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Attorneys for City of Ojai

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,  
a California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL  
BOARD, a California State Agency;  
CITY OF SAN BUENA VENTURA, a  
California municipal corporation, incorrectly  
named as CITY OF BUENA VENTURA,

Respondents.

CITY OF SAN BUENA VENTURA, a  
California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT;  
AGR BREEDING, INC; et al.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

**RESPONDENT AND CROSS-  
DEFENDANT CITY OF OJAI'S STATUS  
REPORT**

Date: March 15, 2021

Time: 1:30 p.m.

Dept: SS10

Action Filed: Sept. 19, 2014

Trial Date: Not Set

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**STATUS CONFERENCE REPORT**

Respondent and Cross-Defendant City of Ojai (“Ojai”) submits this Status Conference Report (“Report”) in advance of the Status Conference scheduled for March 15, 2021 at 1:30 p.m. Pursuant to the Court’s order at the November 16, 2020 Status Conference, the City of Ojai has opted to submit a separate report and legal brief on the doctrine of physical solution.

**PHYSICAL SOLUTION BRIEF**

On March 1, 2021, the Proposing Parties emailed a copy of the draft brief they intended to submit to the Court regarding the physical solution doctrine. Ojai has elected to file a responsive brief on the physical solution doctrine as it applies to this case. That brief is filed concurrently herewith. In sum, the brief demonstrates that the statute regarding a comprehensive adjudication (Code Civ. Proc. 832 et seq.) limits the scope of such an action to a single groundwater basin as defined in Bulletin 118 and that the general discussion in the Proposing Parties’ Brief fails to address the threshold issue of jurisdiction and scope as it relates to the Ojai Basins. Absent a finding that the sixth cause of action can proceed against the parties in the Ojai Basins, all requests for related to the physical solution and moving the matter forward are premature.

**SITE VISIT PROTOCOLS**

Ojai intends to participate in the meet and confer conference with other parties on March 11, 2021 and is hopeful that this conference will resolve its objections. Should the parties fail to agree at or following the March 11, 2021 conference, Ojai objects to the following aspects of the proposed protocols for the site visit.

1. Ojai objects to the limited representatives as listed in the proposed protocol. Because Ventura alleges that the Ojai Basins are properly before this Court, which is contested, Ojai must be permitted to designate a representative knowledgeable about the Ojai Basins and this representative must be included in the site visit.
2. Ojai objects to the limited locations proposed for the site visit and will be proposing additional sites that are critical to the issue of connectivity, or lack thereof, of the

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Ojai Basins.

**CONCLUSION AND SUMMARY OF REQUESTS**

Based on the above, Ojai requests that the Court consider taking the following actions:

1. Require that the site visit include additional representatives for each of the basins, and specifically a representative knowledgeable about the Ojai Basins to be designated by Ojai, to be present at the site visit.
2. To the extent the parties fail to stipulate to the inclusion of Ojai’s suggested locations, add the following locations to the site visit:
  - a. San Antonio Creek at "Dead Dog Levee"
  - b. Camino Cielo at the Ventura River
  - c. OVLC Ventura River Preserve
  - d. Highway 150 at the Ventura River
3. Before additional parties in the Ojai Basins are required to appear or file initial disclosures, determine the proper boundaries and scope of the sixth cause of action for a comprehensive adjudication based upon the plain language of the statutes.
4. Should the Court deem it necessary, schedule an evidentiary hearing where Ventura will be required to prove its allegations that the basins are hydrologically connected, contrary to the Department of Water Resources' finding in Bulletin 118, prior to any hearing on the proposed physical solution.

Dated: March 10, 2021

Respectfully submitted,  
Bartkiewicz, Kronick & Shanahan, PC

By: *Holly Jacobson*  
JENNIFER T. BUCKMAN  
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Attorneys for CITY OF OJAI

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**RESPONDENT AND CROSS-  
COMPLAINANT CITY OF OJAI'S  
LEGAL BRIEF ON PHYSICAL  
SOLUTION**

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1 Pursuant to the February 9, 2021 Status Conference and Ruling thereafter, Cross-  
2 Defendant the City of Ojai elects not to join with Ventura’s legal brief on the physical solution  
3 doctrine and instead submits its own herewith.

4 **I. INTRODUCTION**

5 The City of Ojai (“Ojai”), along with many of its residents, is a Cross-Defendant in this  
6 matter based upon an allegation that it, as an overlying landowner, has rights to extract  
7 groundwater from one or more of the Watershed’s Groundwater Basins. (See Ventura’s Third  
8 Amended Complaint (“TAC”) ¶ 93) The joint legal brief prepared by Cross-Complainant the  
9 City of Ventura and submitted to the Court on March 8, 2021 (“Ventura Brief”) explains the  
10 physical solution doctrine in general terms, but fails to address how those statutory procedures  
11 apply in the context of a comprehensive groundwater adjudication, as pled in the sixth cause of  
12 action. This brief supplements Ventura’s March 8, 2021 legal brief with the procedures for  
13 litigating a comprehensive adjudication, as laid out in the Code of Civil Procedure, section 832,  
14 et seq., and how the physical solution doctrine fits within the same.

15 The focus of this brief will be on the foundational requirements for proceeding with a  
16 comprehensive adjudication including the threshold requirements of standing, the proper scope  
17 of an adjudication, evidentiary requirements, and the court's authority to ultimately impose a  
18 physical solution. This brief also attempts to address some of the questions raised at the last  
19 status conference as to how the physical solution doctrine applies, if at all, to the Ojai Valley  
20 Groundwater Basin and Upper Ojai Valley Groundwater Basin (“Ojai Basins”) and how the  
21 case could be phased to address the concerns that some of the cross-defendants have raised.

22 **II. RELEVANT STATUTES AND CASE LAW**

23 **A. The Statutory Procedures Do Not Authorize a Combined Adjudication of Four**  
24 **Separate, Unconnected Groundwater Basins**

25 “When a statute conferring jurisdiction specifies the procedure to be followed, the  
26 procedural requirements are themselves jurisdictional.” (*Franczak v. Liberty Mut. Ins. Co.*,  
27 (1977) 19 Cal. 3d 481, 489.) Thus, if a court acts beyond the statutorily defined procedure, it  
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1 exceeds its jurisdiction. (*Safer v. Superior Court* (1975) 15 Cal.3d 230, 242 (citing *Abelleira v.*  
2 *District Court of Appeal* (1941) 17 Cal.2d 280, 290).)

3 The comprehensive groundwater adjudication statutes (Code Civ. Proc §§ 832, et. seq.)  
4 authorize the superior courts to determine the rights of parties to extract groundwater from a  
5 single basin. The plain text of these statutes confirms that Ventura's proposal to adjudicate four  
6 separate basins in one proceeding exceeds the jurisdiction created by the statutory framework.  
7 Section 832 defines "basin" as having the same meaning as in Water Code section 10721,  
8 which in turn defines "basin" as "a groundwater basin or subbasin identified and defined in  
9 Bulletin 118" published by the California Department of Water Resources. (Code Civ. Proc. §  
10 832(a); Water Code §10721(a).) "Bulletin 118" refers to the Department of Water Resources'  
11 "report entitled 'California's Groundwater: Bulletin 118' updated in 2003, as it may be  
12 subsequently updated or revised in accordance with Section 12924." (Water Code §10721(c).)  
13 In Bulletin 118, the California Department of Water Resources determined, based on the  
14 hydrogeological and other scientific information submitted to it, that each of the groundwater  
15 basins in this litigation is a separate basin. (Bulletin 118 (Department of Water Resources,  
16 2016), available at [https://water.ca.gov/-/media/DWR-Website/Web-](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/B118-Interim-Update-2016%20ay%2019.pdf)  
17 [Pages/Programs/Groundwater-Management/Bulletin-118/Files/B118-Interim-Update-](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/B118-Interim-Update-2016%20ay%2019.pdf)  
18 [2016 ay 19.pdf.](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/B118-Interim-Update-2016%20ay%2019.pdf) )

19 Subdivisions (b) and (c) of Section 832 likewise frame the scope of a comprehensive  
20 adjudication as involving a singular basin: together, those subsections explain that the purpose  
21 of a comprehensive adjudication is "to comprehensively determine rights to extract  
22 groundwater in **a basin.**" (Code Civ. Proc. § 832(b)-(c) (emphasis added).) Section 833(a)  
23 further clarifies that sections 832-850 "appl[y] to actions that would comprehensively  
24 determine rights to extract groundwater in **a basin**, whether based on appropriation, overlying  
25 right, or other basis of right." (Code Civ. Proc. § 833(a) (emphasis added).)

26 The statutes limit a court's authority to conduct a comprehensive adjudication and  
27 impose a physical solution in a given basin – not a combination of four separate basins such as  
28 Ventura seeks here. For example, the boundaries of an area that is subject to a comprehensive  
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1 adjudication “shall be consistent with the boundaries of a basin.” (Code Civ. Proc. § 844(a).)  
2 The boundaries of a basin may only be revised by the Department of Water Resources. (Code  
3 Civ. Proc. § 844(b).) Only where the boundaries are revised by the Department may the court  
4 revise the boundaries in a comprehensive adjudication. (Code Civ. Proc. § 844(b).) Finally,  
5 the authority of a court to impose a physical solution in a comprehensive groundwater  
6 adjudication is limited to those adjudications as defined in the statute (i.e., a single a basin  
7 identified in Bulletin 118). (Code Civ. Proc. § 849 (a).)

8 Thus, the plain text of the comprehensive groundwater adjudication statutes confirms  
9 that the scope of the comprehensive adjudication is limited to a single defined groundwater  
10 basin. As shown in Bulletin 118, the Department of Water Resources has determined that the  
11 Ojai Basins are two separate basins and are not connected to the Upper or Lower Ventura River  
12 Valley basins. Code of Civil Procedure section 844, read in conjunction with Section 832,  
13 require the court to respect the Department's findings regarding these separate basins. The  
14 court should reject the invitation in the Third Amended Cross-Complaint to combine four  
15 distinct groundwater basins in one adjudication, as there is simply no authority to support such  
16 an adjudication. (See TAC ¶ 103)

17 **B. Ventura Has No Standing to Adjudicate the Groundwater Rights in the Ojai**  
18 **Basins**

19 Because Ventura has no rights to extract groundwater in the Ojai Basins, it has no  
20 standing to bring a complaint to adjudicate those basins. A complaint or cross-complaint may  
21 be filed by a plaintiff to determine the rights of itself and others to extract groundwater in a  
22 comprehensive adjudication of a singular groundwater basin. (See Code Civ. Proc.  
23 §§ 832(b),(c),(k).) Noticeably absent from the statute is language that would permit a plaintiff  
24 to determine the groundwater rights of parties in a "watershed" (See TAC ¶ 1) or in  
25 neighboring groundwater basins.

26 Here, Ventura does not allege that it has any rights to extract groundwater in the Ojai  
27 Basins. Instead, it alleges, that it extracts surface and/or subsurface water from the Ventura  
28 River. (See TAC ¶ 2) While Ventura may have standing to bring certain actions that relate to  
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1 the flow of surface waters, it simply does not have standing to seek the equitable remedy of a  
2 physical solution in a comprehensive adjudication of groundwater rights in a basin in which  
3 Ventura does not pump groundwater and does not own overlying land, and there is no evidence  
4 that those groundwater basins are connected to each other or to the surface water source of  
5 Ventura's water.

6 Ventura alleges that there is a hydrological connection between the Ventura River, its  
7 tributaries and the four separate groundwater basins (See TAC ¶ 103), and, on this basis, invites  
8 the court to adjudicate not only the surface water rights to the Ventura River, but also the  
9 groundwater rights of the four separate groundwater basins identified in the Third Amended  
10 Cross Complaint. Code Civ. Proc. § 833(c) authorizes the court to join parties with **surface**  
11 water rights to a pending comprehensive groundwater adjudication of a basin: "[i]f the court  
12 finds that including an interconnected surface water body or subterranean stream flowing  
13 through known and definite channels is necessary for the fair and effective determination of the  
14 groundwater rights in a basin, the court may require the joinder of persons who claim rights to  
15 divert and use water **from that surface water body or subterranean stream** in a  
16 comprehensive adjudication conducted pursuant to this chapter." (*Id.*, emphasis added.)  
17 Section 833 thus permits a court, after an evidentiary hearing, to find that joining parties who  
18 claim rights to "an interconnected surface water body or subterranean stream... is necessary for  
19 the fair and effective determination of the groundwater rights in a basin." (*Id.*) But the statute  
20 does not say the reverse—namely, it does not state that an action to determine surface water  
21 rights may be expanded to include comprehensive groundwater adjudications of four separate  
22 basins. This is only logical where the Department of Water Resources has found that the basins  
23 are separate, and, therefore, there can be significant interconnection between them, by  
24 definition.

25 Even if the statute could be stretched to read as Ventura suggests, to authorize grafting  
26 the adjudication of four separate groundwater basins onto a proceeding to determine the rights  
27 of parties in surface water, before the sixth cause of action proceeds any further, the Court  
28 should either determine that the Ojai Basins cannot be included as a matter of law, or require an  
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1 evidentiary hearing to determine the boundaries of basin(s) subject to the proposed adjudication  
2 and physical solution. The Court cannot properly assume jurisdiction over the groundwater in  
3 the Ojai Basins absent a finding that this groundwater is connected to and affected by the  
4 waters that Ventura has pumped in a separate, hydrologically disconnected, basin.

5 **C. A Physical Solution Can Only Be Imposed on Parties to an Adjudication of a**  
6 **Single Groundwater Basin**

7 Although section 849 of the Code of Civil Procedure permits the Court to impose a  
8 physical solution, the reach of this statute is limited to those who are a party to the  
9 comprehensive adjudication of a groundwater basin. Likewise, the authority to impose a  
10 physical solution on non-settling parties is premised upon the assumption that non-settling  
11 parties are proper parties to the adjudication of the groundwater basin pursuant to 832 and 841.  
12 (See Code Civ. Proc. §850.) Section 850(b) was intended to promote resolution in a  
13 comprehensive adjudication by preventing a small minority of parties to frustrate settlement. It  
14 naturally follows sections 832-849 of the Code which addresses the proper scope (such as  
15 boundaries of a basin) of a comprehensive adjudication. It does not reach parties that have not  
16 been joined or to which there is no jurisdiction. Thus, until Ventura proves that the thousands  
17 of parties it has attempted to drag into this litigation are properly subject to an adjudication, the  
18 majority consensus required to impose a physical solution is irrelevant. (See Code Civ. Proc. §  
19 850(b).)

20 Further, the cases Ventura cites for the courts' general powers or duties to impose a  
21 physical solution do not apply to parties outside of a single groundwater basin, or to a basin that  
22 is otherwise disconnected from others. (See Ventura Brief, pp. 9-13 (citing, e.g., *City of Lodi v.*  
23 *East Bay Mun. Utility Dist.* (1936) 7 Cal.2d 316, 341; *California American Water v. City of*  
24 *Seaside*, (2010) 183 Cal. App. 4th 471, 480; *Santa Barbara Channelkeeper v. City of San*  
25 *Buenaventura* (2018) 19 Cal.App.5th 1176, 1183-86.) The Ventura Brief glosses over the fact  
26 that each of those cases involved a singular groundwater basin.

27 *City of Barstow* is particularly instructive in distinguishing when and how the surface  
28 and groundwater rights of many landowners can be adjudicated and when a physical solution  
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1 may therefore be imposed. (*City of Barstow v. Mojave Water Agency*, (2000) 23 Cal. 4th  
2 1224.) In *City of Barstow*, the entire Mojave River Basin was in overdraft. (*Id.* at 1234) The  
3 Mojave River Basin encompassed several cities and extended approximately 3,600 square  
4 miles and involved five hydrologic subareas. (*Id.* at 1233-1234) Key to the inclusion of these  
5 subareas was the fact that the sources of water were all interconnected such that “groundwater  
6 and surface water within the entire Mojave River Basin constitute a single interrelated source.”  
7 (*Id.*) The negotiated physical solution in that matter was not imposed upon parties in  
8 disconnected subareas, but on parties who were found specifically to be tied to a single  
9 interrelated, connected source.

10 Additionally, in *Santa Maria I*, a water district filed a suit against the City of Santa  
11 Maria, Southern California Water Company, Guadalupe, and about 3,000 Doe defendants. (*City*  
12 *of Santa Maria v. Adam*, (2012) 211 Cal. App. 4th 266, 281-282) There, the court tried the  
13 matter in five phases, and basin boundaries were determined as a preliminary matter in phases I  
14 and II.<sup>1</sup> (*Id.*) After determining the boundaries of the single groundwater basin that was the  
15 subject of the adjudication, the court proceeded with the remaining phases. On appeal, the  
16 Court reviewed whether the trial court had authority to impose a physical solution (in Phase IV  
17 and V) where the groundwater basin was not in overdraft. (*Id.* at 287)

18 *Santa Maria, I* did not stand for the proposition that a physical solution (a Phase IV  
19 issue) could be approved, or imposed upon parties with groundwater rights in four separate  
20 groundwater basins, especially where the Court has yet to make a finding on the boundaries of  
21 the adjudication or the parties thereto. Nor did it stand for the proposition that a cross-  
22 complainant may delay its evidentiary burden to establish the boundaries and scope of the  
23 adjudication, to the extent section 833(c) permits it to do so, in order to develop a physical  
24 solution. Instead, the question of the court’s authority to impose a physical solution was  
25 directly tied to the court’s jurisdiction over the parties who were already determined to be  
26 within the bounds of the basin.

27  
28 <sup>1</sup> Like the instant case, *Santa Maria I* involved a cross-complaint that attempted to bring in a number of  
parties that fell outside the relevant groundwater basin.  
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1 For all of these reasons, a comprehensive adjudication is limited to the confines of the  
2 boundaries of a single basin. The adjudication is further limited in its definition of a single  
3 basin because Bulletin 118 removes the issue of the Court making a separate factual  
4 determination as to whether or not the basins are hydrologically connected or could be  
5 considered to constitute a single interrelated source.

6  
7 **III. CONCLUSION**

8 For the foregoing reasons, the physical solution doctrine does not apply to the Ojai  
9 Basins and its consideration is premature absent an evidentiary hearing that the Ojai Basins are  
10 connected to the surface waters of the Ventura River. As such, Ventura's proposal for  
11 expensive discovery is also premature. Before the case proceeds further and causes further  
12 unnecessary expense for landowners in the Ojai Basins, the foundational questions regarding  
13 jurisdiction, standing and the proper scope of the sixth cause of action should be addressed in  
14 an evidentiary hearing at which Ventura will be required to prove up its case – and to disprove  
15 the Department of Water Resource's existing Bulletin 118 finding that these basins are separate  
16 and hydrologically disconnected. Finally, the physical solution cannot be binding on parties in  
17 separate basins, regardless of the percentage of how many parties support the settlement,  
18 because Code of Civil Procedure section 850 applies only to a comprehensive adjudication of a  
19 single basin as defined in Bulletin 118.

20  
21 Dated: March 10, 2021

Respectfully submitted,

Bartkiewicz, Kronick & Shanahan, PC

24 By: *Holly Jacobson*  
25 JENNIFER T. BUCKMAN  
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27 Attorneys for CITY OF OJAI  
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**PROOF OF SERVICE**

I, Mikah Erickson, declare:

I am over the age of eighteen and not a party to this action. I work in Sacramento County at 1011 Twenty-Second Street, Sacramento, California 95816.

On March 10, 2021, following ordinary business practices, I placed the following document:

**RESPONDENT AND CROSS-COMPLAINANT CITY OF OJAI'S LEGAL BRIEF ON PHYSICAL SOLUTION**

**RESPONDENT AND CROSS-DEFENDANT CITY OF OJAI'S STATUS REPORT**

BY ELECTRONIC SERVICE: I electronically served the document(s) described above via File & ServeXpress, on the recipients designated on the Transaction Receipt located on the File & ServeXpress website (<https://secure.fileandservexpress.com>) pursuant to the Court Order establishing the case website and authorizing service of documents.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 10, 2021, at Sacramento, California.

\_\_\_\_\_  
MIKAH ERICKSON