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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, etc., et al., Respondents.	Case No. 19STCP01176 Judge: Hon. William F. Highberger STIPULATION FOR DISMISSAL AND [PROPOSED] ORDER Action Filed: Sept. 19, 2014 Trial Date: Not Set
CITY OF SAN BUENAVENTURA, etc., Cross-Complainant, v. DUNCAN ABBOTT, an individual, et al., Cross-Defendants.	

STIPULATION FOR DISMISSAL AND [PROPOSED] ORDER

Defendant and Cross-Complainant City of San Buenaventura ("City") and Plaintiff Santa Barbara Channelkeeper ("Channelkeeper") (collectively, the "Parties"), by and through their respective counsel, hereby enter into the following Stipulation related to dismissal with prejudice of all claims and causes of action against the City in Channelkeeper's First Amended Complaint in *Santa Barbara Channelkeeper v. State Water Resources Control Board, et al.* (County of Los Angeles Superior Court Case No. 19STCP01176) (the "Action") , and request that the Court issue it as an order.

RECITALS

The City and Channelkeeper recite as follows:

1. WHEREAS, on September 19, 2014, Channelkeeper filed a Complaint for Declaratory Relief and Verified Petition for Writ of Mandate ("Complaint") against the City and the State Water Resources Control Board ("State Board"). The Complaint named the City as a defendant in the First Cause of Action, which sought a declaration that the City's use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine, and a Writ ordering the State Board to conduct an analysis of the City's use of Ventura River water;

2. WHEREAS, the City filed a Cross-Complaint on May 14, 2015, and a First Amended Cross-Complaint on June 11, 2015, against other users of water from the Ventura River and interconnected groundwater basins;

3. WHEREAS, on September 7, 2018, Channelkeeper filed a First Amended Complaint for Declaratory Relief and Petition for Writ of Mandate ("First Amended Complaint") against the City and the State Board. In its First Amended Complaint and Verified Petition for Writ of Mandate, Channelkeeper alleged that the City's use of the Ventura River water harms the steelhead trout and its critical habitat and exceeds water quality standards. Channelkeeper also alleged that even if every junior appropriator stopped all pumping and diversion of Ventura River water, instream uses in Reach 4 of the Ventura River, and specifically endangered steelhead,

would see no benefit because of the ongoing unreasonable use by the City;

4. WHEREAS, on September 24, 2018, the City filed a Second Amended Cross-Complaint that requested, among other things, an adjudication of water rights or the Ventura River Watershed, and a physical solution;

5. WHEREAS, on September 30, 2019, the City and Channelkeeper entered into a settlement agreement to settle their past disputes while preserving certain claims and defenses for future alleged violations (the "Settlement Agreement") as set forth below. A true and correct copy of the Settlement Agreement is attached as Exhibit A;

6. WHEREAS, pursuant to the Settlement Agreement, the City agreed to implement a Pilot Project of flow restrictions at Foster Park and agreed to take other actions, including non-flow measures, and agreed to pay Channelkeeper an agreed amount for fees and costs incurred because of the Action;

7. WHEREAS, pursuant to the Settlement Agreement, Channelkeeper released and waived its claims against the City, other than two reserved issues, as set forth in Paragraph 14:

"Claims Not Released. The Parties do not release:

A. Future Pumping and Diversion. Channelkeeper's claim after the Pilot Project is completed but before entry of a stipulated judgment in the adjudication that future pumping and diversion of water in Reach 4 of the Ventura River is an unreasonable use in violation of the California Constitution Article X, Section 2, and the public trust doctrine.

B. Unpaid Attorney's Fees and Costs. Channelkeeper's claims for attorney's fees and costs in the amount of $191,075.29.

C. Enforcement of Agreement. Any action to enforce the Agreement."

8. WHEREAS, on January 3, 2020, the City filed its operative Third Amended Cross-Complaint;

9. WHEREAS, at the June 24, 2020 Status Conference, after the time for the Pilot Project had ended, Channelkeeper informed the Court of its plan to bring a motion for interim flow measures at Foster Park. The City and Channelkeeper met and conferred over this issue, and

in August 2020, the City and Channelkeeper amended the settlement agreement to address the issue (the "Amendment to Settlement Agreement"). A true and correct copy of the Parties' Amendment to Settlement Agreement is attached as Exhibit B;

10. WHEREAS, the Amendment to Settlement Agreement extended and revised the flow protocols for Foster Park, providing in Section 1.4 that:

> "The City shall monitor the impact of pumping on instream flows for the life of this agreement. The City shall specifically evaluate the impact of continued pumping at the subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to Sections 1.1 to 1.3 above. If monitoring at station VR-2 downstream demonstrates a sustained impact on instream flows after the shutdown of wells Nye 7 and 8, or after the shutdown of the subsurface intake, the parties shall meet and confer on or before 30 June of the following year to discuss whether continuing to pump groundwater when instream flows fall below 4.0 CFS may occur or whether all production should stop at 4.0 CFS. If the parties are unable to agree, either party may pursue any available legal remedy they have related to this issue by seeking resolution of the issue via the Court."

11. WHEREAS, the Amendment to Settlement Agreement, provides in Section 1.5 that:

> "Other than as provided in Section 1.4, Channelkeeper agrees not to seek other interim relief regarding flow. This 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."

12. WHEREAS; the Amendment to Settlement Agreement therefore leaves the following specific issues and asserted claims remaining as between the City and Channelkeeper:

a) Channelkeeper's right to comment on, support, or challenge the physical solution proposed by any party as expressly provided in the Amendment to Settlement Agreement. Channelkeeper asserts that its right to challenge the physical solution includes the claim that pumping and diversion of water in Reach 4 of the Ventura River is an unreasonable use in violation of the California Constitution Article X,

Section 2, and the public trust doctrine;

b) Unpaid pre-adjudication attorney's fees and costs ($191,075.29);

c) Channelkeeper's assertion that it may also claim attorney's fees and costs for participation in the issues related to the physical solution;

d) Enforcement of the settlement agreements.

IT IS THEREFORE STIPULATED by and among the City and Channelkeeper, through their counsel, that:

1. Channelkeeper's First Amended Complaint as against the City, should be dismissed with prejudice on all claims and causes of action alleged against the City up to and including September 30, 2019.

2. Channelkeeper agrees that other than as provided in Section 1.4 of the Amendment to Settlement Agreement, it will not seek other interim relief regarding flow.

3. Channelkeeper retains the ability to comment on, support, or challenge the physical solution proposed by any party in the Action pursuant to Section 1.5 of the Amendment to Settlement Agreement.

4. Following entry of judgment, Channelkeeper may file and serve a motion seeking its unresolved claim for attorney's fees and costs in the amount of $191,075.29.

5. Channelkeeper asserts a right to claim any additional fees and costs incurred in this Action, and the City denies that Channelkeeper has reserved that right. The Court will resolve this dispute in connection with any motion filed by Channelkeeper in accordance with paragraph 4 above.

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6. This Stipulation may be executed in counterpart originals and by facsimile or electronic signature, each of which shall be deemed to be an original, and all of which shall constitute one and the same document.

Dated: June 21, 2021

BEST BEST & KRIEGER LLP

By: _____
SHAWN D. HAGERTY
CHRISTOPHER MARK PISANO
SARAH CHRISTOPHER FOLEY
Attorneys for Respondent and Cross-Complainant
CITY OF SAN BUENAVENTURA

Dated: June 21, 2021

SYCAMORE LAW

By: _____
DANIEL COOPER
Attorneys for Plaintiff and Petitioner
SANTA BARBARA CHANNELKEEPER

[PROPOSED] ORDER

Good cause appearing, and upon the stipulation of the parties, IT IS HEREBY ORDERED:

1. Channelkeeper's First Amended Complaint as against the City, is dismissed with prejudice on all claims and causes of action alleged against the City up to and including September 30, 2019;

2. Channelkeeper agrees not to seek interim relief regarding flow other than pursuant to Section 1.4 of the Amendment to Settlement Agreement;

3. Channelkeeper retains the ability to comment on, support, or challenge the physical solution proposed by any party in the Action pursuant to Section 1.5 of the Amendment to Settlement Agreement;

4. Following entry of judgment, Channelkeeper may file and serve a motion seeking its unresolved claim for attorney's fees and costs in the amount of $191,075.29;

5. Channelkeeper asserts a right to claim any additional fees and costs incurred in this Action, and the City denies that Channelkeeper has reserved that right. The Court will resolve this dispute in connection with any motion filed by Channelkeeper in accordance with paragraph 4 above;

6. The Parties' Stipulation may be executed in counterpart originals and by facsimile or electronic signature, each of which shall be deemed to be an original, and all of which shall constitute one and the same document.

IT IS SO ORDERED.

Dated: 6/21, 2021

W. F. Highberger

Judge William F. Highberger
Judge of the Superior Court

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between Santa Barbara Channelkeeper ("Channelkeeper") and the City of San Buenaventura ("City") regarding the action entitled Santa Barbara Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura, Los Angeles County Superior Court, Case No. 19STCP01176 ("Action"). Channelkeeper and the City may be collectively referred to as "Parties" and individually as "Party". The Agreement is entered into and effective on the date defined in Section 23 below ("Effective Date").

RECITALS

Channelkeeper and the City recite as follows:

1. On September 19, 2014, Channelkeeper filed a Complaint for Declaratory Relief and Petition for Writ of Mandate ("Complaint") against the City and the State Water Resources Control Board ("State Board"). The Complaint alleged that the City's use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine.

2. The City filed a Cross-Complaint on May 14, 2015, and a First Amended Cross-Complaint on June 11, 2015, against other users of water from the River and interconnected groundwater basins. On September 18, 2015, the trial court granted Channelkeeper's motion to strike the First Amended Cross-Complaint.

3. The City appealed the order striking its First Amended Cross-Complaint, and the Court of Appeal reversed the trial court's order. Santa Barbara Channelkeeper v. City of San Buenaventura, 19 Cal.App.5th 1176 (2018).

4. Following the appeal, on September 7, 2018, Channelkeeper filed a First Amended Complaint for Declaratory Relief and Petition for Writ of Mandate ("1st Am. Complaint") against the City and the State Board. The 1st Am. Complaint alleges that the City's use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine, and requests a declaratory judgment that the City's use of the River water is unreasonable. The 1st Am. Complaint further seeks to compel and enjoin the State Board to perform its alleged mandatory duties to prevent the City's alleged unreasonable use of the River and impacts on public trust resources.

5. On September 24, 2018, the City filed a Second Amended Cross-Complaint that requests, among other things, an adjudication of water rights for the Ventura River Watershed, which includes the Upper Ventura River Groundwater Basin, Ojai Groundwater Basin, Lower Ventura River Groundwater Basin, and Upper Ojai Groundwater Basin. The 2nd Am. Cross-Complaint also requests a physical solution.

6. In consideration for the commitments made in this Agreement, Channelkeeper and the City intend to settle their past disputes while preserving claims and defenses for future alleged violations.

TERMS

7. Recitals. The above recitals are incorporated in and made a part of the terms of this Agreement.

8. Pilot Project. Within five business days after the Effective Date, the City will start the Foster Park Pilot Project ("Pilot Project").

A. Pilot Flow Operational Regime. During the Pilot Project, the City will operate its Foster Park facilities using the following flow regime:

(1) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 4.0 cubic feet per second ("CFS"), the City will shut down its Nye well 8;

(2) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 3.0 CFS, the City will shut down its Nye well 7; and

(3) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 2.0 CFS, the City will not extract water using its Foster Park facilities.

B. Flow Measurement Location and Shutoff/Restart Protocols. As part of the Pilot Project, the City will install new streamflow gauges directly above and directly below its Foster Park facilities.

(1) Once the new streamflow gauges are operational, the pilot flow operational regime described in Section 8(A) above will be measured using the protocol described in this Section 8(B) at the new streamflow gauge immediately above the Foster Park facilities.

(2) Until the new streamflow gauges are operational, the pilot flow operational regime described in Section 8(A) above will be measured at the USGS streamflow gauge at the Casitas Bridge (Gauge 11118500).

(3) The CFS triggers and corresponding operational changes shall be made when the relevant streamflow gauge registers below the flow threshold at any point within a calendar day for three consecutive calendar days. If the final reading below the threshold occurs after business hours, then the operational change will take place by 8 a.m. the following

business day. The operational changes may be returned to normal when the relevant streamflow gauge registers above the flow threshold for at least 72 consecutive hours.

C. Term of Pilot Project. The term of this Pilot Project will be for a period of 164 days following the Effective Date . This Pilot Project may be modified or terminated under emergency conditions.

D. Future Flow Regimes. All parties understand and agree that the Pilot Project is not an agreement by the City to maintain any specific flow regime after completion of the Pilot Project. The information provided through the Pilot Project may be used to help inform the establishment of target instream flows that will be included in the stipulated judgment and physical solution in the adjudication. However, the flow regime in the Pilot Project is not binding on the development of those target instream flows, which the parties agree and acknowledge may be less than, greater than or entirely different than the flow regime in the Pilot Project.

9. Non-Flow Measures. The City will also implement the following non-flow measures:

A. Foster Park Fish Barriers. The City will address the following two potential low-flow fish passage barriers at Foster Park:

(1) A 36 inch raw water line that runs southeasterly across the Ventura River from the City's intake facility. The line is covered in a concrete apron that due to scour is exposed above the water surface under certain flow conditions. The City will take action to address this potential barrier.

(2) Due to scour, the crest of the subsurface dam at Foster Park is

exposed above the water surface under certain flow conditions on its eastern terminus. The City shall take action to notch or otherwise address the subsurface dam at this location to remove a potential passage barrier.

B. Flow Gauging at Casitas Vista Road Bridge (USGS Gauge No. 11118500). If the United State Geological Survey ("USGS") believes the Casitas Vista Road Bridge gauge equipment is not functioning as originally intended, the City shall work with the USGS, and other responsible parties, to repair the gauge or cause the installation of a new gauge.

C. Regulatory and Environmental Review. Completion of these non-flow measures is subject to all regulatory requirements and environmental review. The City may process the Foster Park Fish Barriers measures as one joint project that may also include operational upgrades to the City's intake facility at Foster Park to enhance operational flexibility and better manage flow at this location.

D. Construction Milestones. The City's estimated construction milestones for planning, permitting and construction of these non-flow measures are set forth below. The City shall use good faith efforts to accelerate the construction of these non-flow measures, jointly or individually, as feasible, including, but not limited to, by considering the use of statutory or categorical CEQA exemptions as provided in Section 9(C) above.

(1) The City will complete preliminary design by April 1, 2020.

(2) The City will circulate draft CEQA documents for public review by June 1, 2020.

(3) The City will submit permit applications by July 1, 2020.

(4) The City will complete CEQA review by October 1, 2020.

(5) The City will complete construction within 1 year of receiving all

permits (time for advertise/bid/award/transition process/submittal review), subject to timing constraints in mitigation measures and permits on construction activity.

10. Channelkeeper's Attorney's Fees and Costs. Within thirty (30) days of the Effective Date, the City shall provide Channelkeeper's attorney, Daniel Cooper of Cooper & Lewand-Martin, Inc., a certified check in the amount of $850,000.00 payable to "Santa Barbara Channelkeeper." The City's payment is for Channelkeeper's attorney's fees and costs incurred because of the Action, but is not intended to pay Channelkeeper's attorney's fees and costs for the trial court and appellate court proceedings challenging the City's Cross-Complaint and 1st Am. Cross-Complaint. Channelkeeper alleges that it has incurred $1,041,075.29, and the Parties will defer resolving payment of the $191,075.29 difference.

11. Force Majeure. The City shall not be considered to be in default in the performance of any of their respective obligations under this Agreement when performance becomes impossible due to a Force Majeure event. A Force Majeure event is any circumstance beyond the City's control, including without limitation, any act of God, war, fire, earthquake, flood, windstorm, or natural catastrophe; criminal acts; civil disturbance, vandalism, sabotage, or terrorism; restraint by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency. A Force Majeure event shall not include normal inclement weather, economic hardship, inability to pay, or employee negligence. If the City seeks to rely upon this Section to excuse or postpone performance, it shall have the burden of establishing that it could not reasonably have been expected to avoid the Force Majeure event and that its exercise of due diligence did not overcome the failure of performance. The City shall exercise due diligence to resolve and remove any Force Majeure event. Any delays due to the City's failure to make timely and bona fide applications and to exercise diligent efforts to comply with the terms in this Agreement will not, in any event, be considered to be circumstances beyond the City's control.

12. Release of Claims. Except as provided in the Agreement, the Parties discharge, release and waive as to each other, and their respective agents, employees, Boards, Councils, members, representatives, officers, directors, insurers, attorneys, affiliates, assigns, predecessors, and successors, from any and all claims, causes of action, losses, damages, costs and attorneys' fees, whether based on case law, the California or Federal Endangered Species Acts or other statutes, constitution, contract, tort, equity, indemnity, or any other theory of recovery, which the Parties have or may have, whether known or unknown, suspected or unsuspected, which were raised or might have been raised, or arise out of, or are connected with the Action, that occurred up to the date of the execution of this Agreement.

13. Waiver of Section 1542. Except as provided in the Agreement, the Parties acknowledge that they have been informed of and are familiar with the provisions of Civil Code section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties waive and relinquish all rights and benefits they have under Civil Code section 1542 to the full extent that they may lawfully waive all such rights and benefits pertaining to the Released Claims.

14. Claims Not Released. The Parties do not release:

A. Future Pumping and Diversion. Channelkeeper's claim after the Pilot Project is completed but before entry of a stipulated judgment in the adjudication that future pumping and diversion of water in Reach 4 of the Ventura River is an unreasonable use in violation of the California Constitution Article X, Section 2, and the public trust doctrine.

B. Unpaid Attorney's Fees and Costs. Channelkeeper's claims for attorney's fees and costs in the amount of $191,075.29.

C. Enforcement of Agreement. Any action to enforce the Agreement.

15. Request for Dismissal. Within five business days of the Effective Date, Channelkeeper shall file a request for dismissal in the form attached as Exhibit A.

16. Joint Press Release. Within five business days of the Effective Date, the Parties shall issue a joint press release in the form attached as Exhibit B.

17. Representations and Warranties. Each of the Parties represents and warrants to the other Party that:

A. As of the date of their execution of this Agreement, they are unaware of any facts, conditions or matters relating to, arising out of or connected with the events and/or transactions which would give rise to any claims for damages or equitable relief not being released by each party pursuant to the terms of this Agreement.

B. Each of the Parties has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

C. No portion of any claim, demand, cause of action that they may have or might have, which are being released herein, has been assigned or transferred to any other person, entity, or company.

D. In executing this Agreement, the Parties have relied solely upon their

own judgment, belief and knowledge and on the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims. Further, that they have not been influenced by any representations or statements concerning any matters made by any other parties or by any person or attorney representing any other parties in connection with the negotiation and/or entering into of this Agreement.

18. No Admission of Liability. The Parties agree that by the execution of this Agreement, and the consummation of the settlement and release of claims as set forth herein, none of the Parties admit responsibility or liability as to any matter whatsoever, nor shall this release, or the settlement and release it effectuates, be admissible in evidence in any proceeding of any nature whatsoever except as described above.

19. Enforcement of Agreement. If legal proceedings are commenced by any of the Parties to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover all of such party's attorneys' fees and costs and expenses of litigation including any and all appeals or petitions as well as fees and costs incurred in enforcing any resulting judgment or award.

20. Entire Agreement. All agreements, covenants, representations and warranties, expressed and implied, oral and written, by each Party to this Agreement concerning its subject matter are contained herein. No other agreements, covenants, representations or warranties, expressed or implied, oral or written, have been made by any Party to any other Party concerning the subject matter of this Agreement. All prior and contemporaneous conversations, covenants and warranties concerning the subject matter of this Agreement are merged herein. This is a fully integrated Agreement.

21. Drafted by All Parties. This Agreement shall be deemed drafted by all Parties

with the advice of counsel for the purposes of its interpretation, sufficiency and enforcement, and shall not be construed against either under the doctrine of *contra preferentem.*

22. All Remedies Available for Breach of the Agreement. All remedies, including without limitation specific performance, shall be available for a breach of this Agreement.

23. Effective Date. This Agreement shall become effective immediately upon the execution of this Settlement Agreement by all Parties. This Agreement may be executed in counterparts. When all Parties and their respective attorneys have signed and delivered at least one such counterpart to the other Parties, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all Parties. No original signatures shall be required to establish the validity or authenticity of this Agreement.

24. Governing Law. This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State of California.

25. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force as though such invalid or unenforceable provisions or portions had not been a part of this Agreement. However, if the provisions requiring dismissal of all actions and cross-actions with prejudice, or if the provisions for releases of claims as provided herein, are found to be invalid, then this Agreement shall be considered invalid in its entirety.

26. Perform All Acts. Each Party agrees to perform all acts and execute and deliver all documents necessary to carry out the purpose and intent of this Agreement.

Dated: September 25, 2019

SANTA BARBARA CHANNELKEEPER

By: _____

Dated: September 30, 2019

CITY OF SAN BUENAVENTURA

By: _____
City Manager

APPROVED AS TO FORM:

Dated: September 25 2019

COOPER & LEWAND-MARTIN, INC.

By: _____
DANIEL COOPER
Attorneys for Petitioner SANTA BARBARA CHANNELKEEPER

Dated: September 30, 2019

BEST BEST & KRIEGER LLP

By: _____
GENE TANAKA
SHAWN HAGERTY
SARAH CHRISTOPHER FOLEY
DAKOTAH BENJAMIN
Attorneys for Respondent and Cross-Complainant CITY OF SAN BUENAVENTURA

EXHIBIT B

AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment to Settlement Agreement ("Amendment") is entered into between Santa Barbara Channelkeeper ("Channelkeeper") and the City of San Buenaventura ("City") regarding the action entitled Santa Barbra Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura, Los Angeles County Superior Court, Case No. 19STCP01176 ("Action"). Channelkeeper and the City may be collectively referred to as "Parties" and individually as "Party". This Amendment is entered into and effective on the date defined in Section 2 below ("Effective Date"). This Amendment is made in light of the following recited facts (each a "Recital").

RECITALS

A. On September 30, 2019, the Parties executed a Settlement Agreement in the Action which settled past disputes while preserving certain claims and defenses for future alleged violations.

B. On June 24, 2020, at a Status Conference in the Action, Channelkeeper expressed an intent to file a motion for interim relief against the City regarding flow in the Ventura River at Foster Park, and the Court ordered Channelkeeper and the City to meet and confer regarding the motion.

C. The Parties met and conferred on multiple occasions, and now desire to settle claims for interim relief regarding flow at Foster Park through this Amendment.

TERMS

Now, therefore, in consideration of the commitments made in this Amendment, Channelkeeper and the City amend the Settlement Agreement as follows:

1. The Parties amend and modify the Settlement Agreement by adding the follows terms, which supersede, modify or amend the terms of the Settlement Agreement:

1.1 When daily average flows as measured at the VR-1 gage fall below 4.0 CFS for 3 consecutive days, the City will shut down wells Nye 7 and 8 before noon on the following business day.

1.2 If daily average flows as measured at the VR-1 gage fall below 3.0 CFS on any day of the time period in Section 1.1 above, the City would also shut down the subsurface intake at the same time as the shutdown in Section 1.1 above.

1.3 If the daily average flows as measured by the VR-1 gage fall below 4.0 CFS for 3 consecutive days, but stay above 3.0 CFS during that period, the City would shut down wells Nye 7 and 8 but would be permitted to continue to operate the subsurface intake until the daily average flows fall below 3.0 CFS for three consecutive days.

1.4 The City shall monitor the impact of pumping on instream flows for the life of this agreement. The City shall specifically evaluate the impact of continued pumping at the subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to Sections 1.1 to 1.3 above. If monitoring at station VR-2 downstream demonstrates a sustained impact on instream flows after the shutdown of wells Nye 7 and 8, or after the shutdown of the subsurface intake, the parties shall meet and confer on or before 30 June of the following year to discuss whether continuing to pump groundwater when instream flows fall below 4.0 CFS may occur or whether all production should stop at 4.0 CFS. If the parties are unable to agree, either party may pursue any available legal remedy they have related to this issue by seeking resolution of the issue via the Court.

1.5 Other than as provided in Section 1.4, Channelkeeper agrees not to seek other interim relief regarding flow. This 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.

1.6 The City shall continue to implement this revised flow regime at least until entry of the stipulated judgment and physical solution.

1.7 The revised flow regime may be temporarily modified or suspended under emergency conditions. Emergency conditions include Act of God, unforeseen pipe failure, and the inability of the City to obtain sufficient usable replacement water from Casitas Municipal Water District or other sources to serve its customers. The City shall promptly notify Channelkeeper in writing whenever such an emergency condition exists. The notification shall include the justification for the modification, and supporting documentation. If necessary, the parties shall meet and confer about the modification or suspension to limit its impact on Southern California steelhead and other impacted species.

1.8 If the City seeks to modify the flow regime pursuant to Section 1.7 above because it is unable to obtain replacement water from Casitas Municipal Water District, the City shall provide Channelkeeper with 30 days written notice, if such notice is feasible in light of water management plans or testing trends, or as much advance notice as is feasible when the inability results from an unexpected event. If the modification is based on the inability to obtain replacement water from Casitas, the City shall implement the following specific water conservation measures in the impacted service area during the emergency period of modification or suspension:

1.8.1 City Actions.

a. Encourage maximum conservation by all customers and users in the impacted area.

b. No outdoor irrigation using potable water will be allowed.

c. All water use not required for health and safety is prohibited.

d. Suspend the issuance of any new development approvals and new water connections in the impacted area other than those required to be processed by state law. Building permits which do not create new demand for water or which are for emergencies, public safety and water conservation may be exempted by the City Manager.

1.8.2 Water Customer Actions.

a. Comply with mandatory water conservation regulations.

b. Prohibition of all outside water use unless necessary for the preservation of health and safety and the public welfare.

c. Watering with hand-held five gallon maximum bucket, filled at exterior hose bib or interior faucet (not by hose) shall be allowed at any time. This will assist in preserving vegetable gardens or fruit trees.

d. The filling of swimming and wading pools is prohibited.

1.9 Channelkeeper acknowledges that the City currently plans to construct the Foster Park notching project this fall in accordance with the Settlement Agreement. In the unlikely event that the implementation of the notching project impacts the City's ability to implement the revised flow regime, or in the possible event that the notching project temporarily impacts the City's ability to use VR-2 to monitor downstream impacts of the pumping regime, the Parties shall meet and confer to discuss any modifications or suspensions of the flow regime or the monitoring process as necessary to complete the notching project.

1.10 The City and Channelkeeper will work in good faith to prepare a joint press release regarding this amendment to the Settlement Agreement. In addition, the City and Channelkeeper will meet and confer on whether they can work collaboratively on other public relations efforts to raise awareness of the need to protect the Ventura River Watershed and its habitat, including protections for the Southern California steelhead.

2. This Amendment shall become effective immediately upon execution by the Parties. This Amendment may be executed in counterparts. When the Parties and their respective attorneys have signed and delivered at least one such counterpart of the other Party, each counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to the Parties. No original signatures shall be required to establish the validity or authenticity of this Amendment.

3. Except as superseded, modified or amended by this Amendment, the Settlement Agreement remains in full force and effect. In the event of conflict between the terms of the Settlement Agreement and the terms of this Amendment, the terms of this Amendment shall govern.

4. All agreements, covenants, representations and warranties, expressed or implied, oral or written, by each Party to this Amendment are contained in this Amendment. No other

agreement, covenants, representations or warranties, expressed or implied, oral or written, have been made by the Parties concerning this Amendment. All prior and contemporaneous conversations, covenants and warranties concerning this Amendment are merged in this Amendment. This is a fully integrated document.

5. This Amendment shall be deemed drafted by all Parties with the advice of counsel for the purposes of interpretation, sufficiency and enforcement, and shall not be construed against either under the doctrine of *contra preferentem*.

(Signatures on following page)

Dated: 8/19/2020

SANTA BARBARA CHANNELKEEPER

By: _____

Dated: 8/20/2020

CITY OF SAN BUENAVENTURA

By: _____
City Manager

APPROVED AS FOR FORM:

Dated: 20 August 2020

SYCAMORE LAW, INC.

By: _____
DANIEL COOPER
Attorneys for Petitioner SANTA BARBARA CHANNELKEEPER

Dated: August 20, 2020

BEST BEST & KRIEGER LLP

By: _____
SHAWN HAGERTY
CHRISTOPHER PISANO
SARAH CHRISTOPHER FOLEY
Attorneys for Respondent and Cross-Complainant CITY OF SAN BUENAVENTURA