

1 **MUSICK, PEELER & GARRETT LLP**

2 2801 Townsgate Road, Suite 200
3 Westlake Village, California 91361
4 Telephone (805) 418-3100
5 Facsimile (805) 418-3101

6 Gregory J. Patterson (State Bar No. 136665)
7 g.patterson@musickpeeler.com
8 William W. Carter (State Bar No. 115487)
9 w.carter@musickpeeler.com

10 Attorneys for The Thacher School; Friend's Ranches, Inc.; Topa Ranch & Nursery, LLC;
11 Finch Farms, LLC; Red Mountain Land & Farming, LLC; Thacher Creek Citrus, LLC; The Finch
12 Family Trust; James P. Finch; Robert Calder Davis, Jr.; Robert Calder Davis, Jr., TTEE of Trust
13 Owned Properties; Sharon H. Booth, Trustee of The Survivor's Trust Created Under Declaration
14 of Trust of Richard G. Booth and Sharon H. Booth Dated July 10, 1980; David Robert Hamm and
15 Reeves Orchard, LLC (collectively, the "East Ojai Group")

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**

18 **SANTA BARBARA CHANNELKEEPER, a**
19 **California non-profit organization**

20 **Petitioner,**

21 **vs.**

22 **STATE WATER RESOURCES CONTROL**
23 **BOARD, a California State Agency; CITY OF**
24 **SAN BUENAVENTURA, a California**
25 **municipal corporation,**

26 **Respondents.**

27 **CITY OF SAN BUENAVENTURA, etc.,**

28 **Cross-Complainant,**

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

CASE No. 19STCP01176

Judge: Hon. William F. Highberger

EAST OJAI GROUP'S TRIAL BRIEF

Action Filed: September 19, 2014

First Amended Complaint Filed:

September 7, 2018

Trial Date (Phase One): March 16, 2022

1 **I. INTRODUCTION.**

2 The East Ojai Group consists of seven (7) parties, all of whom have longstanding
3 overlying water rights in one of the four (4) groundwater basins involved in this case, referred to
4 as the Ojai Valley Groundwater Basin ("Ojai Basin"). With the exception of the Thacher School,
5 the members of the East Ojai Group all own and maintain agricultural interests, primarily growing
6 citrus and avocado crops. The members all have groundwater wells located in a geologic unit
7 known as the "deep" or "deeper" and "confined" aquifer located in the Ojai Basin.

8 The presentation of their case will focus on the lack of any material connectivity between
9 the deep confined aquifer and surface water flows within Ojai Basin, including in San Antonio
10 Creek. to demonstrate that these members should not be parties in the instant action, and more
11 importantly, in the City of Buenaventura's ("City") proposed Physical Solution, which seeks
12 primarily to increase flow in reaches 3 and 4 in the lower Ventura River and improve Steelhead
13 habitat ("Physical Solution"). A copy of the map showing the location of the wells used by the
14 East Ojai Group is attached as Exhibit A. The Ojai Basin is currently being managed by the Ojai
15 Valley Groundwater Management Agency under the California Sustainable Groundwater
16 Management Act (SGMA).

17 The City seeks the imposition of the Physical Solution requiring all parties to pay for the
18 Steelhead fishery habitat improvements under the guise of a "water rights" case. In reality, the
19 purpose of the City's case and the proposed Physical Solution is to inappropriately and unfairly
20 spread the cost of the underlying lawsuit filed by Santa Barbara Channelkeeper against the City
21 and the State Water Resources Control Board ("State"). That underlying lawsuit only alleges that
22 the City's pumping and diversion of water in reaches 3 and 4 of the Ventura River (as defined in
23 the lawsuit) reduce flow during the summer months to the detriment of the Steelhead fishery
24 habitat.

25 The current phase of this trial ("Phase One") is intended to address the issue of whether or
26 not there is sufficient "connectivity" between the four basins and surface water flow within the
27 Ventura River Watershed to allow the City to continue to pursue its case against the hundreds of
28 parties it has sued. There remains, however, significant disagreement as to the burden of proof the

1 City must show to establish "hydrological connection" in this phase. Notwithstanding the Court of
2 Appeal's holding in *Santa Barbara Channelkeeper v. City of San Buenaventura et al.* (2018) 19
3 Cal.App.5th 1176, the City appears to take the position that "any" connectivity is all it must show
4 in this phase of the trial and that it does not need to show that there is any material connection
5 between groundwater pumping and surface water flow in the river, and specifically, that water use
6 impairs the flow in reaches 3 and 4 in the summer months to the harm of the fishery. More
7 specifically, the City is claiming that merely "one drop" of water need make its way from any of
8 the four basins into the Ventura River in order to establish that there is "one common source" of
9 water in satisfaction of its burden. Or, as has been suggested by the City, if no human had ever
10 lived in the watershed and there was no groundwater pumping whatsoever, there would be more
11 water in the river at some point in time, depending on the rainfall in any given year. The City, in
12 essence, seeks to remove any nexus or proximate cause between water use and the harm alleged in
13 the underlying Channelkeeper complaint and indeed, in its own cross-complaint. In a nutshell,
14 according to the City, if a person uses any amount of water taken from anywhere in the basins and
15 watershed, that person is responsible for paying to restore fish habitat that the City damaged
16 through its activities on the lower Ventura River.

17 As discussed below, this position goes far beyond the holding in *Santa Barbara*
18 *Channelkeeper*, which allows the City to pursue this case only against those parties who are
19 responsible for "reduced water flow in reaches 3 and 4 (as defined in the underlying lawsuit)
20 during the summer months." (*Id.* at 1190.) The issue of interconnectivity must also be viewed in
21 the context of this case and the claims asserted by the City. The City's position is also contrary to
22 this Court's Order dated February 8, 2022, in which the Court specifically referenced this language
23 (Order p.3) and its Order of February 14, 2022, wherein the Court similarly noted that the burden
24 for Phase One is more than mere interconnectivity, but rather, noted that the burden is "material
25 interconnectedness." (Order, paragraph 14).

26 This Court should therefore reject the City's notion of its proposed minimal burden of
27 proof and require that there be a material and quantified showing of interconnectivity consistent
28 with the ruling by the Court Appeal, which is the law of the case. That definition and burden of

1 proof should take into account the genesis of this case and the specific ruling in the *Channelkeeper*
2 decision. It is simply a waste of time if the City need only show "any" connection. Rather, the
3 City must quantify any alleged connection and show that it is harming the fishery in reaches 3 and
4 4 during the summer months, as directed by the Court of Appeal.

5 It is the East Ojai Group's position, based on actual groundwater data and their expert,
6 Anthony Brown, as well as the experts for the City of Ojai and Casitas Municipal Water District,
7 that because of the confined nature of the portion of the Ojai Basin from which they extract water,
8 namely, the deep confined aquifer, their respective groundwater pumping has no effect on the
9 surface water flow of the Ventura River in reaches 3 and 4 and even its tributaries, including San
10 Antonio Creek, in the summer months. These opinions are based on actual data. None of the
11 City's or State's experts have provided any opinions regarding any quantifiable material impact the
12 pumping of groundwater water in the Ojai Basin has caused in the Ventura River, including
13 leading to any insufficient flows in reaches 3 and 4 of the Ventura River in the summer months.
14 Rather, the City and the State assert some vague notion of interconnectivity relying primarily on
15 two groundwater models and simulations that the evidence will show are deficient and as a result,
16 do not represent true hydrological and geological conditions in the Ojai Basin and, in particular,
17 the confined (e.g., separate) nature of the deep aquifer from which the East Ojai Group pumps its
18 groundwater.

19 **II. ARGUMENT**

20 **A. The Court of Appeal Decision Requires The City To Show That The East Ojai** 21 **Basin Groups' Pumping Causes Insufficient Flows in the Ventura River In** 22 **Reach 3 and 4 During the Summer Months, Harming the Fishery.**

23 The Court of Appeal was very specific in defining the scope of the City's ability to bring a
24 cross-complaint based on the Channelkeeper's complaint. Any determination of "connectivity"
25 must, as the City has admitted, follow the law of this case. In reviewing the scope of permissive
26 cross-complaints. the Court of Appeal authorized the City to file a "cross-complaint against other
27 water users in the Ventura River watershed, where it alleges that other users are partially
28 responsible for the reduced waterflow in reaches 3 and 4 during the summer months." (*Santa*

1 *Barbara Channellkeeper* 19, Cal.App. 5th at 1190). The Court of Appeal expressly defined the
2 term "hydrological connection: "This means that other water users' pumping and diversion
3 activities may be contributing to the alarmingly low water flow alleged in reaches 3 and 4, and if
4 these activities were curtailed the water flow in the Ventura River might improve." (*Id* at 1189)
5 Thus, the City has the burden of showing that the pumping by the East Ojai Group in the confined
6 deep aquifer in the Ojai Basin leads to insufficient flow in the these reaches of the Ventura River
7 during the summer months. In order to do so, the City is not simply required to show there is
8 "any" connection at some point in time, it must also quantify that connection to prove that it
9 affects or has a material nexus to the flow in the river in those reaches during the summer months.

10 **B. The City's Claims In Its Third Amended Complaint Require Much More**
11 **Than a Showing of Any Vague Connection**

12 The City's relevant causes of action regarding the alleged impact of groundwater pumping
13 to the alleged harm to the fishery include a claim under California Constitution, art. 10, Section 2;
14 (First Claim for Relief); a cause of action under the Public Trust Doctrine (Second Claim for
15 Relief) and a cause of action for a Comprehensive Adjudication and Physical Solution under the
16 Comprehensive Adjudication Statute. (Sixth Claim for Relief) (The remaining causes of action
17 are related to the City's claimed water rights that are not part of this first phase.) Under each of
18 these causes of action, the City has the burden to show much more than just some vague notion of
19 "any" connection between the confined aquifer from which the East Ojai Group pumps and the
20 surface flows of San Antonio Creek, a tributary of the Ventura River.

21 First, California Constitution, art 10, Section 2, requires a showing that the East Ojai
22 Group's pumping is "wasteful" and "unreasonable" and that any actual use be "reasonable" and
23 "beneficial." This requires the City to show that the pumping materially affects the City's own
24 "reasonable and beneficial" use in reaches three and four of the Ventura River.

25 Similarly, under the Public Trust Doctrine, where this Court must balance competing
26 interests, the City must first show that the East Ojai Group' groundwater pumping is harming its
27 interests. (See e.g. *National Audubon Society et al. v. The Superior Court of Alpine County et al*
28 (1983) 33 Cal.3d 419.

1 Finally, with respect to the Sixth Cause of Action under the Comprehensive Groundwater
2 Adjudication statute (Code of Civil Procedure Sections 30-852) CCP § 833(c), only authorizes the
3 court to join parties with surface water rights to a pending comprehensive groundwater
4 adjudication of a basin: "If the court finds that including an interconnected surface water body or
5 subterranean stream flowing through known and definite channels is necessary for the fair and
6 effective determination of the groundwater rights in a basin, the court may require the joinder of
7 persons who claim rights to divert and use water from that surface water body or subterranean
8 stream in a comprehensive adjudication conducted pursuant to this chapter." (*Id.*)

9 "Interconnected surface water" is defined in the Sustainable Groundwater Management Act
10 (SGMA), which is the companion legislation to the Comprehensive Groundwater Adjudication
11 Act. SGMA identifies certain undesirable results caused by groundwater depletions. Water Code
12 § 10721(x)(6) states that one undesirable result is "depletions of interconnected surface water that
13 have significant and unreasonable adverse impacts on beneficial uses of the surface water." Thus,
14 this Court must make a finding under this particular cause of action that the groundwater pumping
15 by the East Ojai Group in the confined deep aquifer has a "significant and unreasonable impact" to
16 the surface water flow of reaches 3 and 4 of the Ventura River.

17 **III. CONCLUSION.**

18 The City is attempting to impermissibly lower its burden of proof in Phase One, so it can
19 then seek to impose the Physical Solution in the next phase, unfairly requiring the East Ojai Group
20 and other parties to pay to improve the fishery at some unknown cost, for some undetermined
21 period of time and subject to regulation, oversight and enforcement by some-as-yet unknown new
22 public agency, even in those basins where the City holds no water rights, such as the Ojai Basin.
23 The Court of Appeal in *Santa Barbara Channelkeeper*, as well as existing case law, require more
24 than the unprecedented "one drop" rule of "hydrological connection" proffered by the City.

25 The East Ojai Group therefore respectfully requests that this Court use the definition of
26 "hydrological connection" provided by the Court of Appeal in *Santa Barbara Channelkeeper*,
27 which requires the City to show that the pumping by the East Ojai Group substantially and
28 materially reduces the flow in reaches 3 and 4 of the Ventura River in the summer months. The

1 Court of Appeal has clearly defined the term "hydrological connection," which is not consistent
2 with the City's proposed "one drop" theory. The City is obviously seeking to move the case
3 immediately to review of the proposed physical solution without meeting its burden of proof.
4

5 DATED: March 2, 2022

MUSICK, PEELER & GARRETT LLP

6
7 By: 

8 Gregory J. Patterson
9 Attorneys for Cross-Defendants
10 The Thacher School; Friend's Ranches, Inc.; Topa
11 Ranch & Nursery, LLC; Finch Farms, LLC; Red
12 Mountain Land & Farming, LLC; Thacher Creek
13 Citrus, LLC; The Finch Family Trust; James P.
14 Finch; Robert Calder Davis, Jr.; Robert Calder
15 Davis, Jr., TTEE of Trust Owned Properties;
16 Sharon H. Booth, Trustee of The Survivor's Trust
17 Created Under Declaration of Trust of Richard G.
18 Booth and Sharon H. Booth Dated July 10, 1980;
19 David Robert Hamm and Reeves Orchard, LLC
20 (collectively, the "East Ojai Group")
21
22
23
24
25
26
27
28