water, but courts have uniformly rejected such arguments. For example, in *City of Los Angeles v.*
 11 *Hunter* (1909) 156 Cal. 603, 606, the defendant asserted that “over all the San Fernando Valley
 12 extends a clay blanket, impervious to water, underlying which blanket are water-bearing gravels;
 13 that the waters above this blanket feed the Los Angeles River, while the waters below this blanket
 14 do not” The trial court rejected this contention, and its ruling was upheld by the California
 15 Supreme Court. (*Id.* at 610.) In *Dailey, supra*, 156 Cal. 617, the court addressed but rejected a
 16 similar “clay blanket” argument, noting that “[i]f there was in the valley a single acre where this
 17 supposed blanket did not exist, the opening would be equivalent to an immense well through
 18 which the water would pass from the upper strata into the lower one, if the water in the latter were
 19 extracted, or would rise into the upper strata if the water in the upper strata was diminished and
 20 there was pressure below, thus depleting or replenishing, as the case might be, the upper strata
 21 from which the creek water was directly obtained, and to that extent affecting the flow of the
 22 creek.” (*Id.* at 622.) In other words, absent specific evidence, which does not exist here, that an
 23 asserted “clay blanket” is uniform and consistent throughout the entire basin, a court should reject
 24 any contentions that a possible “clay blanket” creates a complete disconnection between the entire
 25 basin and surface waters.

26 In any case and based on his prior testimony, Mr. Kear must admit the following facts at
 27 trial, which establish interconnection: (1) the southwestern portion of the Ojai Basin provides
 28 perennial baseflow to San Antonio Creek; (2) within the Ojai Basin, San Antonio Creek, Reeves

1 Creek, and Thacher Creek exhibit balanced, gaining connected, or losing connected conditions at
2 certain points and at certain times; and (3) if pumping in the Ojai Basin ceased, the groundwater
3 table would rise, and the balanced or gaining connected condition would occur more regularly,
4 for longer durations and at more locations. In other words, Mr. Kear will admit facts that
5 establish interconnection between the Ojai Basin as a whole and surface waters.

6 b. Upper Ojai Basin

7 On behalf of the Garrison Group, Mr. Kear has expressed very similar (almost verbatim)
8 opinions about the Upper Ojai Basin as he did with regard to the Ojai Basin. Lion Canyon Creek
9 runs across, and drains the Upper Ojai Basin. After it drains the Upper Ojai Basin, Lion Canyon
10 Creek feeds into San Antonio Creek, which then feeds into the Ventura River. As with the Ojai
11 Basin, Mr. Kear's opinions actually confirm interconnection between Lion Canyon Creek and the
12 Upper Ojai Basin for purposes of Phase One.

13 Although Mr. Kear expresses the general opinion that "management of the Upper Ojai
14 basin will not result in a material difference in discharge to Lion Canyon Creek and San Antonio
15 Creek, as the primary driver for flow in the intermittent and ephemeral Lion Canyon Creek
16 downstream from the Upper Ojai Basin is rainfall," that opinion is not relevant to the Phase One
17 determinations, and the opinions in his report actually confirm that groundwater and surface
18 water in the Upper Ojai Basin is interconnected both within the Basin and at the discharge point
19 to Lion Canyon Creek. (Kear Expert Report, December 14, 2021, page 2.) For example, while
20 Mr. Kear seeks to downplay the amount, he admits that there "appears to be a small degree of
21 'leakage' from the basin area to surface flows of Lion Canyon Creek" (Kear Expert Report,
22 December 14, 2021, page 11.) As with the Ojai Basin, Mr. Kear tries to minimize this connection
23 by reference to another clay layer, stating that "these flows to the west may also be sourced from
24 perched system above the clay landslide deposits described by McKay (2011)." (*Id.*)
25 Nevertheless, Mr. Kear admits that groundwater "in the western part of the basin moves westward
26 toward Lion Canyon. Water in the western portion of the Upper Ojai Basin discharges to San
27 Antonio Creek along Lion Canyon Creek only during and following very flashy rain events."
28

1 Thus, although he seeks to minimize the connection, Mr. Kear's report demonstrates a
2 groundwater and surface interconnection both within the Upper Ojai Basin itself and with San
3 Antonio Creek through discharges to Lion Canyon Creek. The opinions of Dr. Archer, Dr.
4 Schnaar, and Dr. Preston support these portions of Mr. Kear's report. In fact, Dr. Archer's
5 opinion is that "groundwater and surface water are materially connected within the basin and the
6 basin is connected to the Ventura River through its tributary, Lion Canyon Creek." Likewise, Dr.
7 Preston and Dr. Schnaar's report states that "[r]esults at the Upper Ojai Basin Outflow (Table 3.3-
8 6 and Figure 3.3-11) indicate that streamflow is impacted (i.e., influence fractions greater than
9 zero) by pumping within portions of the Upper Ojai Basin and Lion Creek."

10 Future phases of trial or future discussions of a physical solution may dictate special and
11 unique management actions for the Upper Ojai Basin due to its apparent relatively small size and
12 relatively low levels of groundwater production. It may well be that all that is required to
13 effectively manage how the Upper Ojai Basin contributes to downstream flow and supports
14 downstream uses is to maintain historical demands on this portion of the system. However, for
15 purposes of Phase One, the evidence, including Mr. Kear's expert report and testimony,
16 demonstrates an interconnection between surface water and groundwater such that the Upper Ojai
17 Basin should be considered to be an important part of this unified water system.

18 4. Opinions and Testimony of Mr. Anthony Brown

19 The East Ojai Group, represented by Greg Patterson, is a collection of larger property
20 owners (with primarily agriculture uses) located in the eastern portion of the Ojai Basin. Ventura
21 anticipates that the East Ojai Group will present the opinions and testimony of Mr. Anthony
22 Brown regarding groundwater and surface water interconnection in the Ojai Basin, with a
23 particular focus on the individual impacts that pumping or diversion activities of the members of
24 the East Ojai Group have on the Steelhead fishery in San Antonio Creek or its tributaries. Mr.
25 Brown's testimony is objectionable and irrelevant to Phase One for several reasons. Even so, Mr.
26 Brown's testimony, like Mr. Kear's, admits that parts of the Ojai Basin are interconnected with
27 surface water and therefore actually supports a finding of interconnection for purposes of Phase
28 One.

1 Mr. Brown's testimony is objectionable for at least two significant reasons. First, the
2 issue in Phase One is general interconnection between surface water and groundwater in the
3 Watershed and the four basins, *not individualized impacts*. In a collective system, where multiple
4 parties take from a common groundwater source, it is almost always feasible to claim that one
5 person's impact is *de minimis*, even when there is a collective impact. (*Antelope Valley*
6 *Groundwater Cases* (2020) 59 Cal.App.5th 241, 267 [noting that in this scenario any solution
7 would face a "'death by a thousand cuts' because each objecting water claimant could likewise
8 claim exemption from its regulation under the 'individual de minimus impacts' argument."].)
9 That is why Phase One first examines the collective impact groundwater pumping within the Ojai
10 Basin may have on interconnected surface water. Mr. Brown's testimony is irrelevant to the
11 actual issue in Phase One because he focuses solely on individualized impacts of a select group of
12 water users, not the entire system.

13 Although irrelevant for purposes of Phase One, the evidence will show that groundwater
14 production in the lower "production aquifer" does have an impact on surface flow and takes water
15 from the connected system that would otherwise exist as surface flow. This is true generally and
16 specifically regarding the pumping and surface diversions of the members of the East Ojai Group.
17 For example, as noted above, Dr. Archer will testify that when all pumping in the Ojai Basin is
18 "turned off," flow in San Antonio Creek where it exits the Ojai Basin is approximately 6-10 CFS
19 (over 4,000 acre feet per year) greater on average than with well pumping. Dr. Archer will also
20 testify that when only the pumping activities of the East Ojai Group members are "turned off,"
21 flow in San Antonio Creek is approximately 2-5 CFS (or from 1,500 to over 3,000 AFY) higher.
22 Similarly, Dr. Schnarr and Dr. Preston demonstrate that streamflow depletion is about 0.80 (80%)
23 for the East Ojai Group zones, indicating that the majority of East Ojai Group groundwater
24 pumping is sourced from what would otherwise result in streamflow. Even Mr. Brown
25 acknowledged in his deposition that reduced pumping in the "production aquifer" would result in
26 additional seepage from the production aquifer into San Antonio Creek. (Brown Deposition,
27
28

1 December 16, 2021 (Volume I), pages 146:18 – 147:25.¹³)

2 Second, Mr. Brown is a testifying expert on issues related to hydrology, but he is not a
3 fisheries expert. He is not qualified to express an opinion on the impact or lack of impact on the
4 Steelhead fishery in San Antonio Creek, and yet that is exactly what he has done.

5 Nevertheless, Mr. Brown's opinions, as flawed as they are, still support interconnection in
6 at least three ways. First, similar to Mr. Kear, Mr. Brown opines that "there is a hydrologic
7 connection between perched groundwater in the southwestern portion of the Ojai Basin and flows
8 in San Antonio Creek that support Steelhead habitat." (Brown Depo Vol. I, 128:23-129:13.)

9 Second, Mr. Brown admitted in his deposition that even groundwater from the lower "production
10 aquifer" "day lights" at seeps at the 900 foot elevation in the Ojai Basin, and that such "day
11 lighting" was observed in 2017 and 2019. (Brown Depo Vol. I, 236:9-237:1.) Mr. Brown further
12 admitted that without groundwater pumping, these connections between groundwater and surface
13 water would happen more often and for longer periods. (Brown Depo Vol. I, 157:9-160:8.)

14 Third, Mr. Brown admitted in his deposition that there could be anthropogenic connections
15 between the different parts of the Ojai Basin, including between what he describes as the
16 "perched aquifer" and the "production aquifer" through which groundwater from the "production
17 aquifer" can discharge to San Antonio Creek. (Brown Depo. Vol. I, 196:25-197:8.) These
18 opinions support the conclusion that the Ojai Basin is interconnected with surface water in the
19 Watershed.

20 In sum, as with Mr. Kear, Mr. Brown's testimony will confirm that the Ojai Basin is
21 connected with the surface water.

22 5. Opinions and Testimony of Dr. Jim McCord and Mr. Randall Hanson

23 Ventura anticipates that Casitas will present the opinions and testimony of Dr. Jim
24 McCord and Mr. Randall Hanson. These opinions are highly technical and limited to
25 assumptions, data, or techniques used by Dr. Archer, Dr. Schnaar and Dr. Preston in preparing
26 their models.

27
28 ¹³ Hereinafter deposition testimony will be cited as Brown Depo. Vol. 1, relevant portions
attached hereto as Exhibit H.
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1 As this testimony relates to the opinions of Dr. Archer, the opinions of Dr. McCord and
2 Mr. Hanson focus only on one aspect of the many lines of evidence that Dr. Archer used to
3 support her opinion of interconnection. The opinions of Dr. McCord and Mr. Hanson do not
4 address any of the numerous other lines of evidence supporting Dr. Archer's opinion other than
5 her modeling effort. Therefore, these opinions do nothing to undermine Dr. Archer's overall
6 opinion that groundwater and surface water is interconnected in the Watershed. In addition, Dr.
7 Archer disagrees with the technical issues raised by Dr. McCord and Mr. Hanson, and her
8 testimony in Phase One will explain why her model is a valid line of evidence to help confirm her
9 opinion that is supported by significant evidence.

10 Dr. McCord and Mr. Hanson express similar highly technical opinions regarding the State
11 Board's Model as prepared by Dr. Schnaar and Dr. Preston. Dr. Schnaar and Dr. Preston have
12 rebutted these highly technical issues and have expressed the opinion that the State Board's
13 Model "meets and/or exceeds industry standards and is suitable for quantification of surface
14 water—groundwater interactions."

15 C. **Humans Have Connected the Ojai and Upper Ojai Basins to the Ventura**
16 **River**

17 In addition to the above expert testimony on hydrology, Ventura will present expert
18 testimony from Dr. Douglas Littlefield regarding how humans have augmented the natural
19 interconnections in the system through physical changes to the Watershed. Dr. Littlefield's
20 testimony will specifically address the historical development of both the Matilija Dam and Lake
21 Casitas, and how these man-made features benefited the Ojai Basin by connecting it to Ventura
22 River surface water.

23 Dr. Littlefield will testify that the "Ojai Valley's reliance on importing Ventura River
24 water from Matilija Dam and Lake Casitas goes as far back as the 1920s, and development within
25 the Ojai Valley appears to have benefited substantially from the imported water." More
26 specifically, Dr. Littlefield will opine that insufficient groundwater resources coupled with
27 drought conditions prompted residents in the Ojai Valley to push for connections to Ventura
28 River water, which "culminated in the construction of Matilija Dam on the Ventura River

(completed in 1948), and some of Matilija's water supplies were then carried via conduits to the Ojai Valley for spreading and groundwater recharge." Further, Dr. Littlefield will testify that "[w]ater spreading was a well-established practice in the Ojai Valley by the end of the 1950s, when the U.S. Bureau of Reclamation completed its Ventura River Project, which included Casitas Dam and Reservoir on Coyote Creek (a tributary of the Ventura River). A portion of Ventura River's water continued to be diverted to the Ojai Valley for spreading following the completion of the Ventura River Project."

As discussed above, the Court may properly consider these artificial connections between the Ventura River and the Ojai Basin when considering general issues of interconnection. As discussed below, these artificial connections are particularly relevant to the Court's consideration because while they benefited residents of the Ojai Basin, they also resulted in significant barriers to Steelhead migration and access to habitat, thus increasing the need to protect the remaining habitat in San Antonio Creek.

D. Instream and Consumptive Uses of Interconnected Surface and Groundwater in the Watershed Must Be Considered

Ventura and others will also present expert testimony and other evidence to demonstrate that consideration of both surface water rights and uses and groundwater rights and uses in this interconnected system is necessary for a fair and effective determination of rights within the Watershed, and within each of its four groundwater basins. The evidence will address both instream and consumptive uses that must be considered.

1. Instream Uses

Both Ventura and CDFW will present expert testimony and opinions regarding why instream uses of interconnected surface waters, including but not limited to San Antonio Creek, Lion Canyon Creek, and their tributaries, are relevant considerations when assessing rights and uses in contributory basins. Ventura will present expert testimony from Dr. Charles Hanson, a fisheries biologist and certified fisheries professional with over 45 years of experience in freshwater, estuarine, and marine biological studies. Dr. Hanson will testify about the importance of migration, spawning, and juvenile rearing habitat within San Antonio Creek and its tributaries,

1 including Lion Canyon Creek, to the overall health and condition of Steelhead in the Watershed.
2 Dr. Hanson will opine that “migration, spawning and juvenile rearing habitat in San Antonio
3 Creek and its tributaries, including Lion Canyon Creek, and the instream flows from San Antonio
4 Creek and its tributaries are essential to support a healthy Ventura River steelhead population.”
5 Dr. Hanson will also opine that “San Antonio Creek and its tributaries, including Lion Canyon
6 Creek, were made even more important to Southern California steelhead by the construction of
7 Matilija Dam, which blocked access to significant upstream migration, spawning, and juvenile
8 rearing habitat.”

9 Similarly, CDFW will present expert testimony and opinions from Kyle Evans, an
10 Environmental Scientist with CDFW. Mr. Evans will testify regarding the hundreds of wildlife
11 species in the Watershed and explain how many of them, including Steelhead, depend upon
12 riparian habitats and the biological connections they provide. Mr. Evans will explain how these
13 biological connections are dependent on the physical connection of riparian habitats and surface
14 waters and how these connections link river sub-basins together and connect the upper Watershed
15 to the lower Watershed. Mr. Evans will also opine that “changes to the physical processes and
16 connections in one area may impact linked areas. For example, altering a physical connection
17 between San Antonio Creek and its upstream tributaries (Gridley, Senior, Thacher creeks) will
18 impact the biological connections that exist between the San Antonio sub-basin and the Ventura
19 River and may impact the quality and quantity of habitats physically connected downstream.”

20 Taken together, the testimony of Dr. Hanson and Mr. Evans will demonstrate the
21 importance of San Antonio Creek to the Steelhead and how impacts to Steelhead and their critical
22 habitat may be affected by changes within the Ojai and Upper Ojai Basins, and therefore must be
23 considered in assessing rights and impacts in the Watershed. No other party has designated a
24 qualified fisheries expert (both Mr. Kear and Mr. Brown admit that they are not such experts and
25 they therefore cannot properly testify to fishery issues), so the opinions of Dr. Hanson and Mr.
26 Evans are not subject to rebuttal by other qualified expert testimony.

1 2. Consumptive Uses

2 The Phase One trial will not address individual water rights. Although the Phase One trial
3 will not address individual water rights, including the water rights of Ventura, Ventura will
4 present evidence of its use of water from the Watershed so that the Court may determine that
5 downstream consumptive uses of interconnected surface water, such as those exercised by
6 Ventura, must be considered when considering rights and uses in upstream portions of the
7 Watershed.

8 Ventura's evidence in this regard will be addressed through some of the testimony of its
9 experts, but will also include testimony of Susan Rungren and Karen Waln. Ms. Rungren is the
10 General Manager for Ventura Water, the Department of the City responsible for providing water
11 and wastewater services to the City's customers. Ms. Rungren has worked for the City since
12 1999 and in her official capacity has developed knowledge of Ventura's use of water from the
13 Watershed. Ms. Rungren will provide a general overview of Ventura's water system and sources,
14 including testimony regarding Ventura's attempts to increase regional water reliability by
15 constructing an intertie with the State Water Project.

16 Ms. Waln is a retired Ventura employee who worked on water issues for Ventura for
17 many years. Ms. Waln's testimony will focus on issues involving the San Antonio Creek
18 Spreading Grounds Rehabilitation Project, a project located in the Ojai Basin over what Mr. Kear
19 and Mr. Brown refer to as the "production aquifers." The project was led by the Ventura County
20 Watershed Protection District in collaboration with the Ojai Basin Groundwater Management
21 Agency (OBGMA), the Ojai Water Conservation District, Golden State Water Company, and
22 Casitas. The project is designed to divert water from San Antonio Creek to recharge the Ojai
23 Basin and help augment the Ojai Valley's water supply. As part of the water right process with
24 the State Board necessary to divert water from San Antonio Creek, the State Board determined
25 that Ventura's operations at Foster Park could be impaired by the project. In Condition No. 8 of
26 Permit No. 21303, the State Board provided that "[d]iversion under this permit shall not occur
27 until the Permittee enters into an Operation Agreement, acceptable to the City of Ventura, to
28 assure non-interference with the City's senior water rights." Ventura and the Watershed

Protection District ultimately entered into an Operation Agreement which, among other things, provided as follows: “To preserve the downstream senior water rights of the City of San Buenaventura (“City”) and others, the VCWPD shall seasonally (November 1 through May 31) bypass (i.e., not divert surface water) when surface water volume in the Ventura River measured at the Casitas Vista Road stream gage (USGS Gage No. 11118500 Ventura River Near Ventura, CA) is less than 50 cfs or surface flow in San Antonio Creek measured at the Grand Avenue Bridge gage (VCWPD Gage No. 649) is less than 1-foot depth (approximately 21 cfs).” In sum, the evidence will demonstrate that the relevant parties, including the State Board, have already determined that Ventura’s downstream rights must be considered and protected because actions in the interconnected Ojai Basin and San Antonio Creek may interfere with those rights.

VI. OTHER TESTIMONY AND ADMISSIONS FROM THE PARTIES WILL DEMONSTRATE THAT THE WATERSHED HAS HISTORICALLY BEEN CONSIDERED AS ONE WATER SYSTEM

In addition to the above expert testimony and related evidence, Ventura will present evidence during the Phase One trial regarding how the parties (until this litigation) have historically understood that the Watershed is one unified water source and that the challenges in the Watershed must therefore be addressed on a Watershed basis. Some of this evidence includes what amount to admissions from parties who are now seeking to take contrary views in this litigation.

Most of the material parties to the Phase One trial participated in a major effort by the Ventura River Watershed Council to develop the 2015 Ventura River Watershed Plan (Watershed Plan). The fundamental premise of the Watershed Plan is that the Watershed is a single “highly interconnected” system based on decades of hydrological studies and conjunctive management. The Watershed Plan presents extensive information about the relationship between the Ojai Basin and San Antonio Creek, including the following: “San Antonio Creek subwatershed is a key drainage in the Ventura River watershed. One of the two principle drainages in the watershed, it carries 34% of the watershed’s median annual runoff. The Ojai Valley Groundwater Basin drains into San Antonio Creek. For much of the year, flow in the lower half of San Antonio Creek is groundwater from the basin. Demands on or impact to the groundwater basin directly affect the

1 creek.” (Watershed Plan, § 2.3.7.) The Watershed Plan directly links water from the Ojai Basin
2 to the value of San Antonio Creek to the Steelhead, noting that “[t]he combination of San Antonio
3 Creek’s confluence location with more sustained stream flow gives steelhead adults and juveniles
4 greater opportunity for success.”

5 The relationship between groundwater from the Ojai Basin and flows in San Antonio
6 Creek have also been acknowledged in official documents and reports of OBGMA and other
7 public entities such as DWR. For example, in December of 2016, OBGMA submitted a request
8 for DWR’s approval of an alternative plan in lieu of a Groundwater Sustainability Plan required
9 by SGMA. OBGMA’s proposed alternative plan and related information demonstrated that
10 groundwater is the primary contributor of flow, for much of the year, to San Antonio Creek,
11 which contains sensitive beneficial users such as endangered species. Similarly, the groundwater
12 model submitted by OBGMA in conjunction with this request associated groundwater production
13 with a decrease in basin outflow to San Antonio Creek. According to DWR, the information
14 provided by OBGMA “states that groundwater and surface water are interconnected in the Basin,
15 and that for much of the year, including almost all of the dry-season, all of the water in the
16 Ventura River and its tributaries is from groundwater and springs. The Alternative Report
17 estimates that discharge to surface streams, as simulated by the groundwater model, averages
18 approximately 2,280 acre-feet per year. The Groundwater Model Report states that ‘during
19 extended drought period, groundwater discharge to San Antonio Creek decreases dramatically
20 and *groundwater extraction during the drought periods contributes to this decline*’.” (Emphasis
21 added.) Ultimately, DWR rejected OBGMA’s request for an alternative plan in part because
22 OBGMA admitted these connections but failed to address them.

23 Similarly, many of the parties who are contending that there is a lack of connection
24 between the Ojai Basin and surface water are also participants in an effort that is being funded by
25 Proposition 1 grants, known as the Ventura River Regional Water Management Framework for
26 In-Stream Flow Enhancement and Water Security (Instream Flow Enhancement Program).
27 Participants in the Instream Flow Enhancement Program include City of Ojai and Cross-
28 Defendant the Thacher School (a member of the East Ojai Group), among others. The specific

1 goal of the Instream Flow Enhancement Program is to “deliver 25 regional implementation-ready
2 projects that will contribute an additional 4,555.28 AFY of 6.24 cfs to instream flow and multi-
3 beneficial uses.” Many of these projects are designed to increase surface flow in San Antonio
4 Creek by taking various actions in the Ojai Basin to decrease groundwater and surface water
5 demands and to thereby increase flows in San Antonio Creek. Ojai is the sponsor of at least four
6 projects that are designed to increase instream flow, and the Thacher School is the sponsor of at
7 least two projects. Ventura supports this effort but believes that the effort represents an
8 admission of the interconnection between the Ojai Basin and the surface water in San Antonio
9 Creek and its tributaries.

10 Another critical example of the long-standing and wide-spread understanding in the
11 Watershed that groundwater and surface water is interconnected is found in the Watershed
12 Coalition of Ventura County’s Integrated Regional Water Management Plan (IRWMP).
13 Appendix C of the IRWMP provides as follows: “the surface water-groundwater interconnection
14 is an important water management issue in the Ventura River Watershed for a number of reasons,
15 including the need to provide habitat for the endangered southern California steelhead.” Again,
16 Ventura supports the IRWMP, and believes that it reflects a long-standing consensus that existed
17 prior to this litigation that groundwater and surface water in the Watershed are interconnected
18 such that the system should be considered as one unified water source.

19 ///

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1 **VII. CONCLUSION**

2 The issue for the Phase One trial is whether surface water and groundwater in the
3 Watershed is interconnected such that a consideration of both surface water rights and uses and
4 groundwater rights and uses is necessary for a fair and effective determination of rights within the
5 Watershed and within each of its four groundwater basins. As summarized above, the expert
6 opinions of all parties and other evidence presented in the Phase One trial will demonstrate that
7 surface water and groundwater in the Watershed is so interconnected.

8
9
10 Dated: March 2, 2022

BEST BEST & KRIEGER LLP

11
12 By: 

13 SHAWN D. HAGERTY
14 CHRISTOPHER M. PISANO
15 SARAH CHRISTOPHER FOLEY
16 PATRICK D. SKAHAN
17 Attorneys for Defendant and Cross-
18 Complainant
19 CITY OF SAN BUENAVENTURA
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EXHIBIT A

EXHIBIT A

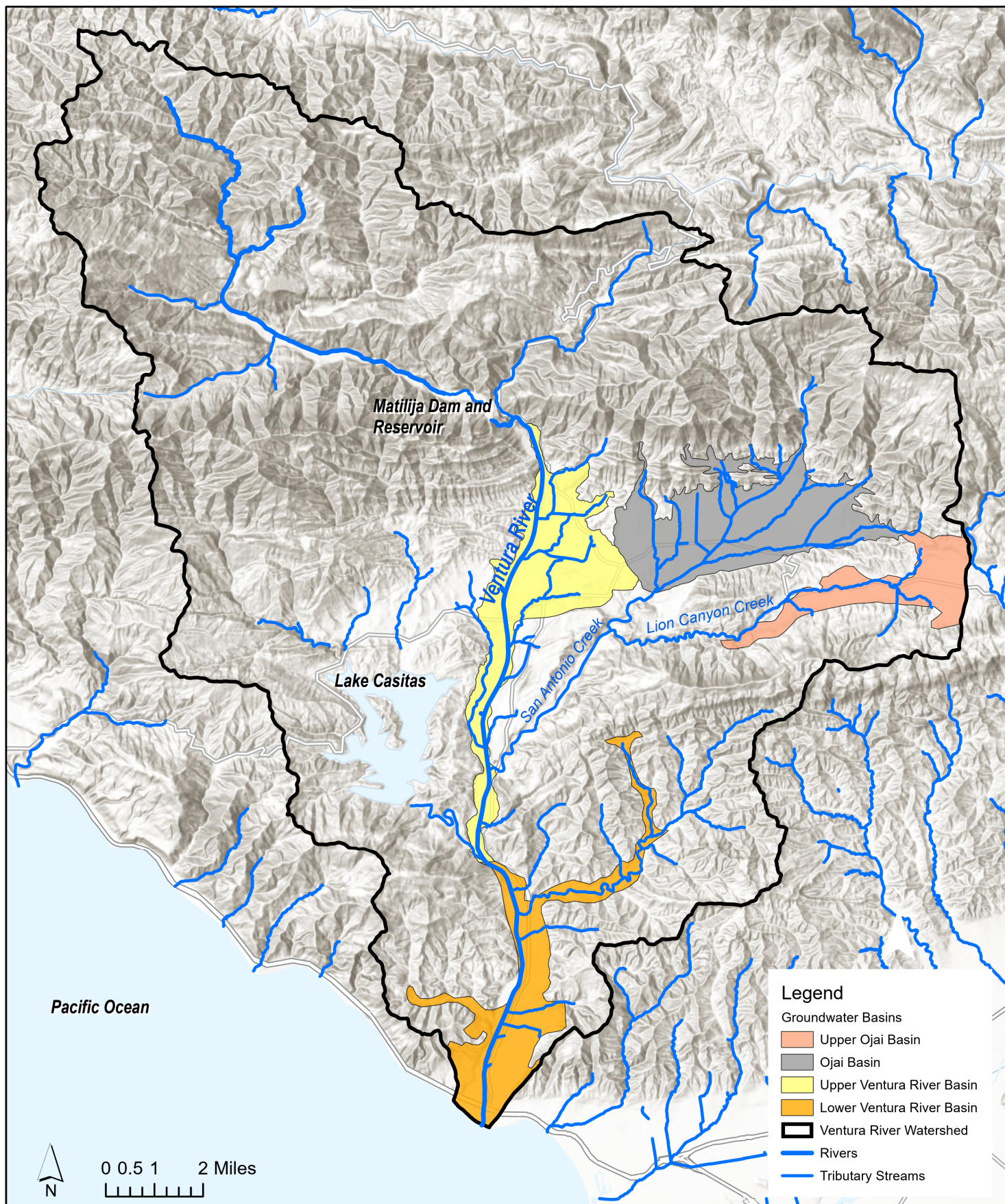


Figure 1. Location of the Groundwater Basins within the Ventura River Watershed

Data Sources: California Bulletin 118
USGS National Hydrography Dataset

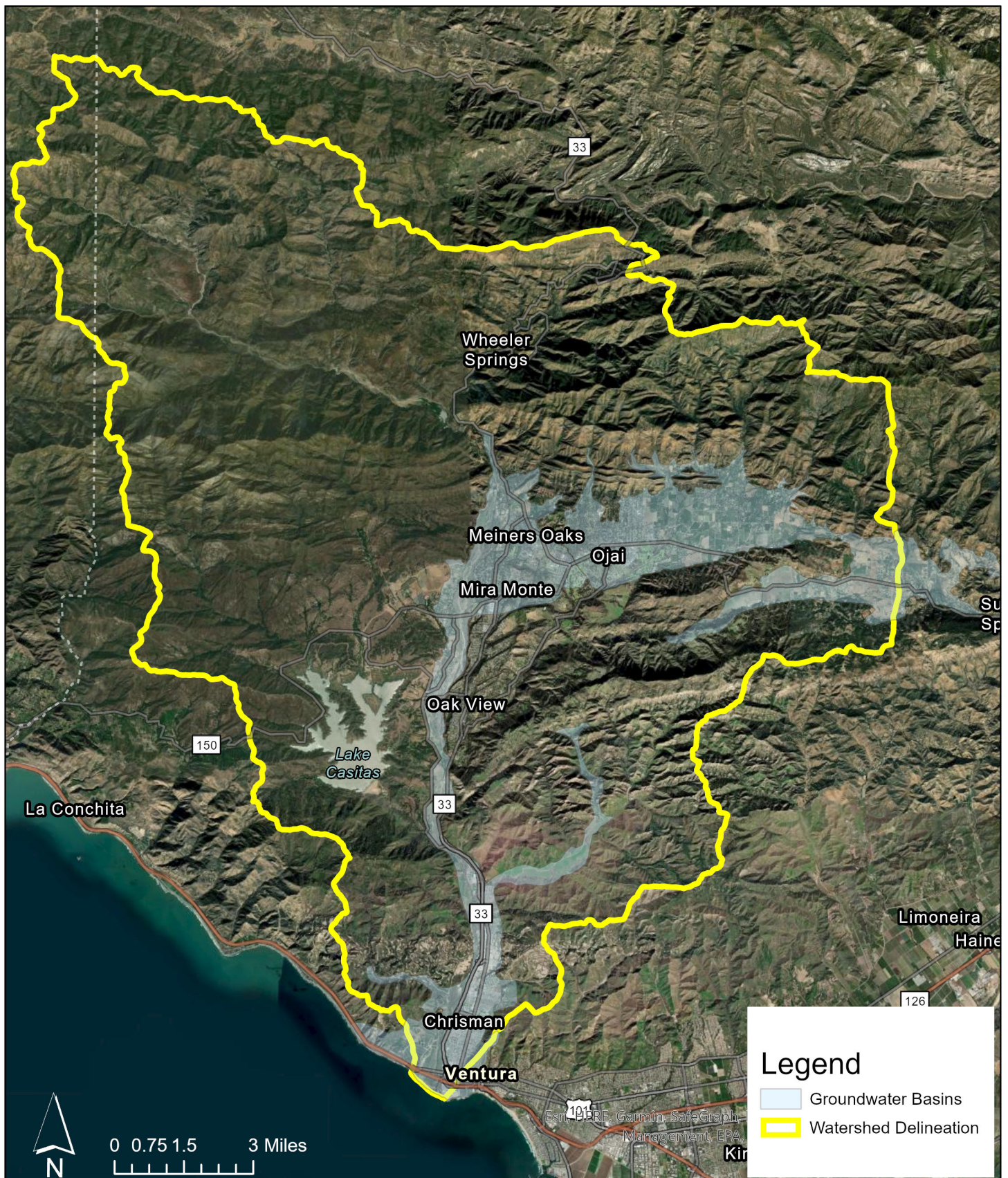


Exhibit 2. Watershed Delineation Map

The Ventura River Watershed delineated using the Hydrology Toolset in ArcGIS

Data Sources: CA DWR Bulletin 118

EXHIBIT B

EXHIBIT B

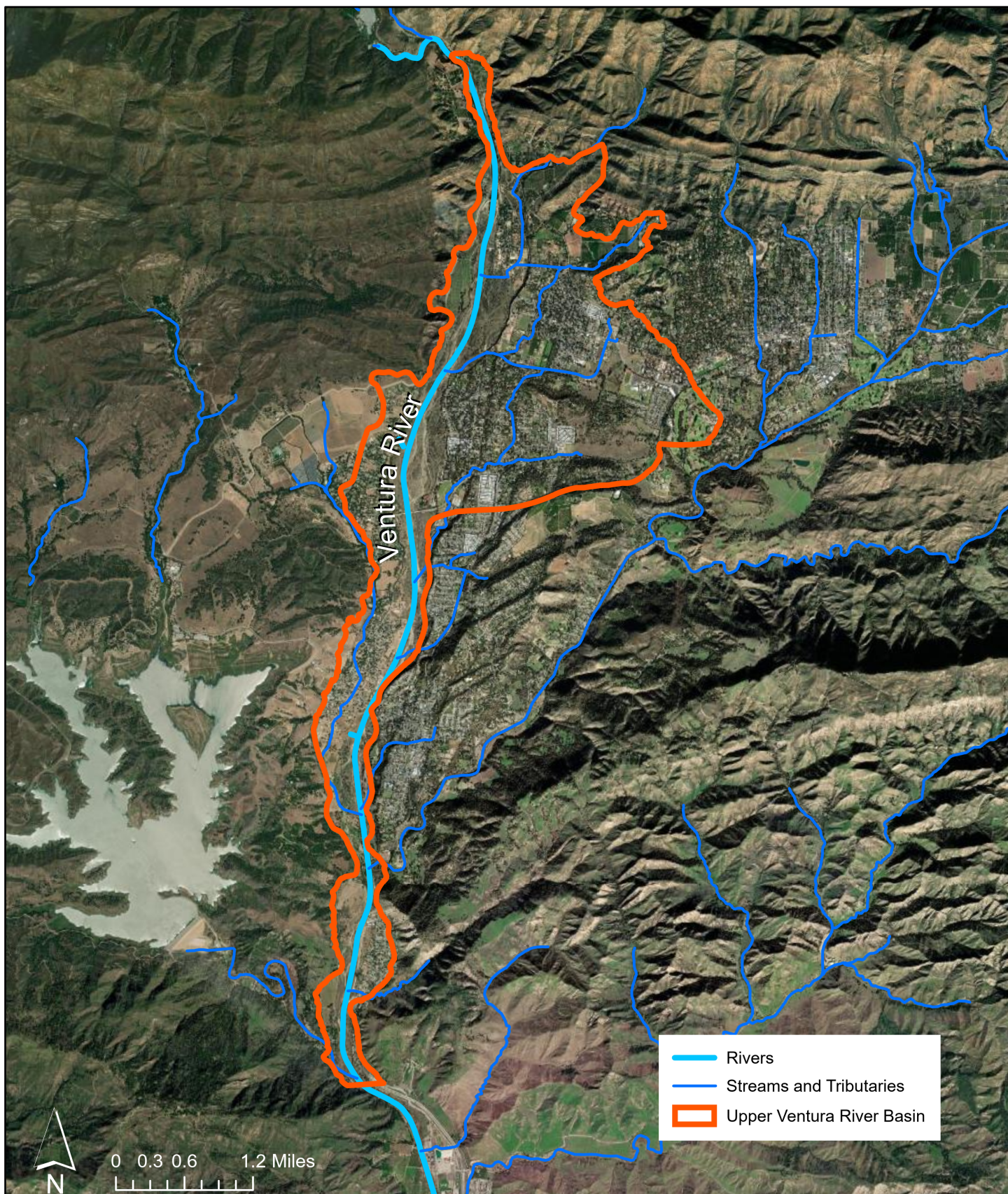


Exhibit 5. Upper Ventura River Valley Groundwater Basin Map

Data Sources: CA DWR Bulletin 118
USGS National Hydrography Dataset
National Watershed Boundary Dataset

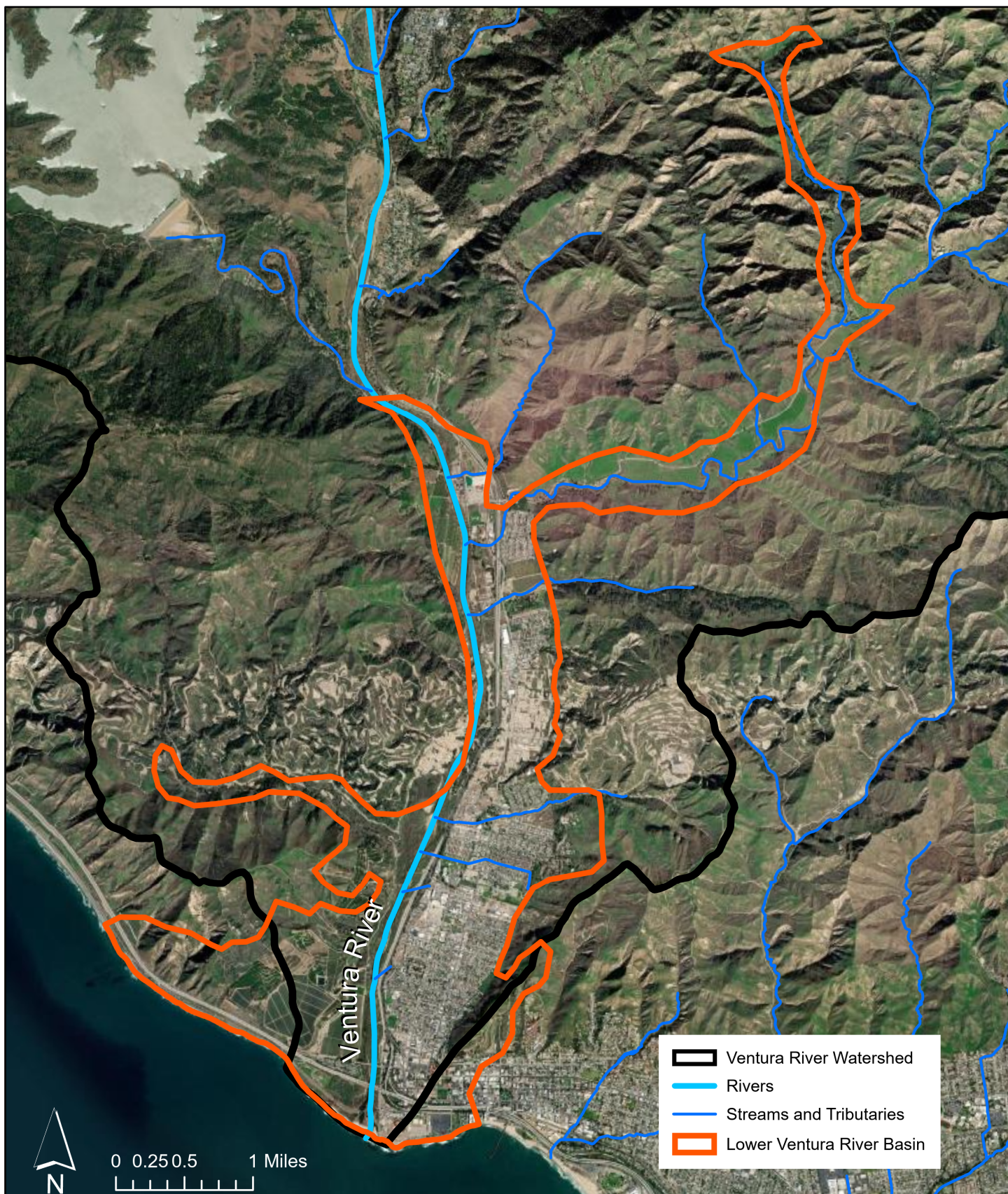


Exhibit 6. Lower Ventura River Valley Groundwater Basin Map

Data Sources: CA DWR Bulletin 118
USGS National Hydrography Dataset
National Watershed Boundary Dataset

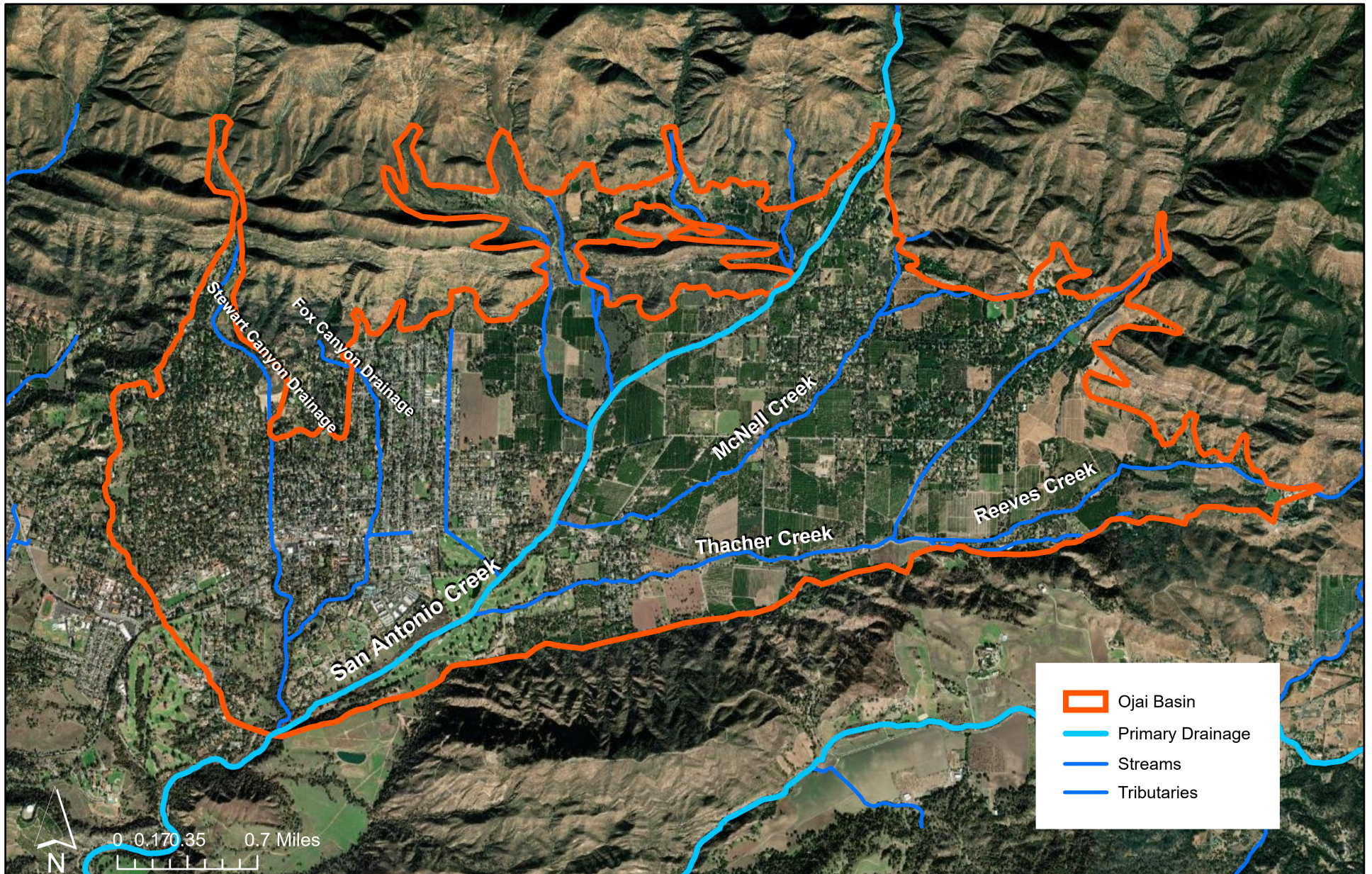


Exhibit 7. Ojai Valley Groundwater Basin Map

Data Sources: CA DWR Bulletin 118
USGS National Hydrography Dataset
National Watershed Boundary Dataset

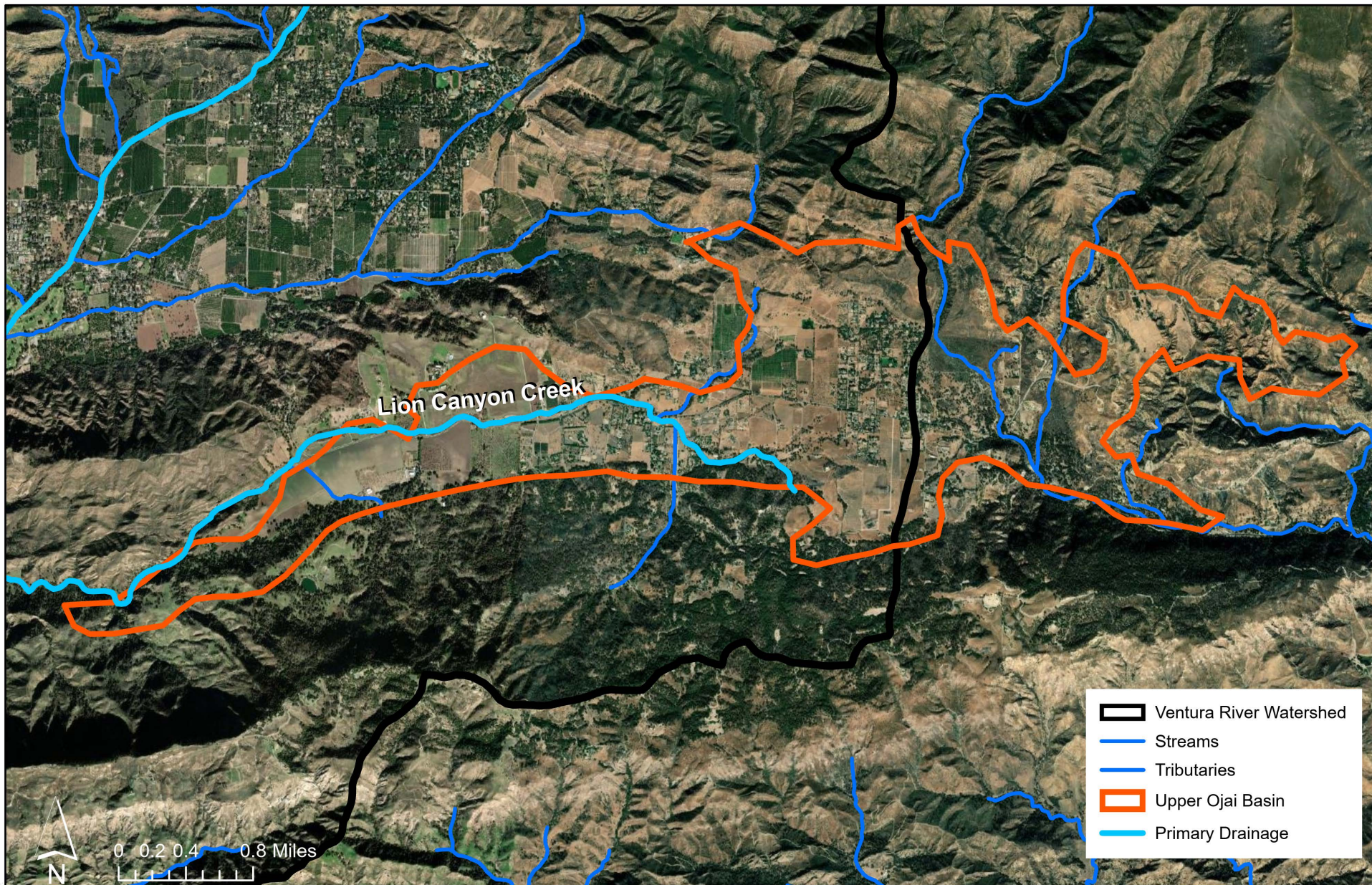


Exhibit 8a. Upper Ojai Valley Groundwater Basin Map

Data Sources: CA DWR Bulletin 118
USGS National Hydrography Dataset
National Watershed Boundary Dataset

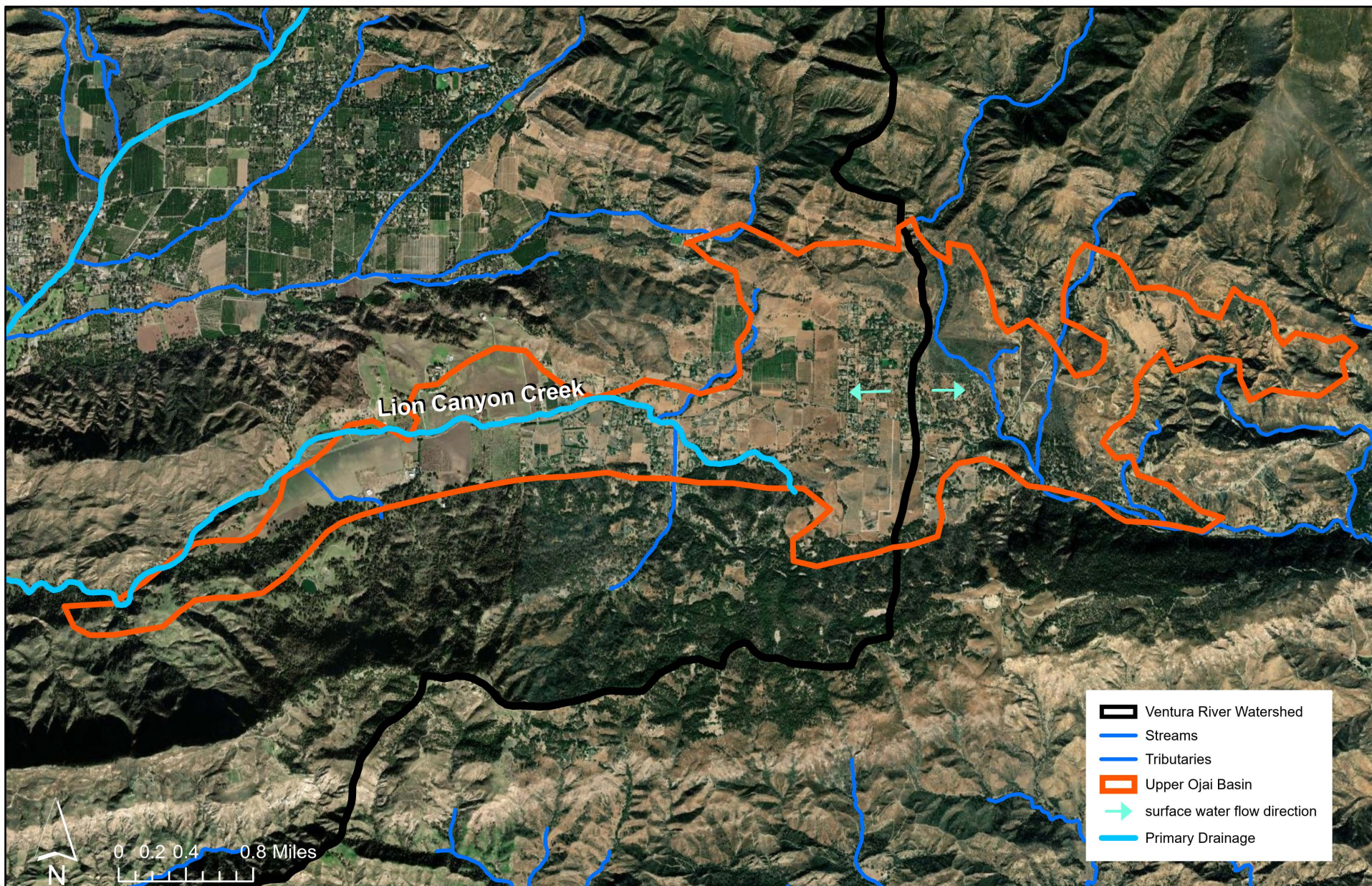


Exhibit 8b. Upper Ojai Valley Groundwater Basin Map

Data Sources: CA DWR Bulletin 118
USGS National Hydrography Dataset
National Watershed Boundary Dataset

EXHIBIT C

EXHIBIT C

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FILED
Superior Court of California
County of Los Angeles
01/13/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: _____ A. Lim Deputy

Attorneys for Respondent and Cross-Complainant
CITY OF SAN BUENAVENTURA

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

~~PROPOSED~~ ORDER ESTABLISHING
WATERSHED AND BASIN BOUNDARIES

Dates: December 9, 2021 and
December 13, 2021

Times: 2:30 p.m. and 4:00 p.m.
Dept: 10

CITY OF SAN BUENAVENTURA, etc.,

Cross-Complainant

v.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

Action Filed: Sept. 19, 2014
Trial Date: Feb. 14, 2022

~~PROPOSED~~ ORDER

PLEASE TAKE NOTICE that on December 9, 2021 at 2:30 p.m. and on December 13, 2021 at 4:00 p.m., in Department S10 of the Los Angeles County Superior Court, this Court held Order to Show Cause hearings as to why the Court should not issue an order establishing (1) the boundaries of the Ventura River Watershed (Watershed), as defined by the U.S. Geological Survey (USGS) National Hydrography Dataset and Watershed Boundary Dataset and (2) the boundaries of the Watershed's four groundwater basins, as defined by the California's Department of Water Resources (DWR) in Bulletin 118, in advance of the Phase 1 Trial.

THIS COURT ORDERS as follows:

1. Watershed Boundaries. The boundaries of the Ventura River Watershed (Watershed) are the boundaries defined by the U.S. Geological Survey (USGS) National Hydrography Dataset and Watershed Boundary Dataset as 10-digit Hydrologic Unit Code (HUC) 1807010101 – Ventura River Watershed as of the date of this order. USGS may adjust these boundaries from time to time, and the Court may amend this order in the future to adjust the Watershed boundaries based on new or additional information, as necessary. This order is without prejudice to any party arguing that the Court needs to consider the adjacent Santa Clara River Watershed before making any final determination in Phase 1 Trial.
2. Groundwater Basin Boundaries. There are four DWR-defined groundwater basins and subbasins (basin numbers 4-1, 4-2, 4-3.01, and 4-3.02) located wholly or partially within the Watershed, and their lateral boundaries are defined by DWR's Bulletin 118 as of the date of this order and as more fully set forth below. DWR may adjust these boundaries from time to time through updates to Bulletin 118 or through the process set forth in Code of Civil Procedure section 841. This order is without prejudice to any party arguing that the Court needs to consider the adjacent Santa Clara River Watershed before making any final determination in Phase 1 Trial.

- 1 a. The boundaries of basin 4-1 the Upper Ojai Valley Groundwater Basin
2 (Upper Ojai Basin) are the boundaries defined by DWR in Bulletin 118.
3 The Bulletin 118 – Update 2020 basin boundaries description, including a
4 map, for the Upper Ojai Basin is attached hereto as Exhibit 1.
- 5 b. The boundaries of basin 4-2, the Ojai Valley Groundwater Basin (Ojai
6 Basin) are the boundaries defined by DWR in Bulletin 118. The Bulletin
7 118 – Update 2020 basin boundaries description, including a map, for the
8 Ojai Basin is attached hereto as Exhibit 2.
- 9 c. The boundaries of basin 4-3.01, the Ventura River Valley – Upper
10 Ventura River Subbasin (Upper Ventura Basin) are the boundaries
11 defined by DWR in Bulletin 118. The Bulletin 118 – Update 2020 basin
12 boundaries description, including a map, for the Upper Ventura Basin is
13 attached hereto as Exhibit 3.
- 14 d. The boundaries of basin 4-3.02, the Ventura River Valley – Lower
15 Ventura River Subbasin (Lower Ventura Basin) are the boundaries
16 defined by DWR in Bulletin 118.¹ The Bulletin 118 – Update 2020 basin
17 boundaries description, including a map, for the Lower Ventura Basin is
18 attached hereto as Exhibit 4.

19
20 IT IS SO ORDERED.
21
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23

24 ¹ The Court is only making a determination as to the lateral boundaries of the groundwater basins as defined in
25 Bulletin 118 and is not making any specific determination as to the definition in Bulletin 118 regarding the depth or
26 definable bottom, if any, of the Lower Ventura Basin. The Court is expressly reserving issues raised by Cross-
27 Defendant Aera Energy LLC regarding the connectivity of the Lower Ventura Basin with geologic formations
28 employed for oil and gas-related operations and the “exempt aquifer” below the Lower Ventura Basin as defined by
the California Department of Conservation Geologic Energy Management Division and the U.S. Environmental
Protection Agency under the federal Safe Drinking Water Act. Such questions shall be reserved for future phases of
the trial, if not otherwise addressed by stipulation of the parties.

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Dated: 01/13/2022



W. F. Hughes

William F. Hughes, Judge
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

EXHIBIT 1

4-001 UPPER OJAI VALLEY

Basin Boundaries Description

2003

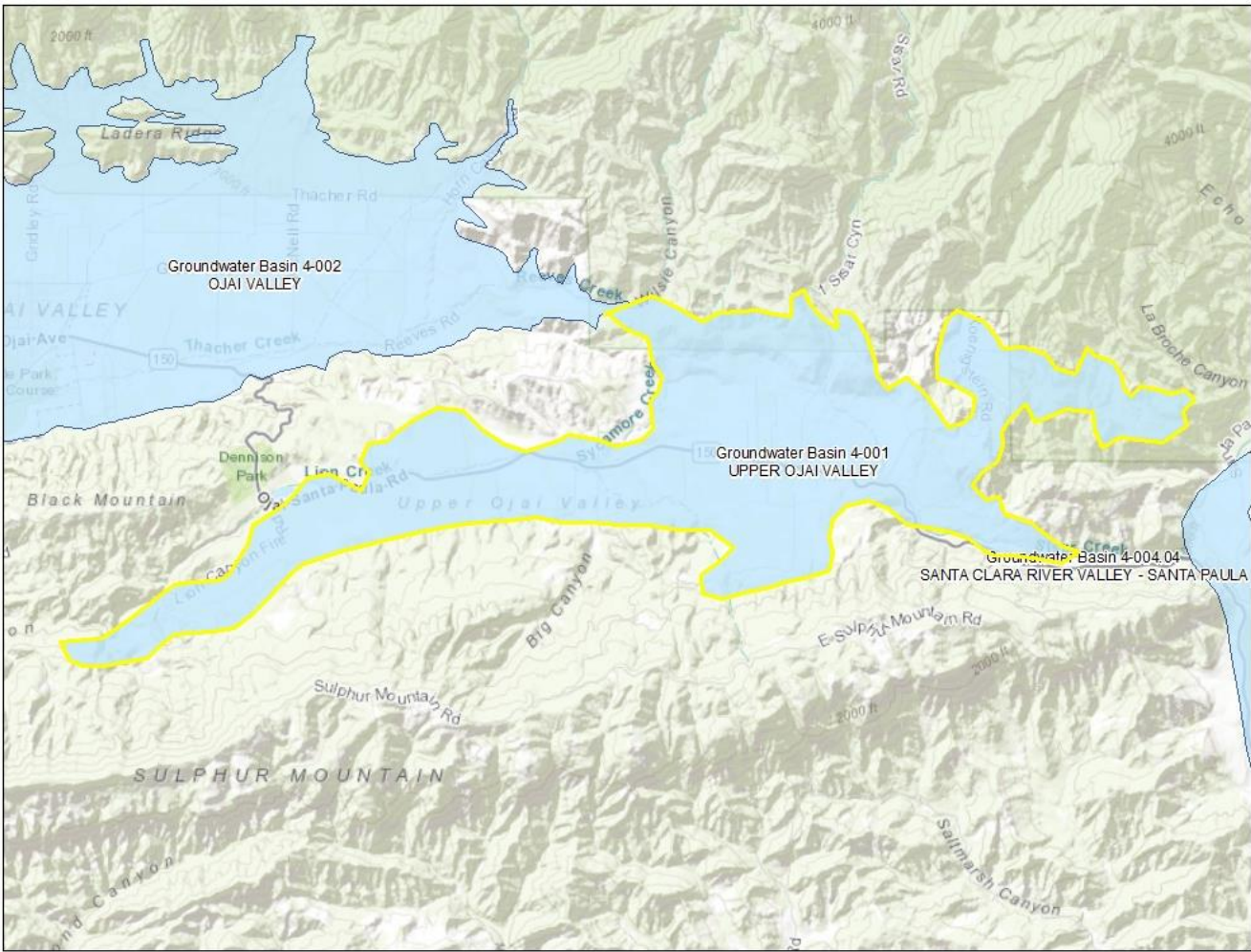
- County: Ventura
- Surface Area: 3,800 acres (5.9 square miles)

Summary

The Upper Ojai Valley Groundwater basin is bounded by the Ojai Valley Groundwater Basin on the north, the Topatopa Mountains on the east, Sulfur Mountain on the south, and near impermeable rocks of the Santa Ynez Mountains elsewhere. The valley is drained westward by Lion Canyon into San Antonio Creek and eastward by Sisar Creek to Santa Paula Creek.

Map

4-001 – OJAI VALLEY



[Map Link](#)

References

This table contains the reference listings for the citations noted in the Summary. Each reference contains the name of the reference and the publication date. For more information, email sgmps@water.ca.gov.

Citation	Pub Date

EXHIBIT 2

EXHIBIT 2

4-002 OJAI VALLEY

Basin Boundaries Description

2016

Summary

The Ojai Valley groundwater basin is located in the central-western portion of Ventura County. The basin is bound on the north by consolidated rocks of the Topatopa Mountains. The easternmost portion of the basin is separated from the adjacent Upper Ojai Valley groundwater basin by the San Cayetano fault. The basin is bound on the south by the Santa Ana fault and the consolidated rocks of Black Mountain. A surface water divide and a subsurface bedrock ridge that forms a groundwater divide separates the basin from the adjoining Upper Ventura River subbasin to the west. South of the Santa Ana fault, thin terrace deposits underlain by bedrock and lacking direct subsurface hydraulic connection with the basin are excluded from the basin. These alluvial terrace deposits have little to no significant groundwater storage capacity. The boundary is defined by 13 segments detailed in the descriptions below.

Segment Descriptions

This table describes each line segment composing the basin boundary polygon for this basin. It includes fields describing the segment label, segment type, segment description, and cited reference. For more information, email sgmps@water.ca.gov.

<u>Segment Label</u>	<u>Segment Type</u>	<u>Description</u>	<u>Ref</u>
1-2	- Alluvial	Begins from point (1) and crosses the Quaternary alluvium to point (2).	{a}
2-3	E Alluvial	Continues from point (2) and follows the contact of Quaternary alluvium with various Tertiary sedimentary rocks to point (3).	{b}
3-4	- Alluvial	Continues from point (3) and crosses Quaternary alluvium to point (4).	{a}
4-5	E Alluvial	Continues from point (4) and follows the contact of Quaternary alluvium with Tertiary Cozy Dell Shale to point (5).	{b}
5-6	- Alluvial	Continues from point (6) and follows the contact of Quaternary alluvium with various Tertiary sedimentary rocks to point (7).	{b}
6-7	E Alluvial	Continues from point (5) and crosses Quaternary alluvium to point (6).	{a}
7-8	- Fault	Continues from point (7) and follows the San Cayetano fault to point (8).	{c}
8-9	E Alluvial	Continues from point (8) and follows the contact of Quaternary alluvium with various Tertiary sedimentary rocks to point (9).	{b}
9-10	- Fault	Continues from point (9) and follows the Santa Ana fault to point (10).	{a}

10-11	E Alluvial	Continues from point (10) and follows the contact of Quaternary alluvium with Sespe Formation to point (11).	{d}
11-12	I Groundwater Divide	Continues from point (11) and follows a subsurface bedrock ridge and a surface divide to point (12).	{a}
12-1	E Alluvial	Continues from point (12) and follows the contact of Quaternary alluvium with various Tertiary sedimentary rocks and ends at point (1).	{d}
13-13	E Alluvial	Island within the basin boundary: begins from point (13) and follows the contact of the Quaternary alluvium with Coldwater Sandstone and Cozy Dell Shale and ends at point (13).	{b}

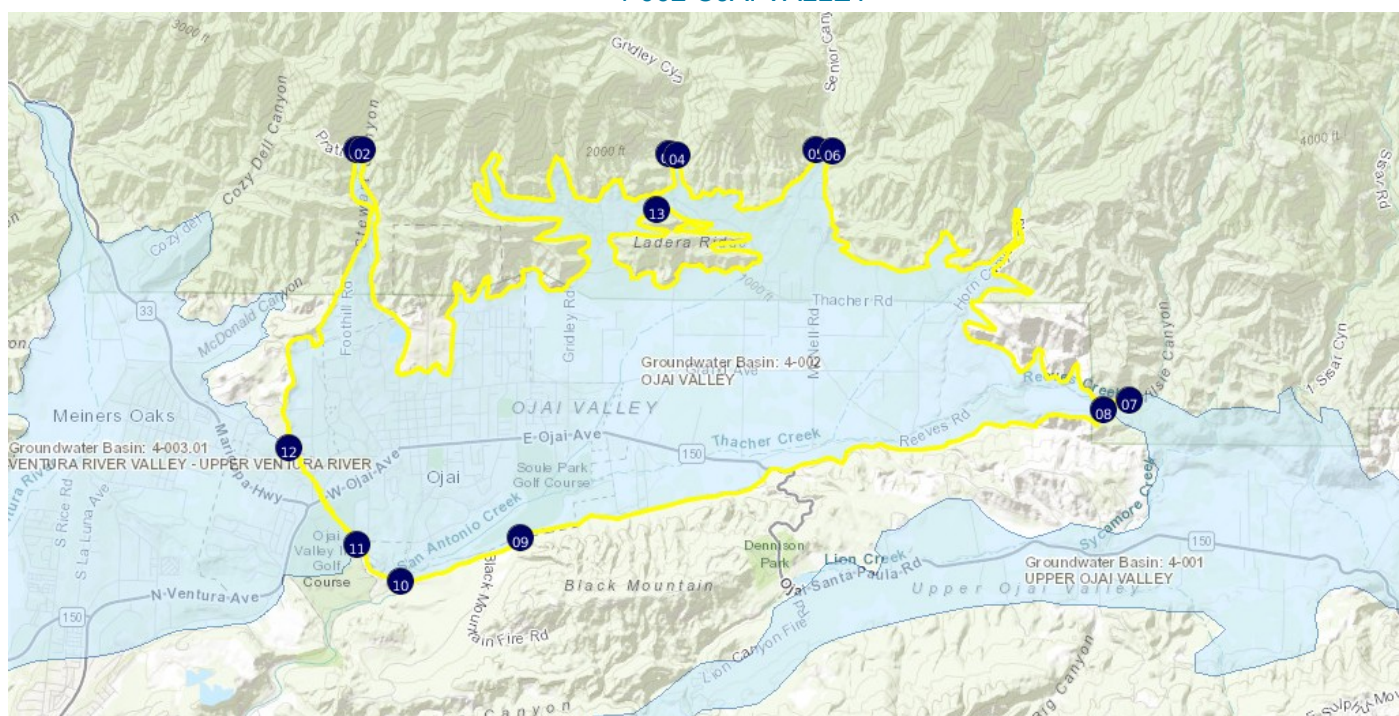
Significant Coordinates

This table contains the latitudes and longitudes of all the beginning and ending points of each segment comprising the basin boundary polygon for this basin. For more information, email sgmps@water.ca.gov.

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>	
1	34.478450793	-119.254761878	
2	34.478452261	-119.253960199	
3	34.478005123	-119.215409106	
4	34.477954846	-119.214341855	
5	34.478460727	-119.196917412	
6	34.478300258	-119.19480887	
7	34.452385212	-119.157425748	
8	34.451419976	-119.160576289	
9	34.438199307	-119.234069884	
10	34.433549061	-119.249251927	
11	34.437432018	-119.254670854	
12	34.44740611	-119.263274675	
13	34.472303032	-119.216908514	

Map

4-002 OJAI VALLEY



[Map Link](#)

References

This table contains the reference listings for the citations noted in the segment description table. Each reference contains the name of the reference, in addition to the publication date. For more information, email sgmps@water.ca.gov.

Ref	Citation	Pub Date	Global ID
{a}	BBMRS	varies	45
{b}	California Department of Conservation, California Geologic Society (CGS), Geologic Map of the Ojai 7.5' Quadrangle, Ventura County, California: A Digital Database, Version 1.0, 1:24,000, S.S. Tan, P.J. Irvine, C.I. Gutierrez. ftp://ftp.consrv.ca.gov/pub/dmg/rgmp/Prelim_geo_pdf/Ojai_prelim.pdf	2005	78
{c}	California Geological Survey (CGS), Geologic Atlas of California Map No. 008, Los Angeles Sheet, , 1:250,000, Charles W. Jennings and Rudolph G. Strand. URL: http://www.quake.ca.gov/gmaps/GAM/losangeles/losangeles.html	1969	33
{d}	California Geological Survey (CGS), Geologic Map of the Matilija Quadrangle, 1:24,000, S.S. Tan and T.A. Jones. URL: http://www.conservation.ca.gov/cgs/rghm/rgm/Pages/preliminary_geologic_maps.aspx	2006	51

Footnotes

- I: Internal
- E: External

EXHIBIT 3

EXHIBIT 3

4-003.01 VENTURA RIVER VALLEY – UPPER VENTURA RIVER

Basin Boundaries Description

2016

Summary

The Upper Ventura River groundwater subbasin is located in central-western Ventura County. The subbasin is bound on the north by impermeable rocks of the Santa Ynez Mountains. A subsurface bedrock ridge and groundwater divide separates the subbasin from the adjacent Ojai Valley groundwater basin to the east. The subbasin is bound on the southeast and the west by consolidated Tertiary sediments. The subbasin extends south in the Ventura River Valley to where it meets the Lower Ventura River subbasin at a narrow portion of the valley and at the approximate location of the Red Mountain fault. The subbasin boundary is defined by eleven (11) segments detailed in the descriptions below.

Segment Descriptions

This table describes each line segment composing the basin boundary polygon for this basin. It includes fields describing the segment label, segment type, segment description, and cited reference. For more information, email sgmps@water.ca.gov.

<u>Segment Label</u>	<u>Segment Type</u>	<u>Description</u>	<u>Ref</u>
1-2	E Alluvial	Begins at point (1) and generally follows the contact of Quaternary alluvium with various Tertiary sedimentary rocks to point (2).	{a}
2-3	I Groundwater Divide	Continues from point (2) and follows a subsurface bedrock ridge, a groundwater divide, and a surface divide to point (3).	{b}
3-4	E Alluvial	Continues from point (3) and follows the contact of Quaternary alluvium with Sespe Formation to point (4).	{a}
4-5	- Fault	Continues from point (4) and follows an unnamed fault to point (5).	{c}
5-6	E Alluvial	Continues from point (5) and follows the contact of active alluvium and colluvium with lower permeability older alluvium to point (6).	{b}
6-7	- Fault	Continues from point (6) and follows the Santa Ana Fault to point (7).	{a}
7-8	E Alluvial	Continues from point (7) and follows the contact of active alluvium with older alluvium and various Tertiary sedimentary rocks to point (8).	{d}
8-9	I Alluvial	Continues from point (8) and crosses the alluvium of the Ventura River valley at the Casitas Vista bridge to point (9).	{b}

9-10	E Alluvial	Continues from point (9) and generally follows the contact of Quaternary alluvium with various Tertiary sedimentary rocks to point (10).	{d}
10-11	E Alluvial	Continues from point (10) and crosses the older alluvium, excluding an area of thin alluvium and Sespe Formation in the west and including areas of thick alluvium in the east, to point (11).	{b}
11-1	E Alluvial	Continues from point (11) and generally follows the contact of Quaternary alluvium with various Tertiary sedimentary rocks and ends at point (1).	{d}

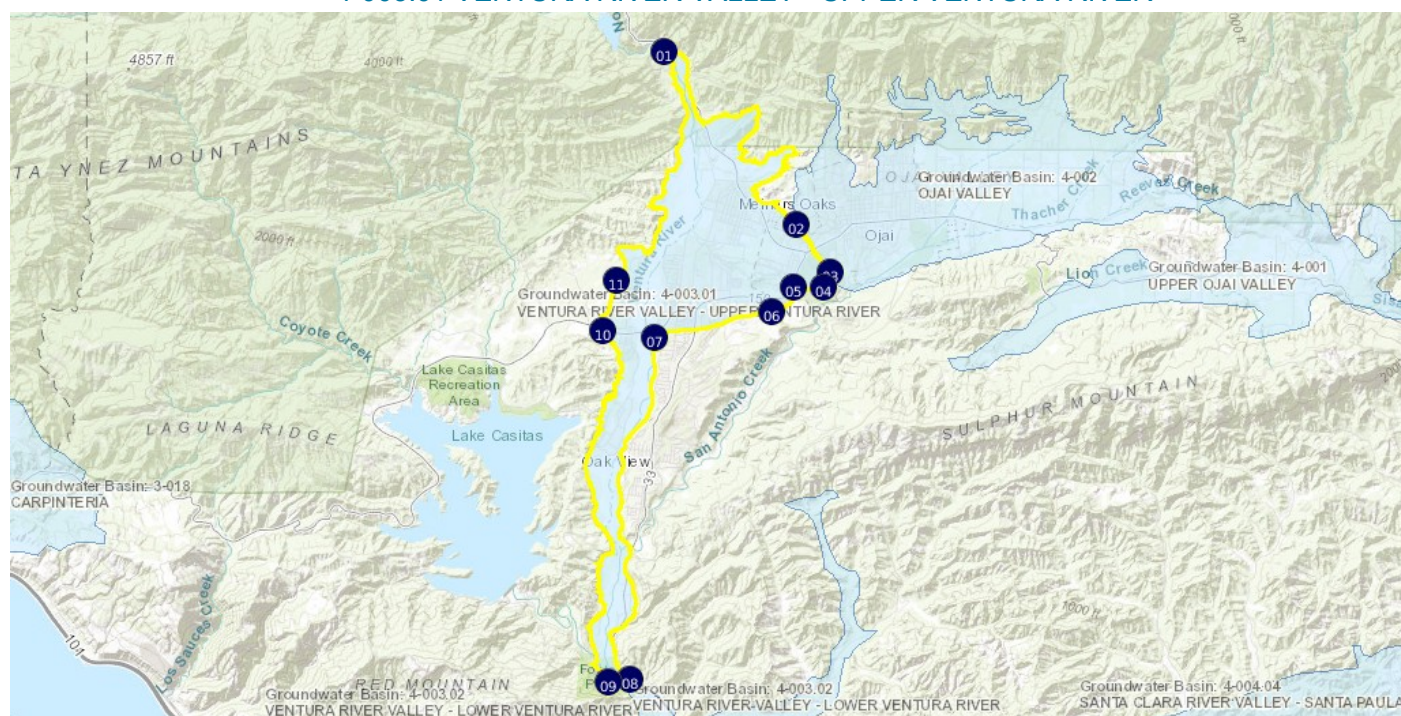
Significant Coordinates

This table contains the latitudes and longitudes of all the beginning and ending points of each segment comprising the basin boundary polygon for this basin. For more information, email sgmps@water.ca.gov.

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>	
1	34.483285737	-119.296538818	
2	34.44740611	-119.263274675	
3	34.437432018	-119.254670854	
4	34.434436555	-119.256415077	
5	34.434229067	-119.263895252	
6	34.429193615	-119.26953361	
7	34.423808356	-119.299086585	
8	34.352634947	-119.30500381	
9	34.352287913	-119.310520285	
10	34.425195196	-119.311964195	
11	34.435726436	-119.308534536	

Map

4-003.01 VENTURA RIVER VALLEY - UPPER VENTURA RIVER



[Map Link](#)

References

This table contains the reference listings for the citations noted in the segment description table. Each reference contains the name of the reference, in addition to the publication date. For more information, email sgmps@water.ca.gov.

Ref	Citation	Pub Date	Global ID
{a}	California Geological Survey (CGS), Geologic Map of the Matilija Quadrangle, 1:24,000, S.S. Tan and T.A. Jones.URL: http://www.conservation.ca.gov/cgs/rghm/rgm/Pages/preliminary_geologic_maps.aspx	2006	51
{b}	BBMRS	varies	45
{c}	Minor, S.A., and Brandt, T.R., 2015, Geologic map of the southern White Ledge Peak and Matilija quadrangles, Santa Barbara and Ventura Counties, California: U.S. Geological Survey Scientific Investigations Map 3321, 34 p., 1 sheet, 1:24,000, https://dx.doi.org/10.3133/sim3321 .	5/26/2015	96
{d}	California Geological Survey (CGS), Geologic Compilation of Quaternary Surficial Deposits in Southern California, T.L. Bedrossian, P. Roffers, C.A. Hayhurst, J.T. Lancaster, and W.R. Short.URL: http://www.conservation.ca.gov/cgs/fwgp/Pages/sr217.aspx	2012	50

Footnotes

- I: Internal
- E: External

EXHIBIT 4

EXHIBIT 4

4-003.02 VENTURA RIVER VALLEY – LOWER VENTURA RIVER

Basin Boundaries Description

2003

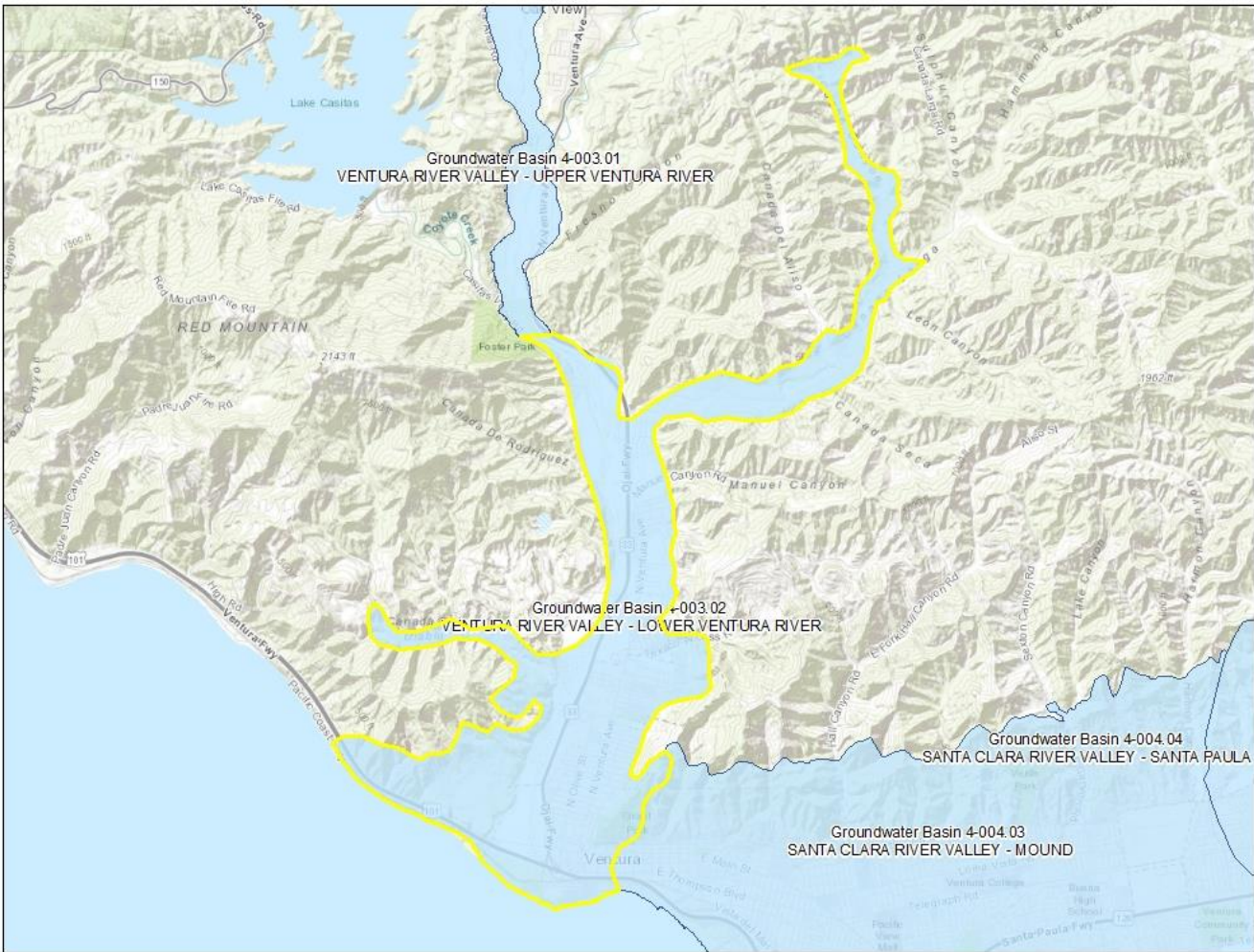
- County: Ventura
- Surface Area: 5,300 acres (8.3 square miles)

Summary

The Lower Ventura River Subbasin is bounded on the north by the Upper Ventura River Subbasin, on the south by the Pacific Ocean and Mound Subbasin of the Santa Clara River Valley Groundwater Basin, and elsewhere by near impervious rocks of the Santa Ynez Mountains (DPW 1933; Panaro 2000). The valley is drained by Canada Larga and the Ventura River.

Map

4-003.02 – VENTURA RIVER VALLEY – LOWER VENTURA RIVER



[Map Link](#)

References

This table contains the reference listings for the citations noted in the Summary. Each reference contains the name of the reference and the publication date. For more information, email sgmps@water.ca.gov.

Citation	Pub Date
California Department of Public Works, Division of Water Resources (DPW). 1933. <i>Ventura County Investigation</i> . Bulletin 46.	1933
Panaro, D. 2000. Fox Canyon Groundwater Management Agency: Written Communication to R.R. Davis (DWR), March 21, 2000.	2000

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main Street, Suite 390, Walnut Creek, CA 94596. On December 21, 2021, I served the following document(s):

[PROPOSED] ORDER ESTABLISHING WATERSHED AND BASIN BOUNDARIES

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
- ☐ I caused such envelope to be delivered via overnight delivery. Such envelope was deposited for delivery by United Parcel Service following the firm's ordinary business practices.
- ☒ by transmission via **E-Service to File & ServeXpress** to the person(s) set forth below. Local Rules of Court 2.10 (P).
- ☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare I under penalty of perjury under the laws of the State of California that the
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CITY OF SAN BUENAVENTURA

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.

CITY OF SAN BUENAVENTURA, etc.,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

Exempt From Filing Fees Pursuant to
 Cal. Gov't Code § 6103

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 Superior Court of California
 County of Los Angeles

MAY 11 2021

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

Case No. 19STCP01176

Judge: Honorable William F. Highberger

CITY OF SAN BUENAVENTURA'S
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF MOTION
 TO BIFURCATE AND PARTIAL LIFTING
 OF THE DISCOVERY STAY

Date: June 21, 2021

Time: 1:30 p.m.

Dept: S10

Action Filed: Sept. 19, 2014

Trial Date: Not Set

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1 I. INTRODUCTION

2 For judicial efficiency and for the convenience of the Court and the parties, the City of
 3 San Buenaventura (“City”) moves to bifurcate the trial of this matter into phases. This is a
 4 complex case involving the use of water by people and aquatic species, such as the Southern
 5 California Steelhead, in the Ventura River Watershed (“Watershed”), which the City alleges
 6 includes the Ventura River, its multiple tributaries, and four interconnected groundwater basins.
 7 As the City has informed the Court, the City and four other parties believe that their proposed
 8 physical solution¹ is the best way, consistent with Article X, section 2 of the California
 9 Constitution, to maximize the reasonable and beneficial consumptive and instream uses of the
 10 Watershed, and ultimately to resolve this litigation. The imposition by the Court of the proposed
 11 physical solution would immediately start addressing the challenges that the Watershed is facing,
 12 obviate the need for years of costly water rights litigation, preserve judicial economy, and protect
 13 the public and environmental interests. However, because the parties have as yet been unable to
 14 agree on certain threshold issues, such as the extent of surface water and groundwater
 15 interconnectivity in the Watershed and the precise boundaries of the basins and the Watershed,
 16 the City moves the Court to set an initial phase of trial to determine these issues, which are crucial
 17 to both the imposition of a physical solution and, if necessary, to the resolution of all of the City’s
 18 causes of action.

19 The term “physical solution” is used in California water law to describe an agreed-upon or
 20 judicially-imposed resolution designed to maximize the reasonable and beneficial use of water.
 21 (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 (“*Santa Maria I*”).) The Court
 22 has a constitutional duty to consider a physical solution that will avoid waste and which will not

23 ¹ The parties are currently engaged in a meet and confer process regarding the lodging with the
 24 Court of the physical solution as currently proposed by the City and Cross-Defendants the
 25 Ventura River Water District, Meiners Oaks Water District, the Rancho Matilija Mutual Water
 26 Company, and the Wood-Claeyssens Foundation (“Proposing Parties”). The Proposing Parties
 27 wish to lodge the current version of the physical solution with the Court and originally intended
 28 to lodge the proposed physical solution with this motion. On May 6, 2021, the parties held a meet
 and confer conference regarding this motion, where multiple parties objected and expressed
 concern for presenting the Court with the proposed physical solution at this stage. As such, the
 City is not lodging the proposed physical solution with this motion, but rather will lodge it with
 the Court on June 21, if any written objections to the submission are resolved. (Declaration of
 Christopher M. Pisano (“Pisano Decl.”), ¶ 7.)

1 unreasonably or adversely affect the rights of the parties. (*See Rancho Santa Margarita v. Vail*
2 (1938) 11 Cal.2d 501, 558-559.) The question posed by the City in this motion is what is the best
3 way to get from here to there; that is, what is the best way to allow the Court to exercise its
4 constitutional duty to consider the physical solution? How can the Court and parties move this
5 case towards a review, and potential approval, of a physical solution that protects the Watershed
6 and all those who depend on it?

7 This motion provides the Court with a roadmap for both addressing in this phase one trial
8 certain threshold claims asserted by several Cross-Defendants about the action and for ultimately
9 achieving a review of the physical solution or, if needed, a resolution of all the City's causes of
10 action. To do this, the City, by this motion, first requests that the Court bifurcate and resolve the
11 following two discrete issues that will help frame the remainder of the case: (1) a determination
12 of the Watershed boundaries and the boundaries of the four groundwater basins; and (2) a
13 determination of the interconnection between the surface water and groundwater in the
14 Watershed, including the interconnection between surface water and the four groundwater basins,
15 and the interconnection between those groundwater basins and the Ventura River, and its
16 tributaries. The City will subsequently seek an order for a further partition of the case for a trial
17 of its proposed physical solution. For now, an early resolution of these two discrete issues will
18 inform the Court as to the extent, nature, and boundaries of the resources being litigated, and
19 confirm that all parties are properly before the Court.

20 The City therefore requests that the Court bifurcate this proceeding and try the issues of
21 the Watershed/basin boundaries and interconnectivity in a first phase of trial. Because these are
22 discrete, expert-driven issues, they can be tried relatively quickly, and the City requests a trial
23 date in mid to late November 2021, depending on the Court's availability. The City further
24 requests that the Court partially lift the discovery stay and permit discovery solely on these two
25 issues, and the City provides herein a proposed discovery schedule for a potential first phase of
26 trial in November.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 If the Court grants this motion, phase one of the trial will establish the basic facts
3 regarding the Watershed and its boundaries, the boundaries of and hydrological conditions in the
4 four groundwater basins, and the hydrology of the Watershed. The very brief factual and
5 procedural background described below is intended to provide the Court with sufficient context
6 for its consideration of the motion, and in an attempt to avoid disputes, is taken from the
7 pleadings in the case and from the Court of Appeal decision in *Santa Barbara Channelkeeper v.*
8 *City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1181. The factual presentation here will
9 of course be subject to proof at trial.²

10 **A. The Ventura River Watershed**

11 The Watershed is a coastal watershed located in southern California, with an approximate
12 catchment area of 226 square miles. The Watershed is located in northwestern Ventura County,
13 with a small part of the Watershed located in southeastern Santa Barbara County. (Respondent
14 and Cross-Complaint City of San Buenaventura's Third Amended Cross Complaint ("TACC"), ¶
15 98.)

16 The Ventura River and its headwater tributary run through the center of the Watershed
17 along a 33.5 mile stretch from its headwaters in the Transverse Ranges to the Pacific Ocean.
18 (TACC, ¶ 99.) The Ventura River and its headwater tributary is fed by several major tributaries,
19 including Matilija Creek, North Fork Matilija Creek, San Antonio Creek, Canada Larga Creek
20 and Coyote Creek. (TACC, ¶ 100.) There are four significant groundwater basins ("Basins") in
21 the Watershed, specifically (1) the Upper Ventura River Groundwater Basin (Department of
22 Water Resources ("DWR") Bulletin 118, Groundwater Basin Number 4-3.01); (2) the Lower
23

24 ² The Court already has before it a significant amount of background material, including
25 documents submitted by Santa Barbara Channelkeeper with its First Amended Complaint
26 ("FAC"). The FAC includes several documents, such as the 2015 Ventura River Watershed
27 Management Plan, that provides more detailed descriptions of the Watershed and its uses. (See,
28 e.g., Supplemental Declaration of Daniel Cooper in support of FAC, ¶ 26, Exhibit W, Excerpts of
the 2015 Ventura River Watershed Management Plan, a full copy of which is available at
<http://venturawatershed.org/the-watershed-plan>.) While all of this information will be subject to
proof at trial, documents such as the 2015 Ventura River Watershed Management Plan provide
general background information for the Court.

1 Ventura River Groundwater Basin (DWR Bulletin 118, Groundwater Basin Number 4-3.02); (3)
2 the Upper Ojai Valley Groundwater Basin (DWR Bulletin 118, Groundwater Basin Number 4-1);
3 and (4) Ojai Valley Groundwater Basin (DWR Bulletin 118, Groundwater Basin Number 4-2).
4 (TACC, ¶ 103.) The pleadings allege that there is a hydrological connection between the Ventura
5 River, its tributaries, and the Basins. (TACC, ¶ 103; Santa Barbara Channelkeeper's First
6 Amended Complaint for Declaratory Relief and Verified Petition for Writ of Mandate ("FAC"), ¶
7 76.)

8 The Watershed also contains several important human-made water supply and flood
9 control features, such as multiple levees, that have changed conditions in the Watershed over the
10 years. At the top of the Ventura River is Matilija Dam. (FAC, ¶ 72.) Downstream of Matilija
11 Dam is the Robles Diversion and Fish Passage Facility, which diverts water from the Ventura
12 River through the Robles Canal to Lake Casitas for storage and subsequent consumptive use
13 throughout the Watershed. (TACC, ¶ 15.) Lake Casitas itself was formed by the construction of
14 the Casitas Dam on Coyote Creek. (TACC, ¶ 15; FAC, ¶ 72.) Further downstream is Foster
15 Park, where there is a subsurface dam that extends below most of the Ventura River. (TACC, ¶2;
16 FAC, ¶ 72.)

17 The Watershed provides water for reasonable and beneficial consumptive and instream
18 uses. Major portions of the Watershed have been designated as critical habitat for the Southern
19 California Steelhead, a federally listed endangered species. (*Santa Barbara Channelkeeper v.*
20 *City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1180; FAC, ¶ 87.) The Watershed also
21 supports reasonable and beneficial consumptive uses such as municipal supply, agricultural uses,
22 and industrial uses. (TACC, ¶¶ 1-91.) In many portions of the Watershed, surface and
23 groundwater from the Watershed is the only source of water for consumptive use.

24 The City alleges that the City or its predecessors in interest have used water from the
25 Watershed for reasonable and beneficial use since well before California became a state (TACC,
26 ¶¶ 107, 124-125), and at least since before 1870. (TACC, ¶ 135; FAC, ¶ 113.) The City asserts
27 that it therefore holds senior water rights in the Watershed. (TACC, ¶¶ 107, 124, 135.)
28

1 **B. Background of the Litigation**

2 In September 2014, Santa Barbara Channelkeeper (“Channelkeeper”) filed a Complaint
3 and Petition for Declaratory Relief and a Writ of Mandate pursuant to Code of Civil Procedure
4 section 1085 against the City and the State Water Resources Control Board. In response to
5 Channelkeeper’s Complaint, the City filed a Cross-Complaint asserting, among other things, that
6 if the City’s use of water was determined to be unreasonable, it was caused by the unreasonable
7 use of water by others within the Watershed. Channelkeeper filed a motion to strike the City’s
8 Cross-Complaint, the trial court granted the motion, and the City appealed.

9 In a reported decision that is now the law of this case, the Court of Appeal held that the
10 trial court abused its discretion in striking the City’s Cross-Complaint because “the water that the
11 Cross-Complaint seeks to prevent Cross-Defendants from using is effectively the same water that
12 Channelkeeper asserts the City must leave in the river for the fish.” (*Santa Barbara*
13 *Channelkeeper, supra*, 19 Cal.App.5th at 1181.) The Court reasoned that “[b]ecause the water
14 sources on which all users draw are alleged to be hydrologically connected, the water that the
15 Cross-Defendants are using and which is the subject of the City’s Cross-Complaint is the same
16 water that the City is using, which is the subject of the Complaint.” (*Id.* at 1193.)

17 After the Court of Appeal decision, Channelkeeper filed its FAC, which is the operative
18 complaint. The City similarly amended its Cross-Complaint, with the operative pleading being its
19 TACC. The TACC names as Cross-Defendants parties that divert water from and/or may claim
20 rights to water from the Ventura River or that pump groundwater from the Basins that contribute
21 water to the River. (TACC, ¶¶ 2-97.) The City asserts that Cross-Defendants’ use of water from
22 the Ventura River and the Basins reduces the surface and/or subsurface water flow of the River.
23 (TACC, ¶¶ 108-110.) The Cross-Complaint asserts nine separate causes of action against each
24 Cross-Defendant.³

25
26
27 ³ The nine causes of action are: (1) Violation of Reasonable Use; (2) Violation of Public Trust;
28 (3) Declaratory Relief—Pueblo and/or Treaty Water Rights; (4) Declaratory Relief—Prescriptive
Water Rights; (5) Declaratory Relief—Appropriative Water Rights; (6) Comprehensive
Adjudication/Physical Solution; (7) Declaratory Relief—Municipal Priority; (8) Declaratory
Relief—Human Right to Water; and (9) Declaratory Relief.

On September 30, 2019 and in August 2020, the City and Channelkeeper entered into a settlement agreement and an amended settlement agreement to settle their past disputes while preserving certain limited claims and defenses for future alleged violations (collectively the “Settlement Agreement”). As part of the Settlement Agreement, Channelkeeper agreed “not to seek other interim relief regarding flow.” The Settlement Agreement provides that the “settlement relating to interim flows in no way impacts Channelkeeper’s ability to comment on, support, or challenge the physical solution proposed by any party in the Action.” The Settlement Agreement therefore leaves only two issues remaining as between the City and Channelkeeper—an unresolved claim for attorney’s fees and costs and Channelkeeper’s participation in the issues related to the physical solution. (Pisano Decl., ¶¶ 2-3.)

In September of 2020, the Proposing Parties released for public review a draft physical solution. Although the Proposing Parties initially intended to ask the Court to consider and act on the physical solution in one trial, multiple parties have raised threshold issues that should be resolved prior to the Court’s consideration of the physical solution. Therefore, the City brings this motion to bifurcate these threshold issues for a phase one trial. (Pisano Decl., ¶¶ 4-6.)

III. LEGAL ARGUMENT

A. The Court Can Order Bifurcation of Issues in Furtherance of Convenience or to Avoid Prejudice

The Court may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to judicial economy. (Code Civ. Proc., §§ 598, 1048, subd. (b); *Equitable Life Assurance Society v. Berry* (1989) 212 Cal.App.3d 832, 836.) In one of the recent appellate opinions stemming from the Antelope Valley Groundwater Cases, the Court of Appeal affirmed a trial court’s discretion to determine the order in which claims or issues are bifurcated and determined in the water rights adjudication context. (*Antelope Valley Groundwater Cases* (2020) 58 Cal.App.5th 343, *reh’g denied* (Jan. 7, 2021).) In the Antelope Valley case, the initial trial phases “defined the geographical boundaries for the Antelope Valley Adjudication Area (AVAA)

1 to determine which parties would be necessary parties to any global adjudication of water rights,
 2 and then determined that the aquifer encompassed within the AVAA boundaries (the AVAA
 3 basin) had sufficient hydrologic interconnectivity and conductivity to be defined as a single
 4 aquifer for purposes of adjudicating the competing groundwater rights claims.” (*Id.* at 523.) The
 5 trial court determined “there was enough hydraulic connectivity within the AVAA basin as a
 6 whole to obviate any claim that certain sections should be treated as separate basins.” (*Id.* at
 7 525.) As is discussed in greater detail herein, the Court should bifurcate this proceeding and try
 8 the issues of the Watershed/basin boundaries and interconnectivity in an initial phase of trial.

9 **B. The Court Should Order Bifurcation of the Issues of Interconnectivity and**
 10 **Watershed/Basin Boundaries**

11 The Court not only has the authority to consider a physical solution, but also has the duty
 12 to do so. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383-384; *Santa Maria I, supra*, 211
 13 Cal.App.4th at p. 288; Code Civ. Proc., § 849, subd. (a) [“The court shall have the authority and
 14 the duty to impose a physical solution on the parties in a comprehensive adjudication where
 15 necessary and consistent with Article 2 of Section X of the California Constitution.”].) The
 16 Supreme Court has stated that “it is the duty of the trial court to ascertain whether there is a
 17 physical solution of the problem that will avoid waste and which will not unreasonably or
 18 adversely affect the rights of the parties.” (*Rancho Santa Margarita v. Vail, supra*, 11 Cal.2d at
 19 pp. 558-559.)

20 The City asserts a variety of water rights causes of action in its TACC. At bottom though,
 21 each cause of action ultimately seeks to establish the reasonable and beneficial consumptive and
 22 instream uses of the Watershed, which the Court of Appeal affirmed was an issue the City had a
 23 right to bring before the Court in this action. (*Santa Barbara Channelkeeper, supra*, 19
 24 Cal.App.5th at 1192-93.) In order for the Court to establish the reasonable and beneficial
 25 consumptive and instream uses in the Watershed, it is appropriate for the Court to first determine
 26 the boundaries of the Watershed and the Basins. In addition, it is appropriate for the Court to
 27 determinate whether the different sources of water within the Watershed are interconnected such
 28 that the water within the system may be considered one source. Stated another way, is the

1 Ventura River and its tributaries interconnected with the Basins, such that all users in the entire
2 Watershed, including all pumpers and those claiming rights in the Basins, are properly before the
3 Court in this action? The City believes that the answer to that question is yes, and that there is
4 ample evidence to support the interconnectivity of the entire Watershed, including its Basins.
5 Other parties appear to disagree, and, therefore, the Court should determine these issues in a first
6 phase of trial.

7 The City's proposed first phase will answer these threshold questions and confirm that the
8 parties before the Court are proper parties for the subsequent consideration by the Court of the
9 proposed physical solution. The proposed first phase will establish the Basin and Watershed
10 boundaries. The boundaries of the Basins have been determined by DWR in its Bulletin 118,
11 which has determined the basin boundaries for groundwater basins throughout California.
12 However, the City acknowledges that for one basin, the Upper Ojai Valley Groundwater Basin, a
13 portion of that basin is connected with the Santa Clara River Watershed rather than the Ventura
14 River Watershed. (See DWR Bulletin 118, Groundwater Basin Number 4-1, available at
15 [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/4_001_UpperOjaiValley.pdf)
16 [Management/Bulletin-118/Files/2003-Basin-Descriptions/4_001_UpperOjaiValley.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/4_001_UpperOjaiValley.pdf), ["A
17 surface and groundwater divide is found in the eastern part of the basin that separates
18 groundwater flow westward toward San Antonio Creek [located within the Ventura River
19 Watershed] and eastward toward Santa Paula Creek [located within the Santa Clara River
20 Watershed].") In the first phase of trial, the parties and Court will establish the boundaries of the
21 Watershed as it relates to the boundaries of the Basins. The City anticipates that the only area of
22 potential dispute about Basin boundaries will be regarding the Upper Ojai Valley Groundwater
23 Basin. The first phase will also resolve the issue of interconnectivity of the Basins and Ventura
24 River system, including all of its tributaries. Following the first phase of trial, the City and the
25 other Proposing Parties will ask the Court to consider the physical solution in a second phase of
26 trial.

27 The City understands that certain parties believe that the Court may only consider the
28 proposed physical solution if the City and the Proposing Parties establish the criteria found in

1 Code of Civil Procedure section 850(b). While this issue does not need to be resolved for
2 purposes of bifurcating trial, such a position is incorrect. As the City will explain in more detail
3 in subsequent briefing, Code of Civil Procedure sections 850(a) and 850(b) provide two
4 independent avenues for the Court to enter a judgment. Under 850(a), a court may enter a
5 judgment in an adjudication if the court finds that the judgment meets the three criteria in that
6 section, none of which requires the courts to consider the number of parties who support the
7 judgment or the extent of the groundwater extraction by those parties. In contrast, Code of Civil
8 Procedure section 850(b) is a burden shifting provision that parties may elect to invoke if they can
9 establish the thresholds set forth in that subsection. If they meet the thresholds, the burden shifts
10 to parties who object to the judgment to prove by a preponderance of the evidence that the
11 judgment does not satisfy the criteria of Section 850(a) or that it “substantially violates the water
12 rights of the objecting party.” The language of Section 850(b) is not a constraint on the Court’s
13 power, and its duty, regarding the physical solution.

14 The Proposing Parties have not yet determined whether they will ask the Court to consider
15 the physical solution under Code of Civil Procedure section 850(a) or 850(b). Nevertheless, by
16 setting Watershed and Basin boundaries in the first phase of trial, the Court will establish some of
17 the factual predicates that may be required for the potential future application of Code of Civil
18 Procedure section 850(b), if the Proposing Parties subsequently elect to proceed under that
19 provision.

20 This first phase of the trial will also establish the factual basis for any determination that
21 the parties assert the Court must make under Code of Civil Procedure section 833(c). That
22 section provides that “[i]f the court finds that including an interconnected surface water body or
23 subterranean stream flowing through known and definite channels is necessary for the fair and
24 effective determination of the groundwater rights in a basin, the court may require the joinder of
25 persons who claim rights to divert and use water from that surface water body or subterranean
26 stream in a comprehensive adjudication conducted pursuant to [the streamlined adjudication
27 statute].” The City’s position is that this section allows the Court to force a plaintiff to add
28 surface water users that have not yet been named in the action. Here, that provision does not

1 apply because the City, consistent with the Court of Appeal decision that is the law of the case,
2 has already named all known surface water users and all potential surface water claimants in the
3 Watershed. Therefore, there is no need for the Court to require the joinder of persons who claims
4 right to divert and use surface water because they are already before the Court as parties.

5 However, to the extent a finding under Section 833(c) is determined to be required, the
6 first phase of trial will provide the factual basis for making that determination. It will establish
7 the boundaries for the Watershed and the Basins, and determine the hydrological connection
8 between surface and groundwater within this system. This determination will, in turn, provide the
9 Court with the basis for making any determinations that are deemed required under Section
10 833(c), if any are required.

11 This first phase of trial will also establish the factual basis for assessing and resolving the
12 arguments made by Cross-Defendant the City of Ojai that attempt to limit this Court's authority
13 to conduct a comprehensive adjudication and impose a physical solution in a Watershed
14 adjudication involving multiple groundwater basins. The City of Ojai's suggested interpretation,
15 that adjudication actions be limited to a single groundwater basin, one at a time, is at odds with
16 the common law, would undermine the streamlining that the comprehensive adjudication statute
17 was designed to create, and would constitute a waste of judicial and party resources.

18 Interconnected surface waters and groundwater basins have been adjudicated together previously.
19 (*City of Barstow v. Mojave Water Agency*, *supra*, 23 Cal.4th 1224; *Los Angeles v. San Fernando*,
20 *supra*, 14 Cal.3d 199), and doing so here is entirely consistent with the language and the purposes
21 of the adjudication statute. In fact, both the adjudication statute and the Sustainable Groundwater
22 Management Act, for which the comprehensive adjudication statute was enacted to facilitate,
23 expressly preserve the common law. (Wat. Code, § 10720.5 [stating that "[n]othing in this part,
24 or in any groundwater management plan adopted pursuant to this part, determines or alters
25 surface water rights or groundwater rights under common law or any provision of law that
26 determines or grants surface water right"]; Code Civ. Proc., § 830, subd. (b)(7) [stating that
27 "[e]xcept as provided in this paragraph, this chapter shall not alter groundwater rights or the law
28

concerning groundwater rights”].) The factual determinations made during the first phase will establish the factual basis for the Court’s assessment and resolution of the City of Ojai’s position.

C. The Court Should Set the First Phase for November 2021, and Should Lift the Discovery Stay in Part to Allow Discovery Only on the Issues to be Tried in the First Phase of Trial, Subject to a Reasonable Discovery Schedule

The Court has inherent authority to provide for the orderly conduct of proceedings before it. (Code Civ. Proc. § 128; *Santandrea v. Siltec Corp.* (1976) 56 Cal.App.3d 525, 529 [“Every court has the inherent power to regulate the proceedings of matters before it and to effect an orderly disposition of the issues presented.”]) The Court also has authority, if cause is shown, to stage and sequence the timing of discovery for the convenience of parties and in the interests of justice. (Code Civ. Proc. § 2019.020, subd. (b).)

As stated, these first two issues are discrete. The Basin boundaries have been defined by DWR in Bulletin 118, and through expert testimony, the City will demonstrate where the Upper Ojai Valley Basin ceases to be connected to the Watershed. As for the issue of interconnectivity, this will largely be shown by expert testimony; however there may also be some relevant but limited percipient fact-based evidence that sheds light on the issue of interconnectivity. In light of this, and given the age of this case, the Court should set a trial date on this first phase in the relative near future. The City suggests that the trial be set for mid- to late-November 2021, or at such other time as the Court has availability. As the City has represented, the City anticipates that the first phase would take approximately seven to ten court days to conduct.

As for discovery, the Court previously ordered a stay on all discovery based on a stipulation of the parties. If the Court orders bifurcation of the proceeding to try the issues of Basin and Watershed boundaries and interconnectivity in the first phase, the Court should likewise lift the stay of discovery only for these two discrete issues. The discovery stay should remain in place for all other issues, but a partial lifting of the stay will allow the parties to prepare for the first phase of trial. It should be noted here that Code of Civil Procedure Section 843 provides that unless otherwise stipulated, parties shall have 30 days following the scheduling of a trial for the parties to designate expert witnesses. The City does not recommend relying upon this statutory scheme for the first phase of trial, but rather recommends a schedule more in line with

1 the Civil Discovery Act. This will allow the parties some time to conduct limited fact-based
2 discovery in advance of expert designations.

3 The following is a proposed schedule for conducting discovery:

4 Percipient Discovery Cut-Off: October 15, 2021

5 Expert Witness Exchange: September 24, 2021

6 Supplemental Expert Exchange: October 14, 2021

7 Expert Deposition Cut-Off: November 1, 2021.

8 Phase 1 Trial: November 15, 2021.

9 **IV. CONCLUSION**

10 For the reasons stated herein, the City requests that the Court grant this motion to
11 bifurcate, and that the Court order a first phase of trial on the issues of the Basin and Watershed
12 boundaries and interconnectivity. The City further requests that the Court schedule the first phase
13 of trial for approximately mid to late November 2021, and that the Court lift the discovery stay
14 solely for the issues that will be tried in the first phase, and establish a reasonable discovery
15 schedule.

16
17 Dated: May 11, 2021

BEST BEST & KRIEGER LLP

18
19 By: 

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24 82470.00018\33903280.10

EXHIBIT E

EXHIBIT E

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11 Attorneys for Respondent and Cross-Complainant
12 CITY OF SAN BUENAVENTURA

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

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

17 Petitioner,

18 v.

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

21 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant

24 v.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.
27
28

Exempt From Filing Fees Pursuant to
Cal. Gov't Code § 68093
FILED
Superior Court of California
County of Los Angeles

JUL 02 2021

Sheri R. Carter, Executive Officer/Clerk of Court
By Kristina Vargas Deputy
Kristina Vargas

Case No. 19STCP01176

Judge: Honorable William F. Highberger

NOTICE OF RULING

Date: June 21, 2021

Time: 1:30 p.m.

Dept: SS10

Action Filed: Sept. 19, 2014

Trial Date: February 14, 2022

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1. In advance of the Status Conference, the Court issued a tentative ruling the morning of June 21, 2021 through File & Serve Xpress. The Court's June 21, 2021 tentative ruling is attached as Exhibit A.
2. The Court signed the Order regarding the Stipulation for Dismissal between Petitioner Santa Barbara Channelkeeper and Cross-Complainant and Respondent City of San Buenaventura ("City").
3. The Court heard the Order to Show Cause ("OSC") regarding service of City's Third Amended Cross-Complaint ("3ACC") by publication of the summons as to unserved Roe Cross-Defendants behind gates and fences in the *Ventura County Star*. No party opposed, and the Court Ordered service by publication of summons as to 71 unserved Roe Cross-Defendants behind gates and fences.
4. The Court ordered and set an OSC hearing for June 30, 2021, at 10:30 a.m.¹ regarding final service by publication in the *Ventura County Star* of the summons of the City's 3ACC as to the remaining 78 unserved Cross-Defendants, who are evading service, located behind gates, or deceased with no known successor upon

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1 whom service was recently attempted at new addresses, and/or Cross-Defendants
2 that, despite diligent efforts, remain unserved at their tax assessor mailing or
3 physical addresses. The City was ordered to deliver the Notice of the OSC
4 hearing, along with Notices and Acknowledgments of receipt to the final unserved
5 Cross-Defendants, via overnight mail no later than June 23, 2021. Any opposition
6 to the issuance of an order for service by publication must be filed and served no
7 later than June 28, 2021.

- 8
- 9 5. The Court signed the Order Directing Service of Summons by Delivery to the
10 California Secretary of State for 7 unserved Cross-Defendant corporate entities.
- 11
- 12 6. Cross-Defendants Claude and Patricia Baggerly were directed to file and re-serve,
13 without any substantive changes, their Notice of Motion and Motion Requesting
14 the Court to Appoint a Scientific Advisor for Hydrology, with a suggestion to set it
15 for hearing on July 19, 2021. Changes may only be made as set forth in the Court's
16 July 21st tentative ruling regarding signing the Declaration, filing with the Court
17 clerk, and paying the \$60 filing fee. Any previously filed oppositions will stand.
- 18
- 19 7. The Court requested that the City meet and confer with Cross-Defendants Gerrold
20 and Karen Grigsby regarding the issues laid out in their May 26, 2021 letter to the
21 Court, served June 16, 2021.
- 22
- 23 8. The Court ordered the City to file with the Court and to serve on File & Serve
24 Xpress a list of the 10 to 20 most important documents supporting interconnection
25 between groundwater and surface water in the Ventura River Watershed by June
26 25, 2021.
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1 9. The Court granted the City's Motion to Bifurcate and Partial Lifting of the
2 Discovery Stay for matters relevant to the Phase 1 trial on the basin and watershed
3 boundaries and interconnectivity. The Court lifted the discovery stay only as to
4 Phase 1 matters. The Court scheduled a bench trial for 10 to 15 days starting on
5 February 14, 2022 at 10:00 a.m., with a pretrial conference set for February 2,
6 2022 at 10:00 a.m. The Court set a further status conference to address a pre-trial
7 discovery and a law and motion schedule on July 6, 2021 at 2:00 p.m. and ordered
8 the parties to meet and confer. City will serve a joint report on File & Serve
9 Xpress by noon on July 2, 2021 and file it with the Court that day. Unilateral
10 reports may also be filed.

11
12 10. The Court heard argument on initial disclosures regarding those who signed
13 stipulations to the physical solution, and the Court withdrew its tentative ruling
14 requiring initial disclosures. The Court directed the State to explain to the Court
15 why stipulating parties should be required to provide initial disclosures at this
16 time.

17
18 11. The Court did not consent to the lodgment of the proposed physical solution and
19 judgment. Court will hear argument and consider this topic at the July 6, 2021
20 Status Conference. Any objections to the lodgment of the proposed physical
21 solution must be in writing and filed and served no later than July 6, 2021.

22
23 12. The Court modified the time of the further Status Conference on July 19, 2021 and
24 scheduled it for 3:00 p.m. The Court ordered that a joint status report and/or any
25 unilateral status reports be filed and served by July 12, 2021.
26
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28

1 Dated: July 2, 2021

BEST BEST & KRIEGER LLP

2
3 By:



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PATRICK D. SKAHAN
Attorneys for Respondent and
Cross-Complainant
CITY OF SAN BUENAVENTURA

EXHIBIT A



19STCP01176 Santa Barbara Channelkeeper v. State Water Resources Control Board

June 21, 2021 Tentative Rulings

Note: While Claude and Patricia Baggerly served a purported “Notice of Motion and Motion Requesting the Court to Appoint a Scientific Advisor, etc.” on May 10, 2021 on File & ServeXpress, the Court has no record of such a document ever being presented for filing and no record of the mandatory \$60.00 filing fee having been paid. Therefore, while a number of Opposition papers were filed and a Reply was filed, there is no motion on calendar to be heard. Further, the purported Motion is not in proper form for filing because it and the purported Declaration are unsigned, and would have been rejected by this Court for this reason even if filed with a fee paid. (Code Civ. Proc., § 128.7(a) (“Every pleading, petition, written notice of motion, or other similar papers . . . if the party is not represented by an attorney, shall be signed by the party.”). Self-represented parties are not excused from complying with the basic rules of procedure.

City of San Buenaventura’s Motion to Bifurcate and to Partially Lift Stay: Grant in part and set Phase I trial for February 2022.

No party has opposed the bifurcation request, as such. The only dispute is the timeline to a Phase I trial. The City of San Buenaventura’s (“Ventura”) trial date of November 2021 is unfair to the most interested cross-defendants. The East Ojai Group’s “end of 2022” trial date for Phase I is too desultory. The Court thinks the State Agencies’ suggestion of a February 2022 trial date is a reasonable compromise of the due process rights to Ventura’s opponents versus the strong public need to move this case forward so that a resolution can be had within our lifetimes. A firm date in February 2022 will be decided at the hearing and the parties will be ordered to meet and confer in the next 30 days to agree upon a discovery and motion schedule.

Ventura’s June 16 Ex Parte Application for Order to Allow Service by Publication: Grant.

The Court is unaware of any opposition filed as to the Ex Parte Application for Order to Allow Service by Publication as to these 92 property owners living behind locked gates. Sufficient notice has been given by alternative means to such persons, and use of publication notice is justified based on the unique circumstances present here. If there is any opposition to issuance of such an Order, file a written Opposition in this docket by June 28, 2021.

Ventura’s June 18 Ex Parte Application for Order to Show Cause re Service by Publication: Grant and Issue OSC Returnable June 30, 2021 at 9:30 a.m.

The Court is unaware of any opposition filed as to the Ex Parte Application for Order to Show Cause. Proper notice has been given and use of publication notice appears justified based on the unique circumstances present here as to the 50 cross-defendants evading service, the 23 cross-defendants living behind locked gates, and the six named cross-defendants who are deceased.¹ If

¹Query as to the deceased: If Ventura tries to get a default and default judgment against a deceased person without going through probate proceedings, does it have a judgment of any value? Also, if Ventura really should be suing the successor in interest or heir, does it obtain a judgment of any value when only the deceased person is named? These concerns do not, however, counsel against giving cross-complainant the benefit of an Order allowing service of a deceased person by publication for whatever good it may do this party.

there is any opposition to issuance of such an Order, file a written Opposition in this docket by June 28, 2021.

Ventura's June 18 Ex Parte Application to Serve Seven Corporate Cross-Defendants via Secretary of State: Grant.

The Court is unaware of any opposition filed as to the Application. Proper notice has been given and use of service via the Secretary of State is justified based on the unique circumstances present here.

Further Status Conference:

1. Ventura is asked to address the concerns expressed in the letter to the Court sent by Karen and Gerrold Grigsby, which this Court served on all parties via File & ServeXpress on June 15, 2021.
2. Why is the Stipulation for Dismissal and [Proposed] Order served June 17, 2021 as between petitioner Santa Barbara Channelkeeper and Ventura signed on behalf of Santa Barbara Channelkeeper by Daniel Cooper as "Attorneys for Cross-Defendants," not as Attorney for Petitioner?
3. The Court has reviewed the State's submission explaining how the modeling process has been underway "[s]ince 2016," with a contractor hired four years ago in June 2017 and with a revised delivery date of December 2021 for an updated draft model with a preliminary draft issued sooner in August 2021. "The perfect is the enemy of the good," per Voltaire, and the State Agencies' approach proves the wisdom of this adage. Please do everything possible to get the preliminary draft deliverable by August 2021 and no later.
4. The Court agrees with the State that ALL parties need to provide initial disclosures of their historic well water usage so that we can determine if Code of Civil Procedure § 850(b) can be invoked by the City and so we know the historic productive capacity of the groundwater basin(s). Having incomplete data caused by lack of responses from those consumptive users who have signed Stipulations and [Proposed] Orders for Entry of Judgment will hinder this process. Time extension requests are legitimate and the Court has signed all such Stipulations and Orders that it has received to date.

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main Street, Suite 390, Walnut Creek, CA 94596. On July 2, 2021, I served the following document(s):

NOTICE OF RULING

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
- ☐ I caused such envelope to be delivered via overnight delivery. Such envelope was deposited for delivery by United Parcel Service following the firm's ordinary business practices.
- ☒ by transmission via **E-Service to File & ServeXpress** to the person(s) set forth below. Local Rules of Court 2.10 (P).
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I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on July 2, 2021 at Walnut Creek, California



Irene Islas

EXHIBIT F

EXHIBIT F

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,)
A CALIFORNIA NON-PROFIT)
CORPORATION,)
)
PETITIONER,)
)
VS.) CASE NO. 19STCP01176
)
STATE WATER RESOURCES CONTROL)
BOARD, ET AL.,)
)
RESPONDENTS.)
_____)
)
CITY OF SAN BUENAVENTURA,)
ET AL.,)
)
CROSS-COMPLAINANT,)
)
V.)
)
DUNCAN ABBOT, AN INDIVIDUAL,)
ET AL.,)
)
CROSS-DEFENDANTS.)
_____)

DEPOSITION VIA ZOOM OF JORDAN KEAR
WEDNESDAY, DECEMBER 15, 2021

JOB NO. CA 4991883
REPORTED BY KRISTIN VARGAS, CSR NO. 11908, RPR

1 DEPOSITION VIA ZOOM OF JORDAN KEAR, THE WITNESS, LOCATED IN
2 LOS ANGELES, CALIFORNIA, WAS TAKEN ON BEHALF OF THE
3 RESPONDENTS, ON WEDNESDAY, DECEMBER 15, 2021, AT 10:14 A.M.,
4 BEFORE KRISTIN VARGAS, CSR NO. 11908, RPR.

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WITNESS

JORDAN KEAR

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EXHIBITS

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EXH NO.	PAGE	DESCRIPTION
EXHIBIT 401	17	RESPONDENT AND CROSS-COMPLAINANT CITY OF SAN BUENAVENTURA'S AMENDED NOTICE OF DEPOSITION OF EXPERT WITNESS FOR CITY OF OJAI AND CASITAS MUNICIPAL WATER DISTRICT, JORDAN KEAR, WITH REQUEST FOR PRODUCTION OF DOCUMENTS
EXHIBIT 402	51	CITY OF OJAI'S CCP 843 EXPERT WITNESS DISCLOSURE; DECLARATION OF HOLLY J. JACOBSON
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EXHIBIT 404	105	INVOICE
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EXHIBIT 407	**	SKIPPED
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EXHIBIT 410	144	ALTERNATIVE DEMONSTRATION REPORT
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EXHIBIT, CONTINUED:

EXHIBIT 414 162 SUMMARY OF THE CONSTRUCTION OPERATIONS
FOR THAT NEW SOUTH CENTRAL NESTED
DEPTH-DISCRETE MONITORING WELL DATED
DECEMBER 2021

EXHIBIT 415 ** SKIPPED

EXHIBIT 416 151 DRAFT GROUNDWATER SUSTAINABILITY PLAN
FOR THE OVGB

EXHIBIT 417 188 CIVIL ENGINEERING ARTICLE

1 BY MR. PISANO:

2 Q You can answer, sir.

3 A Yes, the inflow would equal the outflow,
4 assuming that everything were saturated within that
5 system, which is an assumption I would not make as a
6 professional.

7 Q Okay. Let me ask you then, Mr. Kear --
8 let me ask you a little bit about the second
9 opinion. And the second opinion -- and I'll just
10 read it. I don't know that we necessarily need to
11 put it up on the screen.

12 "It is to my opinion that the surface flow
13 observed in San Antonio Creek emerges from
14 groundwater stored in the perched aquifer system
15 except during periods of excess precipitation and
16 surface water derived runoff."

17 That's the second opinion; correct?

18 A As you have read it, yes.

19 Q Okay. And that's the opinion you intend
20 to offer at the trial; correct?

21 A Correct.

22 Q Okay. The perched aquifer system that you
23 referred to, is that within the Ojai Valley Basin?

24 A The perched aquifer system is a very
25 small, very isolated portion of what is aerially

1 Q Qualification so noted, yes or no?

2 A Groundwater stored within the Ojai Basin
3 that is in the perched aquifer system is that which
4 emerges from exfiltrates, if you will, to
5 San Antonio Creek.

6 Q Okay. Great. So you have some qualifier
7 in the second opinion, a couple qualifiers. You say
8 except for periods of excess precipitation.

9 What do you mean by that?

10 A Rainfall, significant rainfall.

11 Q So is there surface flow observed -- okay.
12 Okay. Let me back up.

13 So when there's periods of significant
14 rainfall, is it the case then that surface flow
15 observed in San Antonio Creek emerges from other
16 locations within the Ojai Basin other than the
17 perched aquifer?

18 A No.

19 Q No, okay. So can you explain what you
20 mean by this qualifier. That there's surface flow
21 within San Antonio Creek emerges from the
22 groundwater stored in the perched aquifer except for
23 during periods of excess precipitation.

24 And what do you mean by that?

25 A What I mean is that over the course of my

1 perched aquifer system?

2 A You still would see perched aquifer system
3 water, but --

4 Q But other water too?

5 A The other water being the excess
6 precipitation as stated in the second opinion.

7 Q Okay. I think I understand.

8 Let me ask you just a couple questions
9 about the third opinion, which is that the perched
10 aquifer system is disconnected from the main
11 production aquifers by a 100-foot-thick confining
12 clay unit.

13 Is that a clay layer? Is that another way
14 to say it?

15 A One can refer to a clay unit as a clay
16 layer, although, because it is not just one
17 individual clay, it is a unit similar to a
18 formation.

19 Q Okay. Is that formation, that clay unit,
20 if you will, that 100-foot thick clay unit -- is
21 that immediately below the perched aquifer for the
22 entire surface area of the perched aquifer?

23 A The clay unit is underlying the perched
24 aquifer and creating the perched aquifer except for
25 to the western portion of the Ojai Basin,

1 westernmost where bedrock -- sesti (phonetic)
2 formation of bedrock -- underlies the boulders and
3 gravels and quaternary strata that effectively does
4 the same thing as the clay unit.

5 Q And that's where we see the discharge to
6 San Antonio Creek?

7 A We see exfiltrated groundwater from the
8 perched aquifer system of -- that comes from the
9 saturated sands and gravels that are perched atop
10 the clay unit and the bedrock to the west.

11 Q Is the clay unit 100 feet thick throughout
12 the entirety of the perched aquifer?

13 A No.

14 Q Okay. Is it sometimes thicker than
15 100 feet?

16 A Yes.

17 Q Is it sometimes less than 100 feet?

18 A I believe so.

19 Q What is the skinniest that the clay --
20 that's a bad way to say it -- what is the smallest
21 thickness of the confining clay unit within the
22 perched aquifer?

23 A I don't know.

24 Q If you don't know, Mr. Kear, how do you
25 know the perched -- strike that.

1 A Yes.

2 Q Okay. So let's go to Page 6 of your memo.
3 I had a few questions about something in there.

4 Section D -- I had a couple questions
5 about Section D on Page 6.

6 It says "The key surface water features
7 are the San Antonio Creek, Reeves Creek and Thatcher
8 Creek."

9 Do Reeves Creek and Thatcher Creek flow
10 into San Antonio Creek?

11 A Yes. They are tributaries to the San
12 Antonio Creek catchment.

13 Q Okay. The sentence goes on to say "which
14 exhibit balanced, losing, detached absent
15 (ephemeral) and gaining features over OVGB," so the
16 Ojai Valley Groundwater Basin; right?

17 A That's as it states on Section D.

18 Q Okay. What is a balanced feature?

19 A A balanced creek in this case would mean a
20 portion wherein -- within a creek channel, it is in
21 balance with a surrounding aquifer material.

22 (Background Zoom participant noise.)

23 THE REPORTER: I'm sorry. I can't hear
24 with the background noise.

25 MR. PISANO: Can everybody make sure their

1 Zoom is on mute, please? Thank you.

2 BY MR. PISANO:

3 Q Yeah. Why don't we start over.

4 So the sentence references a balanced
5 feature. Can you tell us, please, what a balanced
6 feature is, Mr. Kear.

7 A A balanced feature, as described here,
8 indicates a body of surface water and groundwater
9 that is in balance with neither flow going to or
10 from the groundwater or the surface water. It is
11 flowing in the uniform direction that is without a
12 significant difference in hydrologic head from one
13 medium to the other.

14 Q So, in other words, surface water isn't
15 going into the ground, and groundwater is not coming
16 up to the surface?

17 A Correct.

18 Q Okay. What is a losing feature?

19 A A losing feature with respect to this
20 surface water body is where the head in the creek is
21 higher than the surrounding groundwater body and
22 flow is then lost from the creek to the groundwater
23 system.

24 Q So water is going from the surface into
25 the groundwater?

1 A From the surface water into the
2 groundwater.

3 Q Okay. And when you say head, what do you
4 mean?

5 A I mean the elevation or the potentiometric
6 surface at which is a point of elevation above some
7 datum that can be measured. A level.

8 Q Okay. And so then, you also talk about
9 these water bodies exhibiting detached features.
10 What does that mean?

11 A That means that it would be separate,
12 detached. There is no -- no communication. Or
13 there is a communication that is losing, but not
14 connected in this instance.

15 Q So is a balanced feature one that is
16 connected where surface and groundwater are
17 connected?

18 A Yes. A balanced feature, as described
19 here, would be directly connected one to the other
20 or at least under the same head such that no flecks
21 were going between the two.

22 Q Is a losing feature one in which there's a
23 connection between the surface water and the
24 groundwater?

25 A It can be, yes.

1 Q Let's jump ahead. What is a gaining
2 feature?

3 A A gaining feature is where the saturated
4 porous medium on the outside of a surface water
5 channel is higher than that within the channel such
6 that the creek gains flow as it traverses the
7 groundwater body.

8 Q And is that the case where the water is
9 coming up from the ground to the surface?

10 A It can be, but often it's a lateral
11 movement as well.

12 Q But it's water that is below the surface
13 of the earth that is coming up above the surface of
14 the earth; correct?

15 A Or the surface of the earth is going below
16 the water table.

17 Q Okay. It's daylighting water; right?

18 A Exfiltrating groundwater in the gaining
19 system such that the creek flow gains as it flows
20 downward.

21 Q And so is the gaining system a connected
22 system? In other words, is the surface water and
23 groundwater connected?

24 A In a gaining system, the surface water is
25 connected to the groundwater because it is receiving

1 the groundwater system.

2 Q All right. And what about -- what about
3 absent and -- I guess, ephemeral? Is that another
4 way of saying absent? Is that why it's in the
5 parentheses?

6 A Yes. The term absent means there is no
7 water. There is no surface water in the creeks.

8 Q All right. And so you wrote here then
9 that your key surface water features -- and you have
10 got your three creeks, two of which are tributaries.
11 These creeks all exhibit all of these features;
12 correct?

13 A These three creeks have, at times,
14 exhibited one or more of these features speaking to
15 the dynamic nature of the watershed.

16 Q All right. So I mean, is it fair to say
17 then that for each one of these creeks -- San
18 Antonio Creek, Reeves Creek and Thatcher Creek -- at
19 various times and in various conditions, all three
20 have exhibited all of these features: Balanced,
21 losing, detached, absent, and gaining?

22 A I believe that is fair to say given the
23 breadth of the "at some time" statement, yes.

24 MR. PISANO: Fair enough. So let me show
25 you another document that we will mark as

1 A Generally.

2 Q And that perched aquifer, that is located
3 entirely within the boundaries of the Ojai Basin;
4 correct?

5 A Correct.

6 Q And water from the perched aquifer feeds
7 San Antonio Creek; correct?

8 Groundwater from the perched aquifer feeds
9 San Antonio Creek; correct?

10 A Well, San Antonio Creek doesn't eat. But
11 groundwater exfiltrates from the perched aquifer to
12 San Antonio Creek.

13 Q So groundwater from the Ojai Basin
14 exfiltrates to San Antonio Creek; right?

15 A Groundwater from the perched aquifer
16 system within the Ojai Basin materially disconnected
17 from the deeper aquifer system exfiltrates to
18 San Antonio Creek.

19 Q Is the word estimated yours or Dudek's?

20 A I don't recall who coined that phrase.

21 Q Do you use the term estimated in terms of
22 determining the northern extent of the perched
23 aquifer?

24 A I would say that that is an estimation.

25 Q Do you consider the northern extent of the

1 the east in the Ojai Basin to be part of the main
2 production aquifers, the eastern half?

3 A At depth, the eastern portion of the Ojai
4 Basin certainly has a thicker package of main
5 production aquifers than the west.

6 Q Okay. So if I were to substitute, in this
7 sentence, instead of "main production aquifers," I
8 were to say "perched aquifer," that would be an
9 incorrect statement; correct?

10 A If the words main production in this
11 sentence were switched to perched, it would be
12 incorrect to state that.

13 Q Okay. But, in fact, the perched aquifer
14 of the Ojai Basin is materially connected with the
15 surface flows in San Antonio Creek; correct?

16 A Correct. It is the perched aquifers
17 materially -- which are materially disconnected from
18 the main production aquifers of the Ojai Basin that
19 are more connected to.

20 Q Okay. And what about the groundwater in
21 the eastern half of the Ojai Basin, would it be
22 correct to say that the groundwater in the eastern
23 half of the Ojai Basin is connected to the surface
24 flows in San Antonio Creek?

25 A Can you repeat that.

STATE OF CALIFORNIA)
) ss.

COUNTY OF LOS ANGELES)

I, Kristin Vargas, Certified Shorthand Reporter,
Certificate No. 11908 do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and the same is a true, correct, and complete transcript of said proceedings;

That if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript { } was { } was not required.

I further certify that I am not interested in the event of the action.

Witness my hand this 5th day of January,
2022.

Kumar

KRISTIN VARGAS
Certified Shorthand Reporter
for the State of California

EXHIBIT G

EXHIBIT G



September 24, 2021

KG21-0623

Ms. Holly Jacobson

Bartkiewicz, Kronick, & Shanahan, PC

1011 22nd Street

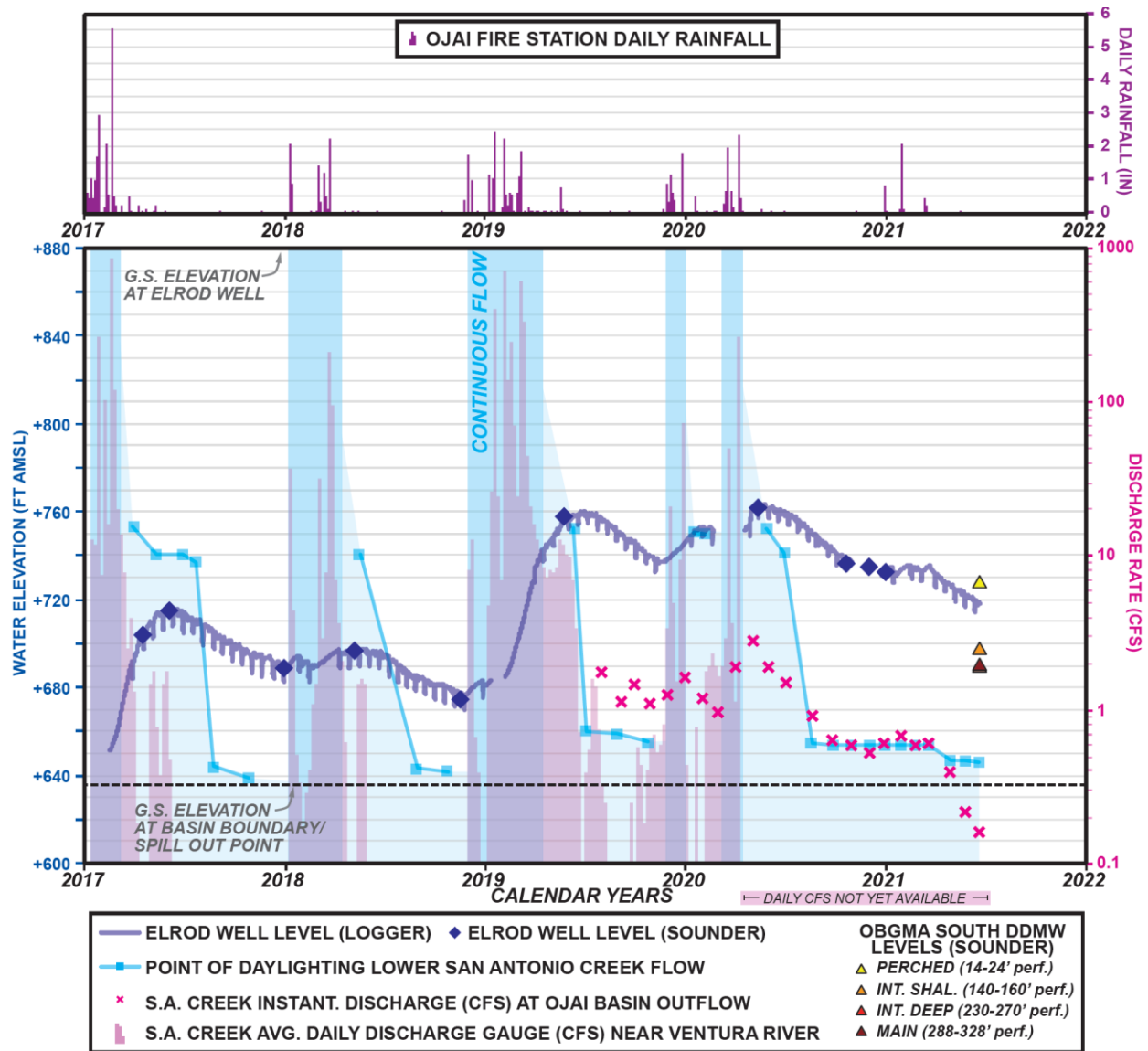
Sacramento, California 95816

Re: Opinions of Jordan Kear, PG, CHG, in regards to connectivity of groundwater basins of the Ventura River Watershed, Ventura County, California

Greetings Ms. Jacobson:

The following information is presented to transmit my opinions regarding the interconnectedness of groundwater in the Ojai Valley Groundwater Basin (Ojai Basin) to surface waters of San Antonio Creek downstream from the Ojai Basin.

Having studied the Ojai Basin over the past 20 years as part of my 28-year-to-date career as a hydrogeologist, I have worked on over 100 projects in the Ventura River Watershed and served numerous public and private clients in the Ojai Basin. My work routinely involves observing and measuring surface flow, groundwater levels, overseeing drilling, development, and testing of wells, and interpreting and reporting the data therefrom.



The material issue here for management of the Ojai basin is clear: to manage the resources for human use within the basin for overlying landowners the key is to monitor and quantify and potentially allocate extraction. Main aquifer water is recharged to this basin and does not materially exit the aquifer but via pumping. Except for during very flashy events and/or water escaping from flowing artesian wells, water from the Ojai Basin that consistently discharges to San Antonio Creek



emerges primarily from the perched aquifer system. These factors are correlative to hydrologic conditions and cycles that are beyond human control in the present and foreseeable future.

[On basin flow and discharge from the Ojai Basin.](#)

For many years the general concept of the Ojai basin was that we have a tilted bowl, and the basin fills quickly and spills quickly. This simplified conceptual model has been thought to be oversimplified but even more so under today's conceptualization of the true stratigraphic nature of the aquifers. As our observations over the past 20 years indicate, there are much more complex factors at play than this simplification. If the basin were to fill and simply spill as previously conceptualized, then why are there flowing artesian wells when water levels are high and significant amounts of water are in storage in the basin such as in 2011, 2006, 2005, 1998, and so on. Another phenomenon that questions this concept is "why is there still water flowing in San Antonio Creek when the basin is not full, such as when water levels are below the elevation of the "spill point?" This phenomenon is better explained by the concept of the impoundment of groundwater within the main aquifer systems of the Ojai basin north of the Arroyo Parida - Santa Ana fault and sandwiched between the perching layer/confining layer clay above and bedrock below and bedrock highs to the north East and west of the basin. If the Ojai Basin is a tilted bowl, it has a pretty tight lid on it.



December 14, 2021

KG21-0636

Mr. Gregg Scott Garrison
Garrison Law Corporation
12986 MacDonald Drive
Ojai, California 93023

Re: Opinions of Jordan Kear, PG, CHG, in regards to lack of percolating groundwater connectivity of the Upper Ojai Valley Groundwater Basin and the other alluvial groundwater basins of the Ventura River Watershed, Ventura County, California

Greetings Mr. Garrison:

The following information is presented to transmit my opinions regarding the lack of interconnectedness of percolating groundwater in the Upper Ojai Valley Groundwater Basin (Upper Ojai Basin) and other alluvial groundwater basins of the Ventura River Watershed.

I have worked on over 100 projects in the Ventura River Watershed and served numerous public and private clients in the local groundwater basins, including many in the Upper Ojai Valley, over my 28-year-to-date career as a hydrogeologist. My work routinely involves observing and measuring surface flow, groundwater levels, locating and designing water wells, overseeing drilling,



development, and testing of wells, and interpreting and reporting the data therefrom.

It is my opinion that the Upper Ojai Basin is a delineated basin that straddles the surface boundary between the Santa Clara River Watershed and the Ventura River Watershed with surface flow toward each.

It is my opinion that the Upper Ojai Basin has a significant amount of percolating groundwater in storage but is not significantly pumped, and is therefore an example of a basin in relative hydrologic balance.

It is my opinion that the main production aquifers of the Upper Ojai Valley Groundwater Basin are materially disconnected from the separately-delineated groundwater basins at lower elevations within the Ventura River Watershed than the Upper Ojai Basin.

It is my opinion that management of the Upper Ojai basin will not result in a material difference in discharge to Lion Creek and San Antonio Creek, as the primary driver for flow in the intermittent and ephemeral Lion Creek downstream from the Upper Ojai Basin is rainfall.

It is my opinion that the discharge from the Upper Ojai Basin to the east, via Sisar Creek is tributary to perennial Santa Paula Creek, a significant source of recharge to the Santa Clara River Groundwater Basin and its adjudicated subbasin (Santa Paula Basin).



If that water continues to percolate toward the localized pumping depressions or capture zones of individual wells, it fills throughout the groundwater basin saturating the aquifer zones. At times that recharge becomes so great that wells tapping this largely confined system become artesian and flow like fountains in portions of the Upper Ojai Basin. So we may think of the Upper Ojai Basin recharge water area as the top of the funnel: water collects in the tributary area and funnels down into the recharge into the aquifers to the valley which is bounded on the bottom by bedrock at the basal contact with the alluvium, it's bounded on the south by the Lion fault – a known barrier to groundwater flow. The aquifers are bounded on the west by the bedrock high at Black Mountain.

One may then ask “what is stopping the water from discharging into Lion Creek from the main aquifer system and then reaching San Antonio Creek?” The answer to this is the natural passage barriers associated with the bedrock highs along the Black Mountain creek reach. While there appears to be a small degree of “leakage” from the basin area to surface flows of Lion Creek, these flows end well before reaching the San Antonio Creek confluence as they are taken up by flora; these flows to the west may also be sourced from perched system above the clay landslide deposits described by McKay (2011). So the important concept here is that water that recharges the main aquifers of the Upper Ojai Basin does not directly or materially flow downstream via Lion Creek to San Antonio Creek. Groundwater also does not flow significantly downward through the lower permeability bedrock below the alluvium of the Upper Ojai Basin.

EXHIBIT H

EXHIBIT H

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,)
A CALIFORNIA NON-PROFIT)
CORPORATION,)
)
PETITIONER,)
)
VS.) CASE NO. 19STCP01176
)
STATE WATER RESOURCES CONTROL)
BOARD, ET AL.,)
)
RESPONDENTS.)
_____)
)
CITY OF SAN BUENAVENTURA,)
ET AL.,)
)
CROSS-COMPLAINANT,)
)
V.)
)
DUNCAN ABBOT, AN INDIVIDUAL,)
ET AL.,)
)
CROSS-DEFENDANTS.)
_____)

DEPOSITION VIA ZOOM OF ANTHONY BROWN
THURSDAY, DECEMBER 16, 2021

JOB NO. CA 4991890
REPORTED BY KRISTIN VARGAS, CSR NO. 11908, RPR
PAGES 1 - 244

1 DEPOSITION VIA ZOOM OF ANTHONY BROWN, THE WITNESS, LOCATED
2 IN LOS ANGELES, CALIFORNIA, WAS TAKEN ON BEHALF OF THE
3 RESPONDENTS, ON THURSDAY, DECEMBER 16, 2021, AT 9:03 A.M.,
4 BEFORE KRISTIN VARGAS, CSR NO. 11908, RPR.

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EXHIBITS

CROSS-DEFENDANTS '

EXH NO.	PAGE	DESCRIPTION
EXHIBIT 418	15	RESPONDENT AND CROSS-COMPLAINANT CITY OF SAN BUENAVENTURA'S AMENDED NOTICE OF DEPOSITION OF EXPERT WITNESS FOR EAST OJAI GROUP, ANTHONY BROWN, AQUILOGIC, INC., WITH REQUEST FOR PRODUCTION OF DOCUMENTS
EXHIBIT 419	15	EAST OJAI GROUP'S EXPERT REPORT OF ANTHONY BROWN
EXHIBIT 420	15	EAST OJAI GROUP'S SUPPLEMENTAL EXPERT REPORT
EXHIBIT 421	37	CORRESPONDENCE DATED 7/12/2021
EXHIBIT 422	38	CORRESPONDENCE DATED 7/29/2021
EXHIBIT 423	146	CITY OF SAN BUENAVENTURA'S BRIEF ON THE ISSUES OF FACT AND LAW FOR THE PHASE 1 TRIAL
EXHIBIT 424	**	(SKIPPED)
EXHIBIT 425	214	EMAIL DATED 12/21/2021

1 this figure would no longer be relevant; is that
2 right?

3 You are relying solely on what is in the
4 Physical Solution -- [Proposed] Physical Solution
5 for where the habitat is; is that right?

6 A Correct.

7 Q Okay.

8 A Well, I shouldn't say that that's
9 actually -- while I'm relying on the habitat as
10 mapped on Figure 14, which is taken from the
11 Physical Solution, I'm also considering the
12 potential for baseflow contribution to support
13 habitat.

14 So even in the absence of this -- the
15 information from the Stipulated Physical Solution, I
16 would be able to document where, based upon my
17 assessment, there is groundwater contribution to
18 baseflow. That could potentially be habitat.

19 Q Okay. But in terms of where the habitat
20 is, you have taken it from the Proposed Physical
21 Solution? That is what is shown here?

22 A That is what is shown here, correct.

23 Q All right. Moving on here to opinion
24 Number 4, it says "Given the above, there are a
25 hydrologic connection between perched groundwater in

1 the southwestern portion of the Ojai Basin and flows
2 in San Antonio Creek that support Steelhead
3 habitat."

4 Just from that first sentence, when you
5 say "flows in San Antonio Creek that support
6 Steelhead habitat," should I just read that as
7 baseflows, or does that include baseflow and
8 stormflow?

9 A That would just be baseflow. The
10 stormflow comes from the precipitation.

11 The perennial that exists between storm
12 events is the groundwater contribution from the
13 perched zone.

14 Q Okay. And then it says "However, changes
15 in groundwater levels in the deeper aquifer, from
16 pumping or recharge have no effect on groundwater
17 levels in the perched aquifer."

18 So in regards to that second sentence in
19 the opinion, what is the data that supports that
20 opinion?

21 A So in particular, I present a
22 figure -- let me see if I can find the exact figure
23 and page number. Figure 21 on Page 54.

24 Q You are looking at Exhibit 419; correct?

25 A Correct, yes.

1 MR. PATTERSON: Why not?

2 (Cross-Defendants' Exhibit No. 423
3 was marked for identification.)

4 BY MR. HERREMA:

5 Q On Page 12, there's an identification of
6 what's identified as Issue Number 3. And it
7 says -- and I'll just tell you that this is a
8 document filed by the city of San Buenaventura
9 regarding what is going to be tried at the Phase one
10 trial which is now scheduled to start on February 14
11 in front of Judge Highberger.

12 This -- what we're looking at here
13 starting on line ten of Page 12.

14 You can see it on the screen, if you
15 wish -- is the city of Ventura's explanation of what
16 is at issue -- one of the issues for Phase one
17 trial.

18 And the question here is, "Is there an
19 interconnection between the surface water and
20 groundwater in the Ventura River Watershed,
21 including the interconnection between surface water
22 and the four groundwater basins, and the
23 interconnection between those groundwater basins and
24 the Ventura River and its tributaries."

25 Do you see that?

1 A I do, yes.

2 Q Okay. So you agree that surface water and
3 groundwater are interconnected within the Ojai
4 Basin, don't you?

5 A Within the southwest portion, the
6 groundwater within the perched groundwater bearing
7 zone does provide baseflow to the Lower Reach of San
8 Antonio Creek. So there is a connection there.

9 Q And then the perched zone within the
10 southwestern portion of the basin as it was in the
11 Bulletin 118 Ojai Basin; is that correct?

12 A That is correct.

13 Q Okay. And is it also your opinion that
14 water from San Antonio Creek or its tributaries
15 recharge the Ojai Basin?

16 A There are stormflows within San Antonio
17 Creek and its tributaries that provide recharge to
18 the Ojai Basin through bed seepage.

19 Q And it's also your opinion that
20 groundwater from the Ojai Basin contributes to San
21 Antonio Creek flows; is that correct?

22 A Within the southwest quadrant, yes. Where
23 there is a perched groundwater zone, that perched
24 groundwater zone does provide baseflow to San
25 Antonio Creek.

1 haven't done any detailed analysis specific to that
2 question.

3 Q Okay. What is the primary source of
4 discharge from the deeper aquifer?

5 A It would be groundwater pumping.

6 Q If the groundwater pumping ceased, what
7 would happen to the water levels in the aquifer, in
8 the deeper aquifer?

9 A So if the groundwater level cease
10 to -- and we actually see that in the winter months
11 when there is little pumping, the water levels
12 obviously rise in response to period -- for the
13 recharge that it's receiving during those wet
14 months.

15 Q Okay.

16 A So essentially, in the absence of pumping,
17 water levels go up.

18 Q And at some point, would they go up high
19 enough that they would provide baseflow to the Upper
20 Reach at the San Antonio Creek?

21 A That -- it does not appear to be so
22 considering the data that's available to date. What
23 seems to happen is during the months when there's no
24 pumping, the water levels rise up considerably as a
25 certain basin fills up quite quickly in response to

1 precipitation.

2 The water level in the deeper aquifer gets
3 to a point where it rises above that point where the
4 aquitard pinches out, that approximate 900-foot
5 above mean sea level elevation and in the streams at
6 that point, you do get seeps. You get springs and
7 seeps because that's the only point of discharge for
8 that time.

9 And obviously, then, that seep -- it
10 either -- what's observed in the basin or what is
11 documented by others who viewed those seeps is they
12 don't persist for very long. And the flow basically
13 either per collates or evaporates shortly after the
14 seep. It is not a contiguous flow that connects
15 with a lower portion of the San Antonio Creek.

16 Q Okay. But that -- that is in the
17 situation now where there is groundwater pumping.
18 And if there were no groundwater pumping and you had
19 those wet winters like you are talking B what would
20 happen to groundwater levels? Would they eventually
21 get to the -- a seepage point where they would
22 continue to seep until the water level reduced back
23 down below that point?

24 A Actually, they would rise to a point at
25 which basically the seeps -- assuming that -- past

1 the winter months, if we assume that in the summer
2 months, there was no pumping.

3 Q Right.

4 A So it's a continual period of nonpumping.

5 Q Right.

6 A Everyone in the basin left.

7 Q Right.

8 A And everyone stopped pumping. And it was
9 returned to a preEuropean development point.

10 Q Uh-huh.

11 A So the groundwater levels under that
12 scenario would rise to the point at which the seeps
13 in the rivers essentially would be maintained for
14 probably a slightly longer period. And eventually,
15 the rain stops and the basin stops recharging. But
16 the seeps would continue for a period until such
17 time as the groundwater levels declined again and no
18 longer with those seeps.

19 Q So you wouldn't call that baseflow because
20 it's -- it's not perennial but you might call
21 it -- is that right?

22 A So under those circumstances, assuming
23 there's no pumping of groundwater at all for an
24 extended period in the basin, there's no evidence
25 that I have seen that would indicate that

1 that -- even that would result in perennial
2 baseflow.

3 What you may see in certain reaches of San
4 Antonio Creek is what is defined as intermittent
5 baseflow at the moment because of -- you get those
6 little -- those -- in very wet years, you see those
7 seeps. But they hardly persist at all. It's not
8 even intermittent.

9 Q Uh-huh.

10 A But they may persist long enough where you
11 might say well, that is an intermittent period of
12 baseflow. But it would not -- unlike -- I have not
13 seen any indication it would be perennial.

14 Q Okay. Understood. So -- all right.

15 A We've been at it about an hour and ten.

16 Q Yeah.

17 A Can we --

18 Q Now is a good time.

19 A -- take a two-minute break?

20 Q We can take five.

21 (Recess taken.)

22 BY MR. HERREMA:

23 Q All right. Back on the record. When we
24 took our break, Mr. Brown, we were talking about a
25 hypothetical where there is a groundwater pumping

1 Yes, so a large portion of the city,
2 particularly the southern half of the city is in the
3 area where the perched groundwater zone exists.

4 Q Okay. So let's just assume -- let's set
5 up a hypothetical and assume that people in the city
6 who water their lawns despite best intentions for
7 water conservation -- there's return flow. That
8 goes into the perched aquifer; right?

9 A There would be some return flow that does
10 go into the perched aquifer, yes.

11 Q Okay. So now, also, let's set up a
12 hypothetical where Casitas pumps water from the deep
13 aquifer and sells it to customers in Ojai and those
14 customers use it not just for drinking and things of
15 that nature, but also to water their lawns.

16 That would be return flow into the perched
17 aquifer; right?

18 A Correct. So into that hypothetical, if
19 there was water pumped from the deep aquifer that
20 was then provided to customers who overlie the
21 perched zone and that water was used for landscape
22 irrigation, some portion of that -- I think
23 generally it's -- I'll assume 20 percent or less,
24 contributes return flow as a form of recharge.

25 Q Would that not be a form of a connection,

1 albeit manmade, between the perched and deep
2 aquifer?

3 MR. PATTERSON: Objection. Vague.

4 THE WITNESS: Under that scenario, you
5 would have created an anthropogenic connection where
6 essentially, you know, a small portion of the deeper
7 aquifer that had been pumped would act as a source
8 of recharge to the perched aquifer area.

9 BY MR. PISANO:

10 Q Okay. One more question about Figure 6.
11 And then we'll move on.

12 In the San Antonio Creek, so the straw
13 between the two buckets, evapotranspiration, that
14 goes back up into the heavens; right?

15 A Correct.

16 Q Where does the streambed infiltration go?

17 A Essentially, it would percolate into the
18 underlying vadose zone.

19 Q The underlying what?

20 A Vadose zone. So the year beneath the
21 creek that is not saturated essentially.

22 Q Would that sit above the perched aquifer
23 or the deep aquifer?

24 A No. That's above the deeper aquifer. So
25 this is an area upstream of the perched aquifer.

1 doesn't appear to be a clay layer.

2 There has been some seminal work done many
3 years ago on the movement of DNAPLS, which are dense
4 nonaqueous phase liquids that sink through
5 groundwater.

6 And even in what appears to be pure sand,
7 you see lateral movement across -- you know, real
8 subtle changes in grain size.

9 Q Okay. So given that this is a -- at least
10 the map shows it's relatively steep, I realize
11 there's vertical exaggeration going on here -- there
12 is potentially water that falls, goes into the
13 ground and then daylights again; correct?

14 A It only daylights -- we've talked about
15 the seeps that occur at 900 feet if the groundwater
16 level rises.

17 I'm not aware of any other daylight points
18 above that where we see percolating water actually
19 from the unsaturated sediment move laterally in
20 daylight.

21 It essentially moves vertically, recharges
22 the groundwater. As the groundwater rises in
23 response to that recharge, the groundwater level in
24 the deeper aquifer will get to that 900-foot point.
25 And then you potentially have that daylighting

1 during those wet winters we have been discussing.

2 Q Okay. We don't have much time. I don't
3 know if this is going to work.

4 You produced a new report on December 3;
5 correct?

6 A I did produce a supplemental report that
7 is essentially a rebuttal report.

8 Q And I think we have marked that as --

9 MR. HERREMA: 420?

10 MR. MELNICK: 420.

11 BY MR. MELNICK:

12 Q Can you look at Pages 6 and 7.

13 A (Witness complies.)

14 Q Is this a section -- I guess it begins on
15 Page 5 -- that you wrote or that Dr. Abrams wrote?

16 A The initial draft was prepared by
17 Dr. Abrams.

18 Q Okay. Notes 11 and 12 are in reference to
19 -- I believe it's a book by J. Bear?

20 A Yeah, Jacob Bear.

21 Q Did you or Dr. Abrams look at that book or
22 did you look at the Wikipedia pages that are
23 referenced here?

24 A I actually -- Dr. Abrams drafted it and
25 made reference to anticipating hydraulic

STATE OF CALIFORNIA)
)
) ss.

COUNTY OF LOS ANGELES)

I, Kristin Vargas, Certified Shorthand Reporter,
Certificate No. 11908 do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and the same is a true, correct, and complete transcript of said proceedings;

That if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript { } was { } was not required.

I further certify that I am not interested in the event of the action.

Witness my hand this 3rd day of January, 2022.

Kumar

KRISTIN VARGAS

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PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main Street, Suite 390, Walnut Creek, CA 94596. On March 2, 2022, I served the following document(s):

**DEFENDANT AND CROSS-COMPLAINANT CITY OF SAN BUENAVENTURA'S
PHASE ONE TRIAL BRIEF**

Exhibits A – H to City of San Buenaventura's Phase One Trial Brief can be accessed via the iManage Share Link below:

<https://www.imanageshare.com/pd/5Z1F2H8qQK0>

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22 I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct.

24 Executed on March 2, 2022 at Walnut Creek, California

25 
26 Irene Islas