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12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

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

Case No. 19STCP01176

16 Petitioner,

Judge: Honorable William F. Highberger

17 v.

CITY OF SAN BUENAVENTURA'S
OPPOSITION TO ANDREW K. WHITMAN,
HEIDI A. WHITMAN, NANCY L.
WHITMAN AND JOHN R. AND NANCY L.
WHITMAN FAMILY TRUST MOTION FOR
JUDGMENT ON THE PLEADINGS

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

20 Respondents.

21 CITY OF SAN BUENAVENTURA, etc.,

*[Concurrently filed with: Request For Judicial
Notice In Support of City of San
Buenaventura's Opposition to Whitman's
Motion For Judgment on the Pleadings]*

22 Cross-Complainant

23 v.

Date: January 18, 2022
Time: 1:30 p.m.
Dept: 10

24 DUNCAN ABBOTT, an individual, et al.

25 Cross-Defendants.

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

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1 Defendant and Cross-Complainant the City of San Buenaventura (Ventura) submits this
2 opposition to the motion for judgment on the pleadings (Motion) filed by Andrew K. Whitman, et
3 al. (Whitman).¹

4 **I. INTRODUCTION**

5 Whitman’s Motion focuses exclusively on the Sixth Cause of Action in Ventura’s Third
6 Amended Cross-Complaint (TACC). The Court must deny Whitman’s Motion because the
7 allegations in the TACC and the Sixth Cause of Action, which must be accepted as true for
8 purposes of the Motion, demonstrate that Ventura has standing to bring the Sixth Cause of Action
9 and that it has met the minimal pleading requirements for such a claim. The Sixth Cause of
10 Action, which merely employs the new procedures contained in the Comprehensive Adjudication
11 Statute (Code of Civil Procedure §§ 830 *et seq.*, the “Statute”) in part, is also entirely consistent
12 with the law of the case reflected in *Santa Barbara Channelkeeper v. City of San Buenaventura*
13 (2018) 19 Cal.App.5th 1176 (*Santa Barbara Channelkeeper*). That law of the case provides an
14 additional basis for denial of the Motion. Finally, the Sixth Cause of Action is not defective
15 because it includes both active water rights users and those who may have unexercised water
16 rights. Consistent with the Statute, applicable common law, and sound water management policy,
17 the Court is required to consider those unexercised water rights in this action.

18 Whitman’s Motion is really a premature motion for judgment that should be brought after
19 Ventura presents its evidence in the Phase One Trial, or in later phases of this case. The Court
20 should deny the Motion, hear the Phase One evidence, and make any applicable legal
21 determinations based on a full evidentiary record.² To do otherwise, would constitute reversible
22 error.

26 ¹ This opposition applies with equal force to all timely and proper joinders to the Motion, including, but not limited
27 to, the joinder filed by Cross-Defendants Claude R. and Patricia E. Baggerly, to the extent the Court considers those
joinders to be timely and proper.

28 ² Alternatively, the Court could defer this Motion until after the Phase One Trial evidence is presented.

1 **II. STANDARD OF REVIEW**

2 The rules governing a motion for judgment on the pleadings are the same as a demurrer,
3 which tests the sufficiency of the pleadings. (Code Civ. Proc., § 438; *Southern Calif. Edison Co.*
4 *v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.)³ In reviewing the Motion, the Court is
5 limited to the contents of the TACC and those matters of which it can take judicial notice.
6 (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.) “As on demurrer, the
7 defendant’s motion cannot be aided by reference to the answer or to matters outside the
8 complaint.” (*Welshans v. City of Santa Barbara* (1962) 205 Cal.App.2d 304, 305.)

9 Because a motion for judgment on the pleadings is the functional equivalent of a general
10 demurrer, it ordinarily does not lie with respect to only part of a cause of action. (*Daniels v.*
11 *Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167.) Thus, where a claim may be
12 based on alternative grounds, one of which is properly pleaded, the motion will ordinarily be
13 denied. (See *Fire Ins. Exch. v. Superior Court (Altman)* (2004) 116 Cal.App.4th 446, 451.) The
14 Motion violates this rule. It addresses only parts of the Sixth Cause of Action, specifically the
15 parts of that claim related to the Ojai and Upper Ojai Basins. The Motion does not appear to
16 dispute Ventura’s right to divert water from the Ventura River or from the Upper Ventura River
17 Sub-Basin or the Lower Ventura River Sub-Basin. (Motion, p. 3, lines 6-15.) Thus, the Motion
18 only addresses part of the Sixth Cause of Action and can be denied on this basis alone.

19 In ruling on a motion for judgment on the pleadings, the Court “must assume that all the
20 facts alleged in the complaint are true” and must interpret all allegations liberally. (*Sheehan v.*
21 *San Francisco 49ers, LTD.* (2009) 45 Cal.4th 992, 998, citing *Evans v. City of Berkeley* (2006) 38
22 Cal.4th 1, 6.) “The trial court is obligated to look past the form of a pleading to its substance.
23 Erroneous or confusing labels attached . . . are to be ignored if a complaint pleads facts which
24 would entitle the plaintiff to relief.” (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) The

25 _____
26 ³ Whether the Motion is proper under the timelines required by Code of Civil Procedure section 438 or whether it is
27 intended to be a non-statutory motion is unclear. In either case, given that the Phase One Trial is imminent, the
28 Motion should be denied, and the Court should decide any legal questions based on a full factual record, if for no
other reason than to avoid the need for multiple additional appeals in a case that has been pending since 2014, that
has already resulted in one published decision, but has yet to proceed to even an initial phase of trial.

1 motion must be denied if there are material factual issues that require evidentiary resolution.
2 (*Schabarum v. California Legislature* (1998) 60 Cal. App. 4th 1205, 1216.) Where the motion
3 for judgment on the pleadings is granted, leave to amend must also be granted unless the defect
4 cannot be cured by amendment. (*Baughman v. State of California* (1995) 38 Cal.App.4th 182,
5 187.) Under these standards, the Sixth Cause of Action in the TACC states a valid cause of
6 action, and Ventura is entitled to proceed to the Phase One Trial on the interconnectedness of the
7 Watershed.

8 **III. VENTURA'S OBJECTIONS**

9 Whitman's Motion does not fully or fairly present the material allegations of the TACC,
10 and seeks instead to introduce unsupported factual allegations that do not appear on the face of
11 the TACC and which are not the subject of a proper and timely request for judicial notice. The
12 Court cannot consider any allegations that are not apparent on the face of the TACC. Ventura
13 objects to and requests that the Court disregard all such allegations that are not apparent on the
14 face of the TACC, including, but not limited to: (1) allegations regarding Whitman's use of water
15 and its impact on the Watershed; (2) allegations regarding the hydrology of the Upper Ojai and
16 Ojai Basins; (3) allegations regarding Ventura's use of water, conservation efforts, and its
17 motives in bringing the TACC; and (4) all other assertions in the moving papers that are not
18 supported by proper references to the TACC or a proper and timely request for judicial notice.

19 Some of these factually contested allegations that are subject to proof in the future may be
20 proper for Whitman to raise in the Phase One Trial or in future phases of this litigation. They are
21 not proper to raise in this Motion.

22 **IV. THE MATERIAL ALLEGATIONS IN THE TACC THAT MUST BE ACCEPTED** 23 **AS TRUE**

24 The Court is well aware of the procedural history of this case and the general factual
25 background of the dispute. For purposes of this Motion, the Court must assume that the
26 following factual allegations from the TACC are true.

27 The Ventura River Watershed is located in western Ventura County, with a small section
28 located in eastern Santa Barbara County, is fan-shaped, and covers 226 square miles. (TACC,

1 ¶ 98.) The Ventura River runs through the center of the Watershed along a 33.5-mile stretch from
2 its headwaters in the Transverse Ranges to the Pacific Ocean. (TACC, ¶ 99.) The Ventura River
3 is fed by several major tributaries, including Matilija Creek, North Fork Matilija Creek, San
4 Antonio Creek, Canada Larga Creek, and Coyote Creek. (TACC, ¶ 100.) There are four
5 significant groundwater basins in the Watershed—the Lower Ventura Groundwater Basin, the
6 Upper Ventura River Groundwater Basin, the Ojai Valley Groundwater Basin, and the Upper Ojai
7 Valley Groundwater Basin. (TACC, ¶ 103.) The Ventura River and its tributaries and the four
8 groundwater basins in the Watershed are hydrologically interconnected. (TACC, ¶ 103.)

9 Ventura holds pueblo, prescriptive, and/or appropriative rights to the waters in the
10 Watershed. (TACC, ¶ 107.) Ventura is a successor to the Mission San Buenaventura pueblo
11 water right, which gives it a priority right to use sufficient water from the Ventura River
12 Watershed, which by definition includes the Ojai Basin, to meet its needs. (TACC, ¶¶ 107, 124-
13 126.) Ventura also holds pre-1914 appropriative water rights. (TACC, ¶¶ 107, 135.) Ventura’s
14 use of water in the Watershed has also resulted in Ventura obtaining prescriptive water rights.
15 (TACC, ¶ 107, 130.) Ventura’s water rights in the Watershed are senior to and have priority over
16 the rights of all Cross-Defendants. (TACC, ¶¶ 126, 131, 135-136, 143, 149-150.)

17 Cross-Defendants’ claims to the Watershed threaten Ventura’s superior rights, and the
18 pumping and/or diversion activities of Cross-Defendants reduce Watershed groundwater tables
19 and surface flows and contribute to the deficiency of the Watershed water supply as a whole.
20 (TACC, ¶ 108.) Cross-Defendants’ use of water, or claims of rights to the use of water, reduces
21 the surface and/or subsurface water flow of the Ventura River and impairs Ventura’s water rights.
22 (TACC, ¶¶ 105, 108-110.) This continued and increasing extraction and/or diversion of
23 Watershed waters has and will deprive Ventura of its rights to provide water for the public health,
24 welfare, and benefit. (TACC, ¶ 110.) Ventura’s use of Watershed water is reasonable and
25 consistent with the public trust as compared to the use of Watershed water by the Cross-
26 Defendants. (TACC, ¶ 115, 120-121, 154.)

27 The TACC names various Cross-Defendants and interested persons in paragraphs 3-97.
28 Specifically named Cross-Defendants are found in paragraph 3-93. Paragraphs 94 and 95 address

1 unnamed claimants who are overlying landowners or interested persons located in the Watershed,
2 including in the groundwater basins, who claim an interest to divert, pump, extract, or store water.
3 These claimants were provided notice pursuant to the Court-approved notice of adjudication.
4 (TACC, ¶ 94; Request for Judicial Notice in Support of the City of San Buenaventura’s
5 Opposition to Whitman’s Motion for Judgment on the Pleadings (RJN), Exs. 1-2.) The Whitman
6 parties elected to become parties by filing form answers after receiving the Court-approved
7 notice. (RJN, Exs. 2-4.⁴) Whitman is therefore an appearing party subject to all allegations in the
8 TACC.

9
10 **V. LEGAL ARGUMENT**

11 **A. The TACC Alleges that Ventura Has Standing**

12 The Motion asserts that Ventura lacks standing to bring the Sixth Cause of Action, at least
13 as to the part of the claim addressing the Ojai and Upper Ojai Basins. However, in making this
14 assertion, the Motion ignores or improperly misstates the allegations in the TACC that must be
15 taken as true, the law of the case regarding Ventura’s standing, and the applicable common and
16 statutory law. Beyond question, the TACC demonstrates that Ventura has at least two grounds
17 for standing—(1) its right to protect any and all of its downstream water rights against
18 impairment by upstream users or potential users of groundwater and surface water and (2) its
19 pueblo or treaty rights, which extend to the Ojai and Upper Ojai Basins and are superior to all
20 other rights within those Basins.

21 Notably, Whitman does not actually set forth any law regarding what he contends to be
22 the legal requirements for standing, or explain how the TACC fails to allege sufficient facts to
23 establish standing under those requirements. “At its core, standing concerns a specific party’s
24 interest in the outcome of a lawsuit.” (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241,
25

26 _____
27 ⁴ The assessor parcel numbers identified by the Whitman parties in their form answers (RJN, Exs. 3-4) are included
28 in Exhibit A to the Declaration of Sarah Christopher Foley in Support of Notice of Completion of Mailing pursuant
to Code of Civil Procedure, Section 836, subdivision (e) filed on April 15, 2021 (RJN Ex. 2) as parcels that were
provided notice in compliance with the Court’s Order (RJN, Ex. 1).

1 1247.) Further, even if there is a doubt regarding standing, California courts have discretion to
2 hear cases to reach important constitutional interests. (*Collier v. Lindley* (1928) 203 Cal. 641,
3 645; *California Water & Tel. Co. v. Los Angeles County* (1967) 253 Cal.App.2d 16, 26 [“the
4 public interest requires that there be an adjudication to settle the constitutional question here
5 presented ... that the amenability of water utilities to local control is a matter of substantial public
6 concern. Were there any doubt about the justiciability of the controversy, that doubt would be
7 resolved in favor of present adjudication, because the public is interested in the settlement of the
8 dispute”].)

9 In the water law context, all that is really required is a basic claim to some beneficial
10 interest in the water in question and, if protection of that interest is sought in addition to
11 declaratory relief, a claim that a subordinate or unreasonable use is or may likely interfere with
12 that interest. (*Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489,
13 529-530 (*Tulare Irrigation Dist.*); *People v. Los Angeles* (1950) 34 Cal.2d 695, 701; *Pasadena v.*
14 *Alhambra* (1949) 33 Cal.2d 908, 924; *Orange County Water Dist. v. City of Riverside* (1959) 173
15 Cal.App.2d 137, 167-171 (*Orange County Water Dist.*); *Coachella Valley Co. Water Dist. v.*
16 *Stevens* (1928) 206 Cal. 400, 410; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d
17 419, 431, fn. 11 (*National Audubon Society*)). Indeed, courts have found sufficient standing
18 under these minimal standing requirements when actions are brought in a representative capacity
19 on behalf of other rights holders (*Orange County Water Dist., supra*, 173 Cal.App.2d at 167-171),
20 or even when members of the public who do not have a water right claim sue to protect public
21 trust interests (*National Audubon Society, supra*, 33 Cal.3d at 431, fn. 11). Where, as here, a
22 party has both a claim that its rights are being impaired by upstream use and that it has senior
23 rights to water, including specific rights to water in a basin that is at issue, standing is clearly
24 evident, and Whitman cites no case to the contrary.

25 The new procedures in the Statute do not in any way heighten these minimal standing
26 requirements, as there are no express standing requirements to commence an adjudication using
27 the process in the Statute. All that is required is for the “plaintiff” who can be any “person” to
28 file a “complaint.” (Code Civ. Proc., § 832, subs. (b), (j) and (k).) Such a “complaint” initiates

1 a comprehensive adjudication to determine rights to extract groundwater “whether based on
2 appropriation, overlying rights, *or other basis of right.*” (Code of Civ. Proc., §§ 832, subd. (b)
3 and 833, subd. (a), emphasis added.)⁵

4 The TACC alleges multiple factual bases for Ventura’s standing, including, but not
5 limited to, superior priority water rights that extend to the Ojai and Upper Ojai Basins. These
6 allegations more than satisfy California’s minimal standing requirements. The Court must accept
7 as true the allegations in the TACC that Ventura holds pueblo, prescriptive, and pre-1914
8 appropriative water rights to water in the Watershed, which as alleged, includes the rights in the
9 interconnected groundwater basins, including the Ojai and Upper Ojai Basins. (TACC, ¶¶ 103,
10 107, 124.) The Court must also accept as true the allegations in the TACC that the Cross-
11 Defendants’ pumping and diversions and/or their conflicting claims to the Watershed and/or its
12 water impair Ventura’s rights, are unreasonable, and are contrary to the public trust doctrine.
13 (TACC, ¶¶ 106, 108-110, 115-116, 122.) The Court must additionally accept as true Ventura’s
14 allegation that the exercise of its water rights is reasonable and consistent with the public trust
15 doctrine as compared to the water uses of the Cross-Defendants. (TACC, ¶¶ 115, 121, 154.)
16 Additionally here, the public interest requires that there be an adjudication to settle the
17 constitutional questions here presented—that “[a]n adjudication is necessary to protect and
18 conserve the limited water supply that is vital to the public health, safety, and welfare of all
19 persons and entities that depend upon waters from the Watershed and to ensure the reasonable
20 use, pursuant to Article X, section 2 of the California Constitution, of the waters in the
21 Watershed.” (TACC ¶ 2.)

22 The Court of Appeal has already held that Ventura has standing to sue other water users
23 who divert from the Ventura River or pump from the surrounding groundwater basins based on
24 these allegations. (*Santa Barbara Channelkeeper, supra*, 19 Cal.App.5th at 1188, 1193.) This
25 law of the case is consistent with multiple adjudications that have been brought by downstream

26
27 ⁵ Overlying and appropriative rights to groundwater are not the exclusive basis for standing in a groundwater
28 adjudication, as stated in the Statute, as discussed more fully below, and as recognized at common law. (*See generally, City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266.)

1 water rights holders against upstream water users to protect their water rights. (*See, e.g., City of*
2 *Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1234 (*Mojave*) [noting that “the City of
3 Barstow and the Southern California Water Company (plaintiffs) filed this action against the City
4 of Adelanto, the Mojave Water Agency (MWA), *and other upstream water producers*, claiming
5 that their groundwater production was adversely impacting plaintiffs’ water supply,” emphasis
6 added].) Under this authority alone, the allegations of the TACC establish Ventura’s standing.
7 Ventura has the right to protect its water rights from impairment by the actions of upstream water
8 users (surface and groundwater) whom it alleges to have junior rights or whose use is
9 unreasonable or inconsistent with the public trust doctrine.

10 In addition, Ventura alleges that it holds pueblo or treaty rights, which give it a superior
11 priority water right to use sufficient water from the Ventura River Watershed, including the
12 groundwater basins, to meet its needs. Pueblo water rights are prior and paramount to any water
13 rights recognized under California law. (*Los Angeles v. San Fernando* (1975) 14 Cal.3d 199,
14 210-211 (*San Fernando*)). They are held by municipal successors to Mexican and Spanish
15 pueblos, and they give that city the highest claim to waters that are required to satisfy the present
16 and future needs of the city and its inhabitants. (*Los Angeles v. Glendale* (1943) 23 Cal.2d 68,
17 74-75.) The pueblo right takes priority over all other rights in the water source, and it applies to
18 both surface water and contributory groundwater. (*Id.*; *San Fernando, supra*, 14 Cal.3d 199.)
19 Thus, Ventura’s allegation of pueblo rights is more than sufficient to satisfy even Whitman’s
20 erroneous interpretation of the requirements for standing in this action.

21 Whitman cites no case that limits standing in a groundwater adjudication to overlying and
22 appropriative rights holders, and no such requirement is contained in the Statute. In fact, the
23 Statute contains no express standing requirements at all and provides that in a comprehensive
24 adjudication, rights to be determined can include rights based on “appropriation, overlying rights,
25 *or other basis of right.*” (Code Civ. Proc., § 833, subd. (a), emphasis added.) Ventura’s
26 allegation that it holds pueblo or treaty rights to the waters in the Watershed therefore establishes
27 sufficient standing as to the interconnected Ojai Basin. (*See, e.g., City of Los Angeles v. Hunter*
28 (1909) 156 Cal. 603, 607 [holding that the pueblo right of the City of Los Angeles extended to the

1 waters of the Los Angeles River and the groundwater of the San Fernando Valley supplying the
2 river].) Ventura’s claim to a pueblo right is without question a claim to a right based on an “other
3 basis of right.”⁶

4 The allegations of the TACC establish that Ventura has standing to bring the Sixth Cause
5 of Action contained in the TACC, including, but not limited to, Ventura’s right to protect its
6 downstream water rights from impairment by upstream users and its superior pueblo or treaty
7 rights that extend to the Ojai and Upper Ojai Basins. If necessary, these allegations will be
8 established through the various phases of trial, if they are contested, but they are more than
9 sufficient to overcome a motion for judgment on the pleadings. The Court should hear the Phase
10 One evidence and make any legal determinations after hearing all the evidence.

11
12 **B. Ventura Alleges a Cause of Action for a Comprehensive Adjudication and**
13 **Physical Solution**

14 In addition to Ventura’s other causes of action, the Sixth Cause of Action seeks an
15 adjudication and physical solution under Article X, section 2 of the California Constitution and
16 using the new procedures contained in the Statute, which expressly preserves the common law on
17 such adjudications. A comprehensive adjudication is an action filed in superior court to
18 comprehensively determine rights to extract groundwater in a basin, and may include an
19 interconnected surface water body or subterranean stream flowing through known and definite
20 channels when necessary for the fair and effective determination of the groundwater rights in a
21 basin. (Code Civ. Proc., §§ 832, subd. (c) and 833, subd. (c).) A comprehensive adjudication is
22 any one that would “comprehensively determine rights to extract groundwater in a basin, whether
23 based on appropriation, overlying rights, *or other basis of right.*” (Code Civ. Proc., § 833, subd.
24 (a), emphasis added.)

25
26 _____
27 ⁶ In addition to pueblo and prescriptive rights, “other basis of right” include claims based on public trust and
28 reasonable use. (*National Audubon Society, supra*, 33 Cal.3d at 448-450 [interpreting the phrase “or other basis of
right” in Water Code section 2501 to include things like the public trust that are not a “water right” in the technical
sense of that term].)

1 There are no special pleading requirements for the initiation of a comprehensive
2 adjudication; all that is required is for the “plaintiff” to file a “complaint.” “Plaintiff” is defined
3 to mean “the person filing the complaint initiating a comprehensive adjudication and includes a
4 cross-complainant who initiates a comprehensive adjudication by cross-complaint.” (Code Civ.
5 Proc., § 832, subd. (k).) “Person” includes, but is not limited to, “counties, local agencies, state
6 agencies, federal agencies, tribes, business entities, and individuals.” (Code Civ. Proc., § 832,
7 subd. (l).) “Complaint” means “a complaint filed in superior court to determine rights to extract
8 groundwater and includes any cross-complaint that initiates a comprehensive adjudication in
9 response to a plaintiff’s complaint or other cross-complaint.” (Code Civ. Proc., § 832, subd. (b).)

10 Thus, all that is required to bring a comprehensive adjudication is to file a complaint in
11 superior court. There are no specific or heightened pleading requirements in the statute as alleged
12 in the Motion. The Sixth Cause of Action in the TACC seeks a comprehensive adjudication and
13 physical solution and more than meets the minimal pleading requirements for such a claim. The
14 TACC alleges that it “seeks a judicial determination of rights of all water within the Ventura
15 River Watershed (“Watershed”), *including a comprehensive adjudication of the waters of the*
16 *Ventura River and the groundwater basins located within the Watershed and their interconnected*
17 *surface waters and for the imposition of a physical solution.” (TACC, ¶ 1, emphasis added.)*
18 Paragraphs 138-141 expressly seek a comprehensive adjudication and physical solution. Among
19 other things, Ventura seeks “a physical solution among City and Cross-Defendants regarding their
20 respective uses of surface and/or subsurface water and groundwater affecting the Ventura River.”
21 (TACC, ¶ 141.) This is all that is required to allege a comprehensive adjudication using the
22 procedures contained in the new statute.

23 Whitman’s contention that Ventura must specifically allege the unreasonableness of each
24 Cross-Defendant’s water use finds no support in the law or statutes and would be an entirely
25 infeasible pleading standard given the nature of a comprehensive adjudication. For example,
26 Ventura did not expressly name Whitman; Whitman elected to appear in the action based on
27 receiving the Court-approved notice and his ownership of land in the Ojai and Upper Ojai Basins.
28 (TACC, ¶¶ 93-94; RJN, Exhibits 2-4.) Ventura had no knowledge of any specific allegations

1 regarding Whitman's individual use prior to his decision to enter the lawsuit. When Whitman
2 elected to appear in the action, he became a Cross-Defendant subject to the allegations in the
3 TACC that his use or threatened use was unreasonable as compared to Ventura's, that his use or
4 threatened use violated the public trust as compared to Ventura's, that his rights were junior to
5 Ventura's and that the exercise or threatened exercise of his rights impaired the superior rights of
6 Ventura. These allegations apply to Whitman and are more than sufficient to support a
7 comprehensive adjudication. Specific individualized pleading is not required for each Cross-
8 Defendant as asserted in the Motion and would be an entirely unworkable and unreasonable
9 standard. In any case, the Statute does not establish any heightened pleading requirements.

10 A core component of the Sixth Cause of Action is a request for a physical solution.
11 Consistent with Article X, section 2 of the California Constitution and as also embodied in Code
12 of Civil Procedure section 849, subdivision (a), this Court has the authority and the duty to
13 impose a physical solution on the parties in a comprehensive adjudication where necessary and
14 consistent with Article X, section 2. To fulfil this duty under the Constitution, the Court must
15 hold an evidentiary hearing. (*Hillside Memorial Park & Mortuary v. Golden State Water Co.*
16 (2011) 205 Cal.App.4th 534, 549-550.) Because Ventura has met the minimal pleading
17 requirements for a comprehensive adjudication, the Court must proceed to hear the Phase One
18 evidence regarding interconnection, and thereafter consider the physical solution. Whitman's
19 Motion must therefore be denied.

20
21 **C. The Sixth Cause of Action is Consistent with the Scope of the Law of the Case**

22 Whitman's Motion (unlike the two other motions for judgment), at least properly
23 recognizes that the law of the case, as reflected in *Santa Barbara Channelkeeper, supra*, 19
24 Cal.App.5th 1176, allows Ventura to bring an action against at least certain Cross-Defendants.
25 However, Whitman's attempt to narrowly read the law of the case is not supported by the
26 decision, or sound water management policy, and Ventura's use of the new procedures in the
27 Statute is consistent with the Court of Appeal's decision.

1 The doctrine of the “law of the case” addresses the effect of a first appellate decision on
2 the subsequent retrial or appeal of that case. The law of the case doctrine provides that “a
3 decision of an appellate court, stating a rule of law necessary to the decision of the case,
4 conclusively establishes that rule and makes it determinative of the rights of the same parties in
5 any subsequent retrial or appeal in the same case.” (*Morohoshi v. Pacific Homes* (2004) 34
6 Cal.4th 482, 491.)⁷

7 Here, the Court of Appeal has already determined that Ventura is *entitled* to have its
8 cross-complaint heard on the merits, and that the Court *must* consider the water uses of others in
9 the Watershed. (*Santa Barbara Channelkeeper, supra*, 19 Cal.App.5th at 1181.) Contrary to
10 Whitman’s contention, these other users include “those who pump from surrounding groundwater
11 basins” and water that “*can be* pumped from the watershed’s groundwater basins. (*Ibid.*,
12 emphasis added.) This would include both current and future users of the Watershed and those
13 who may claim rights to the Watershed. The Court of Appeal also cites with approval to *In re*
14 *Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, which expressly addresses
15 unexercised rights in a stream adjudication and the power to subordinate those rights to rights that
16 are currently being exercised. (*Id.* at 1192.) The Legislature expressly approved the courts’
17 application of the principles established in *In re Waters of Long Valley Creek Stream System* in
18 comprehensive adjudications. (Code Civ. Proc., § 830, subd. (b)(7).)

19 It would be nonsensical to exclude from the scope of the adjudication those who claim a
20 right to pump but who may not currently be pumping because future new or expanded pumping
21 activities could undermine the effort to address the issues in the Watershed. (See *Antelope Valley*
22 *Groundwater Cases* (2021) 62 Cal.App.5th 992, 1032 [upholding a physical solution that
23 subordinated the future exercise of correlative rights by nonpumpers].) Ventura alleges that
24 Cross-Defendants’ continued or increasing extractions or *threatened* increased extractions are
25 unreasonable, violate the public trust, impair the Ventura’s right, and contribute to the challenges
26

27 ⁷ Whitman falls within the Roe Cross-Defendant party group in Ventura’s original Cross-Complaint that was subject
28 to the Court of Appeal decision.

1 in the Watershed. (TACC, ¶¶ 108-110.) This is sufficient to bring Whitman within the scope of
2 the law of the case, and the Motion must be denied.

3
4 **D. The Sixth Cause of Action Properly Applies to Dormant Rights Holders**

5 The TACC, including the Sixth Cause of Action, properly applies to all parties who claim
6 a right to the waters in the Watershed, whether or not they are currently exercising those rights.
7 Whitman’s contention to the contrary is misplaced. Actual extraction is unnecessary to be a
8 proper party in an adjudication. (*Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th
9 992.) In *Antelope Valley*, the Court upheld a physical solution that subordinated nonpumpers’
10 future exercise of water rights to public water suppliers’ prescriptive rights and also to overlying
11 owners who were currently pumping. (*Id.* at 1030.) The nonpumpers were proper parties in the
12 case. Specifically, “the protection of the interests of correlative rights holders who are actually
13 using all available water for reasonable and beneficial purposes may (under appropriate
14 circumstances) permit a court to craft a physical solution which recognizes the rights held by
15 overlayers but subordinates any future use by those correlative rights holders to their fellow
16 correlative rights holders who are presently using the available supply.” (*Id.* at 1032.) For these
17 reasons, Whitman is a proper party whether or not he is currently pumping.

18 Including dormant rights holders, both riparian rights holders and overlying rights holds,
19 is expressly permitted by the only change to the common law that is recognized in the Statute.
20 Code of Civil Procedure section 830, subdivision (b)(7), expressly provides that in a
21 comprehensive adjudication the “court may consider applying the principles established in *In re*
22 *Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339.” In fact, the Statute is
23 designed to provide a sufficient basis for the court “to determine and establish the priority of
24 unexercised water rights.” In *In re Waters of Long Valley Creek Stream System*, the California
25 Supreme Court held that the priority of dormant riparian rights could be subordinated to the rights
26 of presently exercised riparian and appropriative rights. (*In re Waters of Long Valley Creek*
27 *Stream System*, (1979) 25 Cal.3d at 358-359.) The Supreme Court reached this conclusion in part
28

1 because uncertainty about such unexercised water rights has pernicious effects, including
2 inhibiting long range planning and fostering recurrent, costly, and piecemeal litigation. (*Id.* at
3 355-356.) By expressly stating that a court in a comprehensive adjudication may consider
4 applying the principles of *In re Waters of Long Valley Creek Stream System*, the Legislature
5 validated one ruling under the common law applicable to groundwater and expressly clarified
6 courts can address dormant rights in a groundwater adjudication.⁸ Therefore, the Sixth Cause of
7 Action properly includes all water rights claimants, including those who are currently exercising
8 their rights and those who are not and who may claim dormant rights.

9 **VI. THE MOTION DOES NOT INCLUDE A DECLARATION THAT WHITMAN**
10 **SATISFIED THE MEET AND CONFER REQUIREMENTS FOR A MOTION**
11 **FOR JUDGMENT ON THE PLEADINGS**

12 “Before filing a motion for judgment on the pleadings ... the moving party shall meet and
13 confer in person or by telephone with the party who filed the pleading that is subject to the
14 motion for judgment on the pleadings for the purpose of determining if an agreement can be
15 reached that resolves the claims to be raised in the motion for judgment on the pleadings.” (Code
16 Civ. Proc., § 439, subd. (a).) The parties shall meet and confer at least five days before the date a
17 motion for judgment on the pleadings is filed. (Code Civ. Proc., § 439, subd. (a)(2).) Whitman
18 did not file a supporting declaration regarding this requirement.

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27 ⁸ At least one previous case had declined to apply the principles of *In re Waters of Long Valley Stream System* to a
28 groundwater adjudication. (*Wright v. Goleta Water District* (1986) 174 Cal.App.3d 74.)


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VII. CONCLUSION

For all the reasons set forth above, the Motion must be denied.

Dated: January 4, 2022

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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 January 4, 2022, I served the following document(s):

CITY OF SAN BUENAVENTURA’S OPPOSITION TO ANDREW K. WHITMAN, HEIDI A. WHITMAN, NANCY L. WHITMAN AND JOHN R. AND NANCY L. WHITMAN FAMILY TRUST MOTION FOR JUDGMENT ON THE PLEADINGS

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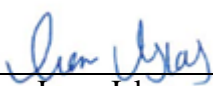
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 4, 2022 at Walnut Creek, California



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