

1 On November 1, 2021, after meeting and conferring with Cross-Defendants City of Ojai and
2 Casitas Municipal Water District, Defendant and Cross-Complainant the City of San Buenaventura filed
3 a Notice of Issues for Trial, setting forth five suggested issues to define the scope of the Adjudication to
4 be determined at the Phase 1 Trial. City of San Buenaventura and City of Ojai were unable to agree to
5 the phrasing of Issue 4; the parties' alternative phrasings are as follows:

6 *As stated by the City of San Buenaventura:*

7 4. A determination of whether the Court may comprehensively adjudicate the four Ventura
8 River Watershed groundwater basins and interconnected surface waters in one legal proceeding pursuant
9 to Code of Civil Procedure section 832, *et seq.*

10 *As stated by the City of Ojai:*

11 4. A determination of whether, as a matter of law, the court may comprehensively
12 determine rights to extract groundwater among all rights holders across four separate basins in one legal
13 proceeding pursuant to Code of Civil Procedure section 830, *et seq.*

14 In accordance with the Court's October 29, 2021 Ruling and November 4, 2021 Amended
15 Ruling, Petitioner Santa Barbara Channelkeeper submits this summary of law to assist the Court in
16 considering Issue 4 to be heard in the Phase 1 trial scheduled for February 14, 2022.

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18 **I. Traditional Adjudication of Interconnected Surface and Groundwater**

19 Whereas traditional common law instructs that a landowner holds title in fee simple to all
20 groundwater underlying their property to extract, consume, and store at will, in the early 1900s the
21 California Supreme Court began to modify overlying rights to account for the scarcity and value of
22 groundwater in the state. (See *Katz v. Walkinshaw* (1902) 70 P. 663, 665; *Burr v. Maclay Rancho Water*
23 *Co.* (1908) 154 Cal. 428, 438.) The Court formulated a "correlative rights" doctrine applicable as
24 between overlying rightsholders analogous to that between riparian rightsholders, dictating that: "each
25 has a common and correlative right to the use of this water upon his land, to the full extent of his needs
26 if the common supply is sufficient, and to the extent of a reasonable share thereof if the supply is so
27 scant that the use by one will affect the supply of the others." (*Hudson v. Dailey* (1909) 156 Cal. 617,
28 625–626.) Contemporaneously, the Court recognized the hydrological interconnectivity of groundwater

1 with surface streams and declared the importance of determining “the relative rights of the owner of the
2 non-riparian land containing percolating water, which feeds a surface stream, and those who have
3 acquired riparian or prescriptive rights in said stream.” (*Id.* at p. 628; see also *Montecito Valley Water*
4 *Co. v. Santa Barbara* (1904) 144 Cal. 578, 588; *Verdugo Canon Water Co. v. Verdugo* (1908) 152 Cal.
5 655, 665; *Los Angeles v. Hunter* (1909) 156 Cal. 603, 609; *San Bernardino v. Riverside* (1921) 186 Cal.
6 7, 14.) The 1928 Constitutional amendment limiting all water rights in the state to reasonable and
7 beneficial uses amplified the necessity for courts to comprehensively adjudicate, and retain jurisdiction
8 to reevaluate, the relative needs, priorities, and reasonableness of beneficial uses of all users of a stream
9 system and underlying groundwater. (See *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.*
10 (1935) 3 Cal.2d 489, 524–525; *Peabody v. Vallejo* (1935) 2 Cal.2d 351, 374–375; *Allen v. California*
11 *Water & Tel. Co.* (1946) 29 Cal.2d 466, 485–486; *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 931,
12 937; *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1001–1002.)

13 Article X, Section 2 of the Constitution imposes the duty to ensure that water is not wasted, that
14 its use is reasonable, and that public trust resources are protected. *Nat. Audubon Society v. Super. Ct.*
15 (1983) 33 Cal.3d 419, 433–34. California’s public trust doctrine further imposes “an affirmative duty to
16 take the public trust into account in the planning and allocation of water resources.” (*Id.* at p. 446.) The
17 California Supreme Court has recognized that “[t]he objective of the public trust has evolved in tandem
18 with the changing public perception of the values and uses of waterways” and that “the state is not
19 burdened with an outmoded classification favoring one mode of utilization over another.” (*Id.* at p. 434
20 [internal quotations omitted].) California’s public trust doctrine has evolved to protect a “far broader”
21 range of protected public trust uses, including “the right to hunt, bathe or swim, and the right to preserve
22 [trust resources] in their natural state.” (*Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521.) The
23 California Supreme Court has held one of the most important public trust uses to be “the preservation of
24 those lands in their natural state, so that they may serve as ecological units for scientific study, as open
25 space, and as environments which provide food and habitat for birds and marine life, and which
26 favorably affect the scenery and climate of the area.” (*Marks v. Whitney*, 6 Cal.3d at pp. 259–260; see
27 also *Environmental Law Foundation*, 26 Cal.App.5th at p. 853 (“The public trust doctrine . . . protects
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1 the public’s right to use, enjoy and preserve the Scott River in its natural state and as a habitat for fish”
2 [internal punctuation omitted]).)

3 Accordingly, to meet their statutory and Constitutional duties, courts have consolidated the
4 adjudication of multiple groundwater basins located within and contributing to the watershed of large
5 stream systems. (See *Orange County Water Dist. v. Riverside* (“*Orange County*”) (1959) 173
6 Cal.App.2d 137, 151–158, 174, review den. Oct. 15, 1959; *City of Barstow v. Mojave Water*
7 *Agency* (“*City of Barstow*”) (2000) 23 Cal.4th 1224, 1233–1235.) Both *Orange County* and *City of*
8 *Barstow* involved adjudication areas coextensive with watersheds spanning thousands of square miles
9 and encompassing multiple groundwater basins as defined by the Department of Water Resources in
10 Bulletin 118. (See *Orange County, supra*, at pp. 152–153; *City of Barstow, supra*, at pp. 1233–1234.)

11 In describing the adjudication’s hydrological complexity, comprising four distinct basins and
12 marked by “protrusions of the bedrock, faults, relatively impervious zones or in some cases arbitrary
13 lines,” the *Orange County* court wrote, “any such subdivisions or further divisions are parts of the entire
14 Santa Ana River system, and all the waters thereof, underground and surface alike, are part of one
15 interconnected common supply.” (173 Cal.App.2d at p. 153; see also *Central Basin Municipal Water*
16 *Dist. v. Fossette* (1965) 235 Cal.App.2d 689, 697, 719.) In rejecting appellants’ arguments that the 2000
17 square mile river system should not be adjudicated as a unified whole, the court observed, “[w]hether
18 [the various basins are] to be taken as a series of lakes or one single stream, is more a question of the use
19 of terms and of emphasis in points of view than of any dispute over the essential facts.” (*Orange County,*
20 *supra*, at p. 174.)

21 Likewise, the California Supreme Court described the “Mojave River Basin” as “approximately
22 3,600 square miles . . . divided into five hydrologic subareas,” in which “[t]he groundwater and surface
23 water . . . constitute a single interrelated source.” (*City of Barstow, supra*, 23 Cal.4th at pp. 1233–1234.)
24 In fact, the “Mojave Basin” as defined in the “Adjudicated Areas” layer of the SGMA Data Viewer¹
25 intersects with at least eight groundwater basins as defined in the “Bulletin 118 Groundwater Basins –
26 2018” layer. In accommodation of the scope of the adjudication area, the Court affirmed a negotiated
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28 ¹ Available at <https://sgma.water.ca.gov/webgis/?appid=SGMADataViewer#boundaries/>.

1 regionally-adapted physical solution, which “requires each subarea within the basin to provide a specific
2 quantity of water to the adjoining downstream subarea.” (*Id.* at p. 1235.) As recently as 2000, therefore,
3 the Supreme Court approved a comprehensive adjudication including multiple distinct groundwater
4 basins, even where adjustments to the physical solution must be made by “subarea,” so long as they
5 “constitute a single interrelated source.” (See *id.* at p. 1234.) Here, protection of public trust resources
6 mandates inclusion of all groundwater basins hydrologically connected to the Ventura River.

7 **II. Actions Relating to Groundwater Rights Under Code of Civil Procedure, sec. 830 *et seq.***

8 Effective January 1, 2016, Code of Civil Procedure part 2, title 10, chapter 7 (§ 830 *et seq.*)
9 governs judicial procedure for comprehensive groundwater adjudications in California. The statutory
10 framework authorizes a court to “determine all groundwater rights of a basin, whether based on
11 appropriation, overlying right, or other basis of right, and use of storage space in the basin.” (Code Civ.
12 Pro., § 834, subd. (a).) Section 841, subdivision (a) instructs that “Except as otherwise provided in this
13 section, the boundaries of the area subject to a comprehensive adjudication shall be consistent with the
14 boundaries of a basin,” as identified and defined by the Department of Water Resources (“DWR”) in
15 Bulletin 118.² Subdivision (b) allows a court discretion to revise basin boundaries, in the interests of
16 justice, if the DWR revises basin boundaries after the adjudication has been initiated. Under subdivision
17 (c), a court may direct either a party, special master, or the State Water Resources Control Board acting
18 as referee to petition the DWR to revise basin boundaries upon a showing that doing so would “further a
19 fair and effective determination of water rights.” A DWR determination on such a request is subject to
20 judicial review in traditional mandamus, coordinated with the comprehensive adjudication. (Code Civ.
21 Pro., § 841, subd. (d).)

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23 As yet, no case law exists interpreting any of these provisions. However, section 830,
24 subdivision (b) instructs that they “shall be applied and interpreted consistently with,” *inter alia*: “(1)
25 Protecting water rights consistent with Section 2 of Article X of the California Constitution; (2)
26 Conducting a comprehensive adjudication in a manner that promotes efficiency, reduces unnecessary
27 delays, and provides due process; (3) Encouraging the compromise and settlement of comprehensive

28 ² Available at https://data.cnra.ca.gov/dataset/calgw_update2020/.

1 adjudications; (4) Conducting a comprehensive adjudication in a manner that is consistent with the
2 achievement of groundwater sustainability within the timeframes of the Sustainable Groundwater
3 Management Act; (5) Establishing procedures by which courts may conduct comprehensive
4 determinations of all rights and priorities to groundwater in a basin. . . .” Notably, section 830,
5 subdivision (b)(7) specifies that “this chapter shall not alter groundwater rights or the law concerning
6 groundwater rights,” except as provided in that paragraph regarding priority of unexercised rights. The
7 bulk of groundwater rights and the law concerning them having been ascertained through case law, Code
8 of Civil Procedure sections 830 *et seq.* must be read to reaffirm rather than supplant substantive
9 rulemaking from the courts.

10 **III. Conclusion**

11 Code of Civil Procedure sections 830 *et seq.* specify that the recently enacted statutory
12 framework “shall not alter . . . the law concerning groundwater rights.” (Code Civ. Pro. § 830, subd.
13 (b)(7).) Historical case law is definitive in its approval of comprehensive adjudication of multiple
14 distinct groundwater basins in one legal proceeding. Protection of public trust resources in the Ventura
15 River, including specifically Federally Listed Endangered Southern California Steelhead, requires
16 inclusion of all hydrologically connected groundwater basins in a comprehensive adjudication of surface
17 and groundwater rights. Questions of the relative impact of groundwater pumping on river flows can and
18 will be addressed during the second, phase 2 trial. This Court has both the authority and the duty to
19 address the entire interconnected surface and groundwater system in this adjudication.

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21 Respectfully Submitted

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