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10/07/2022

Sherril R. Carter, Executive Officer / Clerk of Court

By: \_\_\_\_\_ A. Lim \_\_\_\_\_ Deputy

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, et al,

Respondents.

CITY OF SAN BUENAVENTURA, et al.,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger

~~[PROPOSED]~~ INTERIM ORDER  
CONFIRMING AN EXEMPT CROSS-  
DEFENDANT CLASS

Action Filed: Sept. 19, 2014

Trial Date: Not Set

[PROPOSED] ORDER

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The Court, having considered the request of Defendant and Cross-Complainant the City of San Buenaventura (Ventura), and Cross-Defendants the Casitas Municipal Water District (Casitas), the City of Ojai (Ojai), and the East Ojai Group (East Ojai Group) (collectively Initial Mediating Parties or IMPs), for an interim order confirming an exempt Cross-Defendant class consisting of Cross-Defendants who currently self-identify as diverting or extracting less than five (5) acre-feet per year (AFY) of water from the Ventura River Watershed, and hearing no objections thereto, FINDS AND ORDERS AS FOLLOWS:

1. The request is GRANTED on the terms and conditions set forth in this Order. Subject to the Court’s continuing jurisdiction to address changed circumstances and enforce the terms and objectives of any final judgment entered, and subject to the other terms and conditions set forth in this Order, the Court confirms the existence of an exempt Cross-Defendant class consisting of Cross-Defendants who currently self-identify as diverting or extracting less than five (5) acre-feet per year (AFY) of water from the Ventura River Watershed (Exempt Cross-Defendant Class).

~~2. This Court has broad authority to confirm the Exempt Cross-Defendant Class pursuant to its powers under Article X, section 2 of the California Constitution. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 442; *Environmental Defense Fund v. East Bay Municipal Water Dist.* (1980) 26 Cal.3d 183, 200; Code Civ. Proc., § 849.) In accordance with the Court’s authority under Article X, section 2 of the California Constitution, the Court confirms the Exempt Cross-Defendant Class because it will protect the claimed rights of the Exempt Cross-Defendant Class without impairing the claimed rights of the non-exempt parties. It will relieve the Exempt Cross-Defendant Class from future obligations in the litigation but will allow the Court to maintain continuing jurisdiction over them to address changed circumstances. In confirming the Exempt Cross-Defendant Class, the Court is not making a finding regarding the consistency of~~

1                   ~~any individual water use with the requirements of Article X, section 2 of the~~  
2                   ~~California Constitution.~~

3                   3.       This Court also has specific authority to grant the request under applicable statutes  
4                   and Rules of Court. (See Code of Civil Procedure sections 830 *et seq.*; Water  
5                   Code sections 2500 *et seq.*, and California Rules of Court, Rule 3.400(a).) Code of  
6                   Civil Procedure section 833, subdivision (d) provides as follows: “If the court  
7                   finds that claims of right to extract or divert only minor quantities of water, not to  
8                   exceed five acre-feet of water per year, would not have a material effect on the  
9                   groundwater rights of other parties, the court may exempt those claimants with  
10                  respect to those claims of only minor quantities of water, but a person who is  
11                  exempted may elect to continue as a party to the comprehensive adjudication.” In  
12                  accordance with Code of Civil Procedure section 833, subdivision (d), the Court  
13                  hereby finds, based on the representation of IMPs and without objection, that  
14                  confirming the Exempt Cross-Defendant Class “would not have a material effect  
15                  on the groundwater rights of the other parties” and, therefore, the Court elects to  
16                  use its discretion under Section 833, subdivision (d) to exempt the claims of the  
17                  Exempt Cross-Defendant Class as provided in this Order, but any member of the  
18                  Exempt Cross-Defendant Class may nevertheless elect to participate as a party in  
19                  future proceedings associated with this comprehensive adjudication.

20               4.       This case has been designated as complex pursuant to California Rules of Court,  
21               3.400(a). Consistent with that designation and the powers of this Court associated  
22               with complex cases, the Court finds that confirming the Exempt Cross-Defendant  
23               Class will promote the efficient processing of this complex case by limiting the  
24               number of active parties while protecting the rights of all parties, subject to the  
25               continuing jurisdiction of this Court to address changed circumstances.

26               5.       The Court’s confirmation of the Exempt Cross-Defendant Class is subject to the  
27               following specific terms and conditions:  
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- a. The Exempt Cross-Defendant Class consists of any Cross-Defendant who currently self-identifies as directly diverting or extracting a total of less than five (5) acre-feet per year (AFY) of water from the Ventura River Watershed. At this time, Cross-Defendants are not required to file evidence of self-certification with the Court, but may elect to do so if desired. A Cross-Defendant who self-identifies as a member of the Exempt Cross-Defendant Class may continue extraction or diversion activities consistent with the criteria for class members, subject to the Court's continuing jurisdiction and subject to other applicable law and regulations, including, but not limited to, requirements, restrictions or prohibitions of applicable public entities, including but not limited to, groundwater sustainability agencies. As part of a final judgment, Cross-Defendants will be required to file a certification with the Court or the Court's designee confirming their qualifications for membership in the Exempt Cross-Defendant Class and will have an obligation to report changes in their diversions or extractions to the Court or the Court's designee.
- b. Persons who have been served in this case through the notice process and who have not appeared will be presumptively placed in the Exempt Cross-Defendant Class, subject to the Court's continuing jurisdiction and future evidence regarding any extraction or diversion activities of these Cross-Defendants.
- c. To protect public safety, water extracted or diverted for use in active fire suppression will not count toward the five AFY limit for membership in the Exempt Cross-Defendant Class. As used herein, active fire suppression means direct use to extinguish a fire or its embers.
- d. Cross-Defendants who self-identify as being in the Exempt Cross-Defendant Class are relieved of any further obligation to file papers, make

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appearances or otherwise participate in this case until further notice from the Court, but may elect to file papers, make appearances, and/or otherwise participate in this case. All Cross-Defendants, including members of the Exempt Cross-Defendant Class, will continue to receive notices of all rulings in the action.

- e. As part of this Order, and as part of any final judgment, the Court retains and will retain continuing jurisdiction over members in the Exempt Cross-Defendant Class to address changed circumstances and effectuate the terms and obligations of any final judgment entered in this case.
- f. The Exempt Cross-Defendant Class shall be incorporated into any final judgment in this case, whether that judgment occurs through settlement or after trial. The final judgment will contain more detail on the reporting obligations of the Exempt Cross-Defendant Class consistent with the terms and conditions of this interim order of the Court. The final judgment, or a future interim order, will, for example, require members of the class to identify themselves as members of the class, and will provide a process for doing so.

10/07/2022

  
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 JUDGE WILLIAM F. HIGHBERGER