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FILED
Superior Court of California
County of Los Angeles

MAY 11 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By Kristina Vargas Deputy
Kristina Vargas

11 Attorneys for Respondent and Cross-Complainant

12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

16 SANTA BARBARA CHANNELKEEPER, a
California non-profit corporation,

Case No. 19STCP01176

17 Petitioner,

Judge: Honorable William F. Highberger

18 v.

CITY OF SAN BUENAVENTURA'S
MEMORANDUM OF POINTS AND
19 AUTHORITIES IN SUPPORT OF MOTION
20 TO BIFURCATE AND PARTIAL LIFTING
OF THE DISCOVERY STAY

20 STATE WATER RESOURCES CONTROL
BOARD, etc., et al.,

21 Respondents.

Date: June 21, 2021
Time: 1:30 p.m.
Dept: S10

22 CITY OF SAN BUENAVENTURA, etc.,

Action Filed: Sept. 19, 2014
Trial Date: Not Set

23 Cross-Complainant,

24 v.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.
27

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1 **I. INTRODUCTION**

2 For judicial efficiency and for the convenience of the Court and the parties, the City of
 3 San Buenaventura (“City”) moves to bifurcate the trial of this matter into phases. This is a
 4 complex case involving the use of water by people and aquatic species, such as the Southern
 5 California Steelhead, in the Ventura River Watershed (“Watershed”), which the City alleges
 6 includes the Ventura River, its multiple tributaries, and four interconnected groundwater basins.
 7 As the City has informed the Court, the City and four other parties believe that their proposed
 8 physical solution¹ is the best way, consistent with Article X, section 2 of the California
 9 Constitution, to maximize the reasonable and beneficial consumptive and instream uses of the
 10 Watershed, and ultimately to resolve this litigation. The imposition by the Court of the proposed
 11 physical solution would immediately start addressing the challenges that the Watershed is facing,
 12 obviate the need for years of costly water rights litigation, preserve judicial economy, and protect
 13 the public and environmental interests. However, because the parties have as yet been unable to
 14 agree on certain threshold issues, such as the extent of surface water and groundwater
 15 interconnectivity in the Watershed and the precise boundaries of the basins and the Watershed,
 16 the City moves the Court to set an initial phase of trial to determine these issues, which are crucial
 17 to both the imposition of a physical solution and, if necessary, to the resolution of all of the City’s
 18 causes of action.

19 The term “physical solution” is used in California water law to describe an agreed-upon or
 20 judicially-imposed resolution designed to maximize the reasonable and beneficial use of water.
 21 (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 (“*Santa Maria I*”).) The Court
 22 has a constitutional duty to consider a physical solution that will avoid waste and which will not

23 ¹ The parties are currently engaged in a meet and confer process regarding the lodging with the
 24 Court of the physical solution as currently proposed by the City and Cross-Defendants the
 25 Ventura River Water District, Meiners Oaks Water District, the Rancho Matilija Mutual Water
 26 Company, and the Wood-Claeyssens Foundation (“Proposing Parties”). The Proposing Parties
 27 wish to lodge the current version of the physical solution with the Court and originally intended
 28 to lodge the proposed physical solution with this motion. On May 6, 2021, the parties held a meet
 and confer conference regarding this motion, where multiple parties objected and expressed
 concern for presenting the Court with the proposed physical solution at this stage. As such, the
 City is not lodging the proposed physical solution with this motion, but rather will lodge it with
 the Court on June 21, if any written objections to the submission are resolved. (Declaration of
 Christopher M. Pisano (“Pisano Decl.”), ¶ 7.)

1 unreasonably or adversely affect the rights of the parties. (See *Rancho Santa Margarita v. Vail*
2 (1938) 11 Cal.2d 501, 558-559.) The question posed by the City in this motion is what is the best
3 way to get from here to there; that is, what is the best way to allow the Court to exercise its
4 constitutional duty to consider the physical solution? How can the Court and parties move this
5 case towards a review, and potential approval, of a physical solution that protects the Watershed
6 and all those who depend on it?

7 This motion provides the Court with a roadmap for both addressing in this phase one trial
8 certain threshold claims asserted by several Cross-Defendants about the action and for ultimately
9 achieving a review of the physical solution or, if needed, a resolution of all the City's causes of
10 action. To do this, the City, by this motion, first requests that the Court bifurcate and resolve the
11 following two discrete issues that will help frame the remainder of the case: (1) a determination
12 of the Watershed boundaries and the boundaries of the four groundwater basins; and (2) a
13 determination of the interconnection between the surface water and groundwater in the
14 Watershed, including the interconnection between surface water and the four groundwater basins,
15 and the interconnection between those groundwater basins and the Ventura River, and its
16 tributaries. The City will subsequently seek an order for a further partition of the case for a trial
17 of its proposed physical solution. For now, an early resolution of these two discrete issues will
18 inform the Court as to the extent, nature, and boundaries of the resources being litigated, and
19 confirm that all parties are properly before the Court.

20 The City therefore requests that the Court bifurcate this proceeding and try the issues of
21 the Watershed/basin boundaries and interconnectivity in a first phase of trial. Because these are
22 discrete, expert-driven issues, they can be tried relatively quickly, and the City requests a trial
23 date in mid to late November 2021, depending on the Court's availability. The City further
24 requests that the Court partially lift the discovery stay and permit discovery solely on these two
25 issues, and the City provides herein a proposed discovery schedule for a potential first phase of
26 trial in November.

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1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 If the Court grants this motion, phase one of the trial will establish the basic facts
3 regarding the Watershed and its boundaries, the boundaries of and hydrological conditions in the
4 four groundwater basins, and the hydrology of the Watershed. The very brief factual and
5 procedural background described below is intended to provide the Court with sufficient context
6 for its consideration of the motion, and in an attempt to avoid disputes, is taken from the
7 pleadings in the case and from the Court of Appeal decision in *Santa Barbara Channelkeeper v.*
8 *City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1181. The factual presentation here will
9 of course be subject to proof at trial.²

10 **A. The Ventura River Watershed**

11 The Watershed is a coastal watershed located in southern California, with an approximate
12 catchment area of 226 square miles. The Watershed is located in northwestern Ventura County,
13 with a small part of the Watershed located in southeastern Santa Barbara County. (Respondent
14 and Cross-Complaint City of San Buenaventura’s Third Amended Cross Complaint (“TACC”), ¶
15 98.)

16 The Ventura River and its headwater tributary run through the center of the Watershed
17 along a 33.5 mile stretch from its headwaters in the Transverse Ranges to the Pacific Ocean.
18 (TACC, ¶ 99.) The Ventura River and its headwater tributary is fed by several major tributaries,
19 including Matilija Creek, North Fork Matilija Creek, San Antonio Creek, Canada Larga Creek
20 and Coyote Creek. (TACC, ¶ 100.) There are four significant groundwater basins (“Basins”) in
21 the Watershed, specifically (1) the Upper Ventura River Groundwater Basin (Department of
22 Water Resources (“DWR”) Bulletin 118, Groundwater Basin Number 4-3.01); (2) the Lower
23

24 ² The Court already has before it a significant amount of background material, including
25 documents submitted by Santa Barbara Channelkeeper with its First Amended Complaint
26 (“FAC”). The FAC includes several documents, such as the 2015 Ventura River Watershed
27 Management Plan, that provides more detailed descriptions of the Watershed and its uses. (See,
28 e.g., Supplemental Declaration of Daniel Cooper in support of FAC, ¶ 26, Exhibit W, Excerpts of
the 2015 Ventura River Watershed Management Plan, a full copy of which is available at
<http://venturawatershed.org/the-watershed-plan>.) While all of this information will be subject to
proof at trial, documents such as the 2015 Ventura River Watershed Management Plan provide
general background information for the Court.

1 Ventura River Groundwater Basin (DWR Bulletin 118, Groundwater Basin Number 4-3.02); (3)
2 the Upper Ojai Valley Groundwater Basin (DWR Bulletin 118, Groundwater Basin Number 4-1);
3 and (4) Ojai Valley Groundwater Basin (DWR Bulletin 118, Groundwater Basin Number 4-2).
4 (TACC, ¶ 103.) The pleadings allege that there is a hydrological connection between the Ventura
5 River, its tributaries, and the Basins. (TACC, ¶ 103; Santa Barbara Channelkeeper's First
6 Amended Complaint for Declaratory Relief and Verified Petition for Writ of Mandate ("FAC"), ¶
7 76.)

8 The Watershed also contains several important human-made water supply and flood
9 control features, such as multiple levees, that have changed conditions in the Watershed over the
10 years. At the top of the Ventura River is Matilija Dam. (FAC, ¶ 72.) Downstream of Matilija
11 Dam is the Robles Diversion and Fish Passage Facility, which diverts water from the Ventura
12 River through the Robles Canal to Lake Casitas for storage and subsequent consumptive use
13 throughout the Watershed. (TACC, ¶ 15.) Lake Casitas itself was formed by the construction of
14 the Casitas Dam on Coyote Creek. (TACC, ¶ 15; FAC, ¶ 72.) Further downstream is Foster
15 Park, where there is a subsurface dam that extends below most of the Ventura River. (TACC, ¶ 2;
16 FAC, ¶ 72.)

17 The Watershed provides water for reasonable and beneficial consumptive and instream
18 uses. Major portions of the Watershed have been designated as critical habitat for the Southern
19 California Steelhead, a federally listed endangered species. (*Santa Barbara Channelkeeper v.*
20 *City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1180; FAC, ¶ 87.) The Watershed also
21 supports reasonable and beneficial consumptive uses such as municipal supply, agricultural uses,
22 and industrial uses. (TACC, ¶¶ 1-91.) In many portions of the Watershed, surface and
23 groundwater from the Watershed is the only source of water for consumptive use.

24 The City alleges that the City or its predecessors in interest have used water from the
25 Watershed for reasonable and beneficial use since well before California became a state (TACC,
26 ¶¶ 107, 124-125), and at least since before 1870. (TACC, ¶ 135; FAC, ¶ 113.) The City asserts
27 that it therefore holds senior water rights in the Watershed. (TACC, ¶¶ 107, 124, 135.)
28

1 **B. Background of the Litigation**

2 In September 2014, Santa Barbara Channelkeeper (“Channelkeeper”) filed a Complaint
3 and Petition for Declaratory Relief and a Writ of Mandate pursuant to Code of Civil Procedure
4 section 1085 against the City and the State Water Resources Control Board. In response to
5 Channelkeeper’s Complaint, the City filed a Cross-Complaint asserting, among other things, that
6 if the City’s use of water was determined to be unreasonable, it was caused by the unreasonable
7 use of water by others within the Watershed. Channelkeeper filed a motion to strike the City’s
8 Cross-Complaint, the trial court granted the motion, and the City appealed.

9 In a reported decision that is now the law of this case, the Court of Appeal held that the
10 trial court abused its discretion in striking the City’s Cross-Complaint because “the water that the
11 Cross-Complaint seeks to prevent Cross-Defendants from using is effectively the same water that
12 Channelkeeper asserts the City must leave in the river for the fish.” (*Santa Barbara*
13 *Channelkeeper, supra*, 19 Cal.App.5th at 1181.) The Court reasoned that “[b]ecause the water
14 sources on which all users draw are alleged to be hydrologically connected, the water that the
15 Cross-Defendants are using and which is the subject of the City’s Cross-Complaint is the same
16 water that the City is using, which is the subject of the Complaint.” (*Id.* at 1193.)

17 After the Court of Appeal decision, Channelkeeper filed its FAC, which is the operative
18 complaint. The City similarly amended its Cross-Complaint, with the operative pleading being its
19 TACC. The TACC names as Cross-Defendants parties that divert water from and/or may claim
20 rights to water from the Ventura River or that pump groundwater from the Basins that contribute
21 water to the River. (TACC, ¶¶ 2-97.) The City asserts that Cross-Defendants’ use of water from
22 the Ventura River and the Basins reduces the surface and/or subsurface water flow of the River.
23 (TACC, ¶¶ 108-110.) The Cross-Complaint asserts nine separate causes of action against each
24 Cross-Defendant.³

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³ The nine causes of action are: (1) Violation of Reasonable Use; (2) Violation of Public Trust;
(3) Declaratory Relief—Pueblo and/or Treaty Water Rights; (4) Declaratory Relief—Prescriptive
Water Rights; (5) Declaratory Relief—Appropriative Water Rights; (6) Comprehensive
Adjudication/Physical Solution; (7) Declaratory Relief—Municipal Priority; (8) Declaratory
Relief—Human Right to Water; and (9) Declaratory Relief.

1 On September 30, 2019 and in August 2020, the City and Channelkeeper entered into a
2 settlement agreement and an amended settlement agreement to settle their past disputes while
3 preserving certain limited claims and defenses for future alleged violations (collectively the
4 “Settlement Agreement”). As part of the Settlement Agreement, Channelkeeper agreed “not to
5 seek other interim relief regarding flow.” The Settlement Agreement provides that the
6 “settlement relating to interim flows in no way impacts Channelkeeper’s ability to comment on,
7 support, or challenge the physical solution proposed by any party in the Action.” The Settlement
8 Agreement therefore leaves only two issues remaining as between the City and Channelkeeper—
9 an unresolved claim for attorney’s fees and costs and Channelkeeper’s participation in the issues
10 related to the physical solution. (Pisano Decl., ¶¶ 2-3.)

11 In September of 2020, the Proposing Parties released for public review a draft physical
12 solution. Although the Proposing Parties initially intended to ask the Court to consider and act on
13 the physical solution in one trial, multiple parties have raised threshold issues that should be
14 resolved prior to the Court’s consideration of the physical solution. Therefore, the City brings
15 this motion to bifurcate these threshold issues for a phase one trial. (Pisano Decl., ¶¶ 4-6.)

16 **III. LEGAL ARGUMENT**

17 **A. The Court Can Order Bifurcation of Issues in Furtherance of Convenience or** 18 **to Avoid Prejudice**

19 The Court may order a separate trial of any cause of action, including a cause of action
20 asserted in a cross-complaint, or of any separate issue or of any number of causes of action or
21 issues, in furtherance of convenience or to avoid prejudice, or when separate trials will be
22 conducive to judicial economy. (Code Civ. Proc., §§ 598, 1048, subd. (b); *Equitable Life*
23 *Assurance Society v. Berry* (1989) 212 Cal.App.3d 832, 836.) In one of the recent appellate
24 opinions stemming from the Antelope Valley Groundwater Cases, the Court of Appeal affirmed a
25 trial court’s discretion to determine the order in which claims or issues are bifurcated and
26 determined in the water rights adjudication context. (*Antelope Valley Groundwater Cases* (2020)
27 58 Cal.App.5th 343, *reh’g denied* (Jan. 7, 2021).) In the Antelope Valley case, the initial trial
28 phases “defined the geographical boundaries for the Antelope Valley Adjudication Area (AVAA)

1 to determine which parties would be necessary parties to any global adjudication of water rights,
2 and then determined that the aquifer encompassed within the AVAA boundaries (the AVAA
3 basin) had sufficient hydrologic interconnectivity and conductivity to be defined as a single
4 aquifer for purposes of adjudicating the competing groundwater rights claims.” (*Id.* at 523.) The
5 trial court determined “there was enough hydraulic connectivity within the AVAA basin as a
6 whole to obviate any claim that certain sections should be treated as separate basins.” (*Id.* at
7 525.) As is discussed in greater detail herein, the Court should bifurcate this proceeding and try
8 the issues of the Watershed/basin boundaries and interconnectivity in an initial phase of trial.

9 **B. The Court Should Order Bifurcation of the Issues of Interconnectivity and**
10 **Watershed/Basin Boundaries**

11 The Court not only has the authority to consider a physical solution, but also has the duty
12 to do so. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383-384; *Santa Maria I, supra*, 211
13 Cal.App.4th at p. 288; Code Civ. Proc., § 849, subd. (a) [“The court shall have the authority and
14 the duty to impose a physical solution on the parties in a comprehensive adjudication where
15 necessary and consistent with Article 2 of Section X of the California Constitution.”].) The
16 Supreme Court has stated that “it is the duty of the trial court to ascertain whether there is a
17 physical solution of the problem that will avoid waste and which will not unreasonably or
18 adversely affect the rights of the parties.” (*Rancho Santa Margarita v. Vail, supra*, 11 Cal.2d at
19 pp. 558-559.)

20 The City asserts a variety of water rights causes of action in its TACC. At bottom though,
21 each cause of action ultimately seeks to establish the reasonable and beneficial consumptive and
22 instream uses of the Watershed, which the Court of Appeal affirmed was an issue the City had a
23 right to bring before the Court in this action. (*Santa Barbara Channelkeeper, supra*, 19
24 Cal.App.5th at 1192-93.) In order for the Court to establish the reasonable and beneficial
25 consumptive and instream uses in the Watershed, it is appropriate for the Court to first determine
26 the boundaries of the Watershed and the Basins. In addition, it is appropriate for the Court to
27 determinate whether the different sources of water within the Watershed are interconnected such
28 that the water within the system may be considered one source. Stated another way, is the

1 Ventura River and its tributaries interconnected with the Basins, such that all users in the entire
2 Watershed, including all pumpers and those claiming rights in the Basins, are properly before the
3 Court in this action? The City believes that the answer to that question is yes, and that there is
4 ample evidence to support the interconnectivity of the entire Watershed, including its Basins.
5 Other parties appear to disagree, and, therefore, the Court should determine these issues in a first
6 phase of trial.

7 The City's proposed first phase will answer these threshold questions and confirm that the
8 parties before the Court are proper parties for the subsequent consideration by the Court of the
9 proposed physical solution. The proposed first phase will establish the Basin and Watershed
10 boundaries. The boundaries of the Basins have been determined by DWR in its Bulletin 118,
11 which has determined the basin boundaries for groundwater basins throughout California.
12 However, the City acknowledges that for one basin, the Upper Ojai Valley Groundwater Basin, a
13 portion of that basin is connected with the Santa Clara River Watershed rather than the Ventura
14 River Watershed. (See DWR Bulletin 118, Groundwater Basin Number 4-1, available at
15 [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/4_001_UpperOjaiValley.pdf)
16 [Management/Bulletin-118/Files/2003-Basin-Descriptions/4_001_UpperOjaiValley.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/4_001_UpperOjaiValley.pdf), ["A
17 surface and groundwater divide is found in the eastern part of the basin that separates
18 groundwater flow westward toward San Antonio Creek [located within the Ventura River
19 Watershed] and eastward toward Santa Paula Creek [located within the Santa Clara River
20 Watershed].") In the first phase of trial, the parties and Court will establish the boundaries of the
21 Watershed as it relates to the boundaries of the Basins. The City anticipates that the only area of
22 potential dispute about Basin boundaries will be regarding the Upper Ojai Valley Groundwater
23 Basin. The first phase will also resolve the issue of interconnectivity of the Basins and Ventura
24 River system, including all of its tributaries. Following the first phase of trial, the City and the
25 other Proposing Parties will ask the Court to consider the physical solution in a second phase of
26 trial.

27 The City understands that certain parties believe that the Court may only consider the
28 proposed physical solution if the City and the Proposing Parties establish the criteria found in

1 Code of Civil Procedure section 850(b). While this issue does not need to be resolved for
2 purposes of bifurcating trial, such a position is incorrect. As the City will explain in more detail
3 in subsequent briefing, Code of Civil Procedure sections 850(a) and 850(b) provide two
4 independent avenues for the Court to enter a judgment. Under 850(a), a court may enter a
5 judgment in an adjudication if the court finds that the judgment meets the three criteria in that
6 section, none of which requires the courts to consider the number of parties who support the
7 judgment or the extent of the groundwater extraction by those parties. In contrast, Code of Civil
8 Procedure section 850(b) is a burden shifting provision that parties may elect to invoke if they can
9 establish the thresholds set forth in that subsection. If they meet the thresholds, the burden shifts
10 to parties who object to the judgment to prove by a preponderance of the evidence that the
11 judgment does not satisfy the criteria of Section 850(a) or that it “substantially violates the water
12 rights of the objecting party.” The language of Section 850(b) is not a constraint on the Court’s
13 power, and its duty, regarding the physical solution.

14 The Proposing Parties have not yet determined whether they will ask the Court to consider
15 the physical solution under Code of Civil Procedure section 850(a) or 850(b). Nevertheless, by
16 setting Watershed and Basin boundaries in the first phase of trial, the Court will establish some of
17 the factual predicates that may be required for the potential future application of Code of Civil
18 Procedure section 850(b), if the Proposing Parties subsequently elect to proceed under that
19 provision.

20 This first phase of the trial will also establish the factual basis for any determination that
21 the parties assert the Court must make under Code of Civil Procedure section 833(c). That
22 section provides that “[i]f the court finds that including an interconnected surface water body or
23 subterranean stream flowing through known and definite channels is necessary for the fair and
24 effective determination of the groundwater rights in a basin, the court may require the joinder of
25 persons who claim rights to divert and use water from that surface water body or subterranean
26 stream in a comprehensive adjudication conducted pursuant to [the streamlined adjudication
27 statute].” The City’s position is that this section allows the Court to force a plaintiff to add
28 surface water users that have not yet been named in the action. Here, that provision does not

1 apply because the City, consistent with the Court of Appeal decision that is the law of the case,
2 has already named all known surface water users and all potential surface water claimants in the
3 Watershed. Therefore, there is no need for the Court to require the joinder of persons who claims
4 right to divert and use surface water because they are already before the Court as parties.

5 However, to the extent a finding under Section 833(c) is determined to be required, the
6 first phase of trial will provide the factual basis for making that determination. It will establish
7 the boundaries for the Watershed and the Basins, and determine the hydrological connection
8 between surface and groundwater within this system. This determination will, in turn, provide the
9 Court with the basis for making any determinations that are deemed required under Section
10 833(c), if any are required.

11 This first phase of trial will also establish the factual basis for assessing and resolving the
12 arguments made by Cross-Defendant the City of Ojai that attempt to limit this Court's authority
13 to conduct a comprehensive adjudication and impose a physical solution in a Watershed
14 adjudication involving multiple groundwater basins. The City of Ojai's suggested interpretation,
15 that adjudication actions be limited to a single groundwater basin, one at a time, is at odds with
16 the common law, would undermine the streamlining that the comprehensive adjudication statute
17 was designed to create, and would constitute a waste of judicial and party resources.

18 Interconnected surface waters and groundwater basins have been adjudicated together previously.
19 (*City of Barstow v. Mojave Water Agency, supra*, 23 Cal.4th 1224; *Los Angeles v. San Fernando*,
20 *supra*, 14 Cal.3d 199), and doing so here is entirely consistent with the language and the purposes
21 of the adjudication statute. In fact, both the adjudication statute and the Sustainable Groundwater
22 Management Act, for which the comprehensive adjudication statute was enacted to facilitate,
23 expressly preserve the common law. (Wat. Code, § 10720.5 [stating that “[n]othing in this part,
24 or in any groundwater management plan adopted pursuant to this part, determines or alters
25 surface water rights or groundwater rights under common law or any provision of law that
26 determines or grants surface water right”]; Code Civ. Proc., § 830, subd. (b)(7) [stating that
27 “[e]xcept as provided in this paragraph, this chapter shall not alter groundwater rights or the law
28

1 concerning groundwater rights”].) The factual determinations made during the first phase will
2 establish the factual basis for the Court’s assessment and resolution of the City of Ojai’s position.

3 **C. The Court Should Set the First Phase for November 2021, and Should Lift the**
4 **Discovery Stay in Part to Allow Discovery Only on the Issues to be Tried in**
5 **the First Phase of Trial, Subject to a Reasonable Discovery Schedule**

6 The Court has inherent authority to provide for the orderly conduct of proceedings before
7 it. (Code Civ. Proc. § 128; *Santandrea v. Siltec Corp.* (1976) 56 Cal.App.3d 525, 529 [“Every
8 court has the inherent power to regulate the proceedings of matters before it and to effect an
9 orderly disposition of the issues presented.”]) The Court also has authority, if cause is shown, to
10 stage and sequence the timing of discovery for the convenience of parties and in the interests of
11 justice. (Code Civ. Proc. § 2019.020, subd. (b).)

12 As stated, these first two issues are discrete. The Basin boundaries have been defined by
13 DWR in Bulletin 118, and through expert testimony, the City will demonstrate where the Upper
14 Ojai Valley Basin ceases to be connected to the Watershed. As for the issue of interconnectivity,
15 this will largely be shown by expert testimony; however there may also be some relevant but
16 limited percipient fact-based evidence that sheds light on the issue of interconnectivity. In light
17 of this, and given the age of this case, the Court should set a trial date on this first phase in the
18 relative near future. The City suggests that the trial be set for mid- to late-November 2021, or at
19 such other time as the Court has availability. As the City has represented, the City anticipates that
20 the first phase would take approximately seven to ten court days to conduct.

21 As for discovery, the Court previously ordered a stay on all discovery based on a
22 stipulation of the parties. If the Court orders bifurcation of the proceeding to try the issues of
23 Basin and Watershed boundaries and interconnectivity in the first phase, the Court should
24 likewise lift the stay of discovery only for these two discrete issues. The discovery stay should
25 remain in place for all other issues, but a partial lifting of the stay will allow the parties to prepare
26 for the first phase of trial. It should be noted here that Code of Civil Procedure Section 843
27 provides that unless otherwise stipulated, parties shall have 30 days following the scheduling of a
28 trial for the parties to designate expert witnesses. The City does not recommend relying upon this
statutory scheme for the first phase of trial, but rather recommends a schedule more in line with

1 the Civil Discovery Act. This will allow the parties some time to conduct limited fact-based
2 discovery in advance of expert designations.

3 The following is a proposed schedule for conducting discovery:

- 4 Percipient Discovery Cut-Off: October 15, 2021
- 5 Expert Witness Exchange: September 24, 2021
- 6 Supplemental Expert Exchange: October 14, 2021
- 7 Expert Deposition Cut-Off: November 1, 2021.
- 8 Phase 1 Trial: November 15, 2021.

9 **IV. CONCLUSION**

10 For the reasons stated herein, the City requests that the Court grant this motion to
11 bifurcate, and that the Court order a first phase of trial on the issues of the Basin and Watershed
12 boundaries and interconnectivity. The City further requests that the Court schedule the first phase
13 of trial for approximately mid to late November 2021, and that the Court lift the discovery stay
14 solely for the issues that will be tried in the first phase, and establish a reasonable discovery
15 schedule.

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17 Dated: May 11, 2021

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