

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@musickeeler.com](mailto:g.patterson@musickeeler.com)  
8 William W. Carter (State Bar No. 115487)  
9 [w.carter@musickeeler.com](mailto:w.carter@musickeeler.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.

CASE No. 19STCP01176

Judge: Hon. William F. Highberger

**REVISED NOTICE OF EX PARTE  
APPLICATION TO CONTINUE TRIAL;  
POINTS AND AUTHORITIES IN  
SUPPORT OF CONTINUANCE AND  
[PROPOSED] ORDER**

**[Filed Concurrently with Declarations of  
Gregory J. Patterson and Anthony Brown  
and Proof of Service]**

**Date: January 20, 2022**

**Time: 1:30 p.m.**

**Dept: 10**

Action Filed: September 19, 2014

First Amended Complaint Filed:

September 7, 2018

Trial Date (Phase One): February 14, 2022

27 CITY OF SAN BUENAVENTURA, etc.,

28 Cross-Complainant,

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 The Thacher School; Friend's Ranches, Inc.; Topa Ranch & Nursery, LLC; Finch Farms,  
3 LLC; Red Mountain Land & Farming, LLC; Thacher Creek Citrus, LLC; The Finch Family  
4 Trust; James P. Finch; Robert Calder Davis, Jr.; Robert Calder Davis, Jr., TTEE of Trust Owned  
5 Properties; Sharon H. Booth, Trustee of The Survivor's Trust Created Under Declaration of Trust  
6 of Richard G. Booth and Sharon H. Booth Dated July 10, 1980; David Robert Hamm and Reeves  
7 Orchard, LLC (collectively, the "East Ojai Group") submits this revised ex-parte application for  
8 an order to continue the trial date in this matter, currently scheduled on February 14, 2022, until a  
9 date convenient for this Court in either June or July 2022, which is the first available time period  
10 the parties have no pending conflicts, and to continue all pre-trial deadlines related to that new  
11 date.

12 **The original ex-parte application set for January 18, 2022 has been continued to**  
13 **January 20, 2022 at 1:30 p.m. in the Los Angeles Superior Court, Dept. 10. The East Ojai**  
14 **Group sent a NOTICE TO ALL PARTIES of the January 20<sup>th</sup> date by File/ServeXpress on**  
15 **Tuesday, January 18<sup>th</sup>, 2022 and via e-mail on the same date. (See Revised Declaration of**  
16 **Gregory Patterson at Paragraph 20.)**

17 The City of San Buena Ventura and the Wood-Claeyssens Foundation oppose the ex-parte  
18 application. No other party has opposed the application.

19 **Summary Basis For Ex-Parte Application**

20 This ex parte application is based upon the fact that Cross-Complainant, the City of  
21 Ventura ("City"), did not timely provide its expert's groundwater flow and transport model when  
22 it disclosed its expert's initial report, which relies primarily upon that model. (See Declaration of  
23 Gregory Patterson at Paragraphs 3-11.) The City was required under the Comprehensive  
24 Adjudication Statute, namely, Code Civ. Proc. § 843, to provide its expert's model on August 31,  
25 2021, the date the Court ordered the City to make its initial expert disclosure. In comparison,  
26 Defendant State Water Resources Control Board ("State Board") timely provided its expert's  
27 respective model on September 24, 2021, the date it was required to disclose its expert's initial  
28 report.

1           Thereafter, for several months, the City continued to refuse to provide its expert's essential  
2 and material model, despite repeated requests from the East Ojai Group's counsel and others. On  
3 December 27, 2021, after a four-month delay, the City provided its model to a limited number of  
4 parties, pursuant to a stipulation.

5           In addition, as of this date, the City has also refused to provide its expert's model to certain  
6 other cross-defendants, who, at this time, have not disclosed any experts, despite requests by these  
7 cross-defendants for the model. (See Declaration of Gregory Patterson at Paragraph 14.)

8           In short, the City has improperly withheld critical information necessary for all cross-  
9 defendants to adequately represent their clients' interests in the Phase One Trial. Specifically, the  
10 inability of cross-defendants to timely obtain these models has prevented them from access to  
11 essential information and data critical to preparing their defense, including fully and effectively  
12 deposing the City's experts and others. As a consequence, the delayed production of the City's  
13 expert's models necessitates the continuance of the trial and related pre-trial dates. (See  
14 Declaration of Gregory Patterson at Paragraphs 12, 13; Declaration of Anthony Brown.)

15           It is important to note that neither the City nor any of the significant parties participating  
16 in Phase 1 of the trial initially were opposed to a continuance of the trial, including a continuance  
17 of that trial to a date convenient for his Court in April or May. (See Declaration of Gregory  
18 Patterson at Paragraph 16) However, after consultation among the parties, it became apparent  
19 that there were multiple various conflicts during the months of March, April and May. The  
20 parties do, however, have available dates on June 13-24. (See Declaration of Gregory Patterson  
21 at Paragraph 16 and Exhibit G summarizing then known available dates.)

22           The East Ojai Group, the Upper Ojai Group, Casitas Municipal Water District, and the  
23 State Board are all agreeable to continue and schedule the trial to those dates, subject to Court  
24 availability. (See Declaration of Gregory Patterson at Paragraph 16). Although the City and the  
25 Wood Claeysens Foundation are agreeable to a short continuance of the trial currently-scheduled  
26 on February 14, 2022, it opposes a continuance to June or July. (See Declaration of Gregory  
27 Patterson at Paragraphs 16-17.)

28

1 The East Ojai Group is unaware of any prejudice to the City in continuing the trial to the  
2 date in June or dates convenient to the Court. In any event, the need for the continuance is of the  
3 City's own making caused by its delay in providing its experts' model, in contravention of Code  
4 Civil Proc. § 843.

5 **I. POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO**  
6 **CONTINUE TRIAL**

7 **A. The Court May Continue The Trial If A Party Has Been Precluded From**  
8 **Obtaining Material And Relevant Evidence**

9 California Rules of Court 3.1332(c) provides various grounds for a continuance of a trial.  
10 In particular, Rule 3.1332(c)(6) provides good cause for continuing the trial based on a party's  
11 inability to obtain essential testimony, documents or other material evidence despite diligent  
12 efforts. Where denial of a continuance would result in substantial injustice, it is an abuse of  
13 discretion to deny it. *Hamilton v. Orange County Sheriff's Dept.* (2107) 8 Cal App. 5<sup>th</sup> 759, 756.

14 In this case, the City has precluded the cross-defendants from obtaining critical data and  
15 model information until very late in the proceedings. More specifically, having just recently  
16 received the requested expert's model, cross-defendants cannot reasonably complete expert  
17 witness depositions and be ready for trial on the currently set date of February 14, 2022.

18 **B. The City Of Ventura Was Required To Turn Over The Modeling Data When**  
19 **It Provided Its Initial Expert Disclosure**

20 California Code of Civil Procedure § 843, involving comprehensive water adjudication  
21 under the Sustainable Groundwater Management Act, a claim asserted by the City in this matter,  
22 provides explicit expert disclosure requirements: Aside from requiring a written report, Code  
23 Civil Proc. § 843(b), requires that the expert's report must be accompanied by "The facts or data  
24 considered by the witness in forming his or her opinions." The City's expert's model, which  
25 includes data and information relied upon by the expert in developing her expert report clearly  
26 falls within the disclosure requirements of § 843(b).<sup>1</sup>

27 \_\_\_\_\_  
28 <sup>1</sup> As noted above, although the State Board did turn over its expert's model in a timely manner, the

1 Timely access to the City's expert's model, as well as sufficient time to fully and  
2 effectively review the model is necessary and reasonable to allow the cross-defendants the ability  
3 to prepare for the deposition of the City's expert, as well as allow the cross-defendants' respective  
4 experts to prepare their testimony and any related reports. Timely access to the City's expert's  
5 model is especially critical given the anticipated highly-technical and disputed nature and scope  
6 of the Phase 1 trial, namely, whether the groundwater basins and surface waters, which are spread  
7 out over a huge watershed, are hydrologically-interconnected, in a matter of first impression  
8 under the recently enacted provisions of § 830 *et seq.*

9 **C. The East Ojai Group's Diligent Efforts To Obtain The Model**

10 On September 1, 2021, counsel for East Ojai Group first requested that the City provide a  
11 fully-functioning model of its expert's model, immediately after the City provided its initial expert  
12 disclosure on August 31, 2021. (See Greg Patterson Declaration at Paragraph 3 and Exhibit A to  
13 the Declaration.)

14 However, via an email on September 2, 2021, the City refused to provide the requested  
15 expert's model. (See Declaration of Greg Patterson at Paragraph 4 and Exhibit B attached to the  
16 Declaration.) Subsequently, counsel for the East Ojai Group had multiple conversations with  
17 counsel for the City in an attempt to reach resolution. (Declaration of Greg Patterson at  
18 Paragraph 5.)

19 As a result of the City's continued refusal to provide the model, the East Ojai Group was  
20 forced to continue the depositions of City experts, Ms. Tamara Klug and Dr. Claire Archer, that  
21 had been scheduled in early December 2021 and early January 2022, respectively. The  
22 depositions of the State Board's experts scheduled in early January 2022 were also continued by  
23 the East Ojai Group. The East Ojai Group was forced to continue these deposition given its  
24 inability to timely review and analyze the City's expert's model, which was not received until  
25 December 27, 2021, preventing the East Ojai Group's expert the opportunity to compare the City's  
26 expert's model with that model used by the State Board's experts, having different criteria and

27 \_\_\_\_\_  
28 East Ojai Group's expert finds it more effective and efficient to analyze the competence and  
accuracy of all models at the same time. (See Declaration of Anthony Brown.)

1 variables. As such, the East Ojai Group could not effectively prepare for and take those expert  
2 depositions, where those experts' development and use of the models, which serve as the primary  
3 bases for their respective expert opinions, could be fully examined and challenged. (See  
4 Declaration of Greg Patterson at Paragraphs 6-13 and Exhibits attached B through E.)

5 On December 6, 2021, counsel for the City finally suggested that the parties discuss a  
6 possible resolution regarding the requested production of the City's expert's model. (See  
7 Declaration of Greg Patterson at Paragraph 8 and Exhibit E attached to the Declaration). After  
8 further discussions, the City agreed to provide the requested model on the condition that the  
9 parties sign a stipulation controlling use and access to the model. Notwithstanding the absence of  
10 any statutory authority requiring such a stipulation, the East Ojai Group agreed to the stipulation  
11 in order to expedite obtaining the long-requested model. (Declaration of Greg Patterson at  
12 paragraphs 10-11.)

13 On December 27, 2021, pursuant to the stipulation, the City finally turned over the model  
14 to the East Ojai Group's counsel. Given the schedules and other factors, the East Ojai Group's  
15 expert was not able to begin his review and assessment of the City's expert's model until January  
16 3, 2020. As a consequence, the delayed production of the requested model provided a mere  
17 two(2) weeks to review, analyze and compare the City and State Board models at issue, and  
18 thereafter confer with counsel, as well as prepare for and complete all expert witness depositions  
19 by January 14, 2022, pursuant to the discovery deadline set by this Court. (Declaration of Greg  
20 Patterson at Paragraph 13.)

21 Such a short time period made it impossible for the East Ojai Group and its expert to  
22 effectively review, analyze and compare the expert models at issue. Specifically, after an initial  
23 review of the models at issue, the East Ojai Group's expert has informed counsel that he needs at  
24 least eight (8) weeks to adequately review, analyze and compare the models, develop opinions  
25 regarding those models, consult with counsel and assist counsel in the preparation of expert  
26 depositions and related matters. (See Declaration of Anthony Brown.)

27 The City has also apparently withheld disclosure of the City's expert's model for other  
28 cross-defendants, Andrew Whitman, Heidi Whitman, Nancy L. Whitman and the John R. and

1 Nancy L. Whitman Trust, although they are named parties to the instant matter. According to a  
2 brief filed by these other parties, the City has refused to provide them with the requested model,  
3 arguing that those parties are not entitled to receive the model because they have not retained an  
4 expert. (Brief filed on January 7, 2022. For the convenience of the Court, a copy of this brief is  
5 attached to the Declaration of Gregory Patterson as Exhibit F.)

6 The City's continued failure to provide its expert's model to other parties remains  
7 unresolved, preventing all named parties who have expressed an intention to participate in  
8 Phase 1 of the trial from effectively challenging the opinions of the City's expert. It appears  
9 manifestly unfair that these other parties would not be able to adequately defend their interests  
10 without access to the requested model.

11 **D. A Continuance Of The Trial And Related Dates Will Allow Cross-Defendants**  
12 **The Opportunity To Properly Prepare For Trial**

13 Given the impending pre-trial and trial dates, it is not possible to thoroughly (1) review  
14 and analyze the City's expert's models, as well as compare to the different model used by the  
15 experts for the State Board; (2) prepare expert witness testimony and related matters; (3) prepare  
16 for and complete opposing expert witness depositions; and (4) comply with current pre-trial  
17 deadlines and prepare for trial date on February 14, 2020. Given the delayed production of the  
18 expert model by the City, there simply is not sufficient time and opportunity for the East Ojai  
19 Group to effectively and properly prepare for trial and related litigation dates.

20 As the Court is well aware, this is a case of first-impression involving the recently enacted  
21 Sustainable Groundwater Management Act ("SGMA") (Water Code § 10720 *et seq.*) and the  
22 Comprehensive Adjudication Statute (Code Civ. Procedure §§ 830-852), seeking the  
23 unprecedented comprehensive adjudication of four(4) separate and distinct groundwater basins  
24 and the surface waters of several rivers, creeks and their respective tributaries in a huge  
25 watershed, and involving hundreds of parties – all of which is disputed by the parties, who have  
26 retained at least a half-dozen experts providing highly-technical and conflicting opinions on the  
27 subjects of hydrogeology, biology and botany. It is therefore imperative that a complete and  
28

1 accurate factual record be made in the instant matter, which requires that cross-defendants have  
2 sufficient time and opportunity to fully investigate and prepare their case.

3 Accordingly, the East Ojai Group respectfully requests that the Court set a trial date in  
4 June, the first available time period in which one or more parties does not have a conflict on date  
5 convenient to the Court and set all other pre-trial dates consistent with the current order.

6 **NOTICE OF SERVICE OF EX-PARTE APPLICATION**

7 The original ex-parte application was served on all parties om January 13, 2022 via File  
8 and ServeXpress and was served via e-mail to all parties on the date. (See Declaration of Greg  
9 Patterson at Paragraph 20.) The original date for hearing on the ex-parte application was January  
10 18, 2022 at 1:30 p.m. in Department 10. It has since been re-scheduled for January 20, 2022 at  
11 1:30 p.m. in Department 10. Notice of the January 20, 2022 date has been sent to all parties via  
12 File & ServeXpress and via e-mail on January 18, 2022. (See Declaration of Greg Patterson at  
13 Paragraph 20.)

14  
15 DATED: January 18, 2022

MUSICK, PEELER & GARRETT LLP

16  
17 By: 

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