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CITY OF SAN BUENAVENTURA

FILED
Superior Court of California
County of Los Angeles
12/23/2021
Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Lim Deputy

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

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

18 Petitioner,

19 v.

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

22 Respondents.

23 CITY OF SAN BUENAVENTURA, et al.,

24 Cross-Complainant,

25 v.

26 DUNCAN ABBOTT, an individual, et al.,

27 Cross-Defendants.
28

Case No. 19STCP01176

Judge: Hon. William F. Highberger

**STIPULATION AND PROTECTIVE
ORDER – CONFIDENTIAL
DESIGNATION FOR REGIONAL
GROUNDWATER – SURFACE
WATER FLOW MODEL**

Action Filed: Sept. 19, 2014
Phase 1 Trial Date: Feb. 14, 2022

1 IT IS HEREBY STIPULATED by and between the parties CITY OF SAN
 2 BUENAVENTURA (“Ventura”) on the one hand, and CITY OF OJAI (“Ojai”), CASITAS
 3 MUNICIPAL WATER DISTRICT (“Casitas”) and EAST OJAI GROUP (“EOG”) on the other
 4 hand (collectively “Stipulating Parties”), by and through their respective counsel of record, that in
 5 order to facilitate the exchange of information which may be subject to confidentiality limitations
 6 on disclosure due to federal laws, state laws, and privacy rights, which in this matter the
 7 Stipulating Parties intend to limit to the electronic MODFLOW program codes, files and
 8 databases that comprise the Regional Groundwater – Surface Water Flow Model developed by
 9 Ventura’s designated expert, Dr. Claire Archer of Cardno (the “Model”), the Stipulating Parties
 10 stipulate as follows:

11 1. In this Stipulation and Protective Order, the words set forth below shall have the
 12 following meanings:

13 a. “Proceeding” means the above-entitled proceeding *Santa Barbara*
 14 *Channelkeeper v. State Water Resources Control Board et. al.*, Case No. 19STCP01176.

15 b. “Confidential” means Information which is in the possession of a
 16 Designating Party, which in the case of this Stipulation is limited to the Model and such
 17 other materials as identified in Section 1.f herein, who believes in good faith that the
 18 Information is entitled to confidential treatment under applicable law,

19 c. “Designating Party” means Ventura.

20 d. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give,
 21 or make available the Model, or any part thereof, or any information contained therein.

22 e. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as
 23 those terms are defined by California Evidence Code Sections 250, 255, and 260, which
 24 have been produced in discovery in this Proceeding by any person or entity, and (ii) any
 25 copies, reproductions, or summaries of all or any part of the foregoing.

26 f. “Information” means the content of the Model, including as part of the
 27 Model all electronic codes, files and databases therein which are disclosed as digital files,
 28 and which may include, but are not limited to:

- 1 i) All GIS and basic data and databases used to develop model
- 2 properties, parameters, and observations used for construction, simulation, and analysis.
- 3 ii) All tools used to develop the model attributes and analysis, and
- 4 iii) All model input, output observations, and input or calibration
- 5 analysis results in digital or GIS form, and
- 6 iv) All model input and output files as well as all GIS shape files,
- 7 databases, and other supporting information and data used in support of building and
- 8 running any calibration or parameter estimation software such as ModelMuse, PEST, or
- 9 UCODE.

10 2. The entry of this Stipulation and Protective Order by these Stipulating Parties does
11 not alter, waive, modify, or abridge any right, privilege, or protection otherwise available to any
12 Stipulating Party with respect to the discovery of matters, including but not limited to any
13 Stipulating Party’s right to assert the attorney-client privilege, the attorney work product doctrine,
14 or other privileges, or any Stipulating Party’s right to contest any such assertion.

15 3. The Model shall be designated as “Confidential,” and it shall clearly be so
16 designated before it is Disclosed or produced. The “Confidential” designation should not obscure
17 or interfere with the legibility of the designated Information. However, the “Confidential”
18 designation may be displayed on any and all program codes, files and databases that comprise the
19 Model.

20 4. Access to and/or Disclosure of the Model shall be permitted only to the following
21 persons or entities:

- 22 a. Attorneys of record for the Stipulating Parties and their paralegals, clerical
- 23 and secretarial staff employed by such attorneys who are actively involved in the
- 24 Proceeding and are not employees of any Party;
- 25 b. experts who have been designated by the undersigned Parties or their
- 26 counsel in connection with the Proceeding, provided, however, that prior to the Disclosure
- 27 of the Model to any such designated expert, counsel for the Party making the Disclosure
- 28 to the expert shall deliver a copy of this Stipulation and Protective Order to such person,

1 shall explain its terms to such person, and shall secure the signature of such person on a
2 statement in the form attached hereto as Exhibit A. It shall be the obligation of counsel,
3 upon learning of any breach or threatened breach of this Stipulation and Protective Order
4 by any such expert to promptly notify counsel for the Designating Party of such breach or
5 threatened breach.

6 5. The Designating Party shall deliver the Model to the Stipulating Parties' using a
7 secure internet-based website. The Stipulating Parties, or their designated experts, may download
8 the Model from the internet-based website onto a computer of the Stipulating Parties' or their
9 designated experts' choosing, provided however that once the Model has been downloaded onto
10 the Stipulating Parties' or their designated experts' chosen computer, no additional electronic
11 copies of Model shall be made or otherwise electronically transmitted to any other computer hard
12 drive, disk, thumb drive or any other electronic devise, unless the transmission is in a form that
13 allows the Information thereon to be viewed, but not altered, manipulated or otherwise changed.¹
14 The Stipulating Parties' designated experts may alter any aspect of the Model or any of its files
15 therein provided that any such alterations are performed solely on the single computer that the
16 Model was originally downloaded onto from the secure internet-based website.

17 6. Provided the Court approves and signs this Stipulation and Protective Order no
18 later than December 24, 2021 and provided that the Stipulating Parties' experts sign the Exhibit A
19 attached herein and provide a copy to the Designating Party, the Designating Party shall establish
20 the secure internet-based website and provide information regarding accessing said website to the
21 Stipulating Parties no later than December 27, 2021.

22 7. The Model shall be used by the persons or entities receiving it only for the
23 purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or
24 defending the Proceeding, and not for any business or other purpose whatsoever.

25 8. Any Stipulating Party may ask the Court, after appropriate notice to the other

26 _____
27 ¹ However, nothing herein shall limit the ability of experts, and/or their designated support
28 staff, to remotely access the Model, and to fully utilize the Model and associated files remotely,
on the single computer where the Model has been downloaded, and to otherwise undertake
remotely all of the activities authorized in sections 4-7 herein.

1 Stipulating Parties and to all parties to the Proceeding, to modify or grant relief from any
2 provision of this Stipulation and Protective Order.

3 9. Any party to the Proceeding (or other person subject to the terms of this
4 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other parties
5 to the Proceeding, to join this Stipulation as a Stipulating Party, subject to the terms of the
6 Stipulation and any additional terms as the Court may deem appropriate.

7 10. Entering into, agreeing to, and/or complying with the terms of this Stipulation and
8 Protective Order shall not operate as an admission by any person that the Model contains or
9 reflects trade secrets, proprietary, confidential or competitively sensitive business, commercial,
10 financial or personal information. Further, this agreement shall not require any Recipient of
11 Confidential Information to submit a motion to seal prior to seeking to use the Confidential
12 Information at trial pursuant to California Rules of Court 2.551 or any other authority.

13 11. If any person subject to this Stipulation and Protective Order who has custody of
14 the Model receives a subpoena or other process (“Subpoena”) from any government or other
15 person or entity demanding production of such materials, the recipient of the Subpoena shall
16 promptly give notice of the same by electronic mail transmission, followed by either express mail
17 or overnight delivery to counsel of record for the Designating Party, and shall furnish such
18 counsel with a copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in
19 its sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise oppose
20 production of the Confidential Materials or Highly Confidential Materials, and/or seek to obtain
21 confidential treatment of such materials from the subpoenaing person or entity to the fullest
22 extent available under law. The recipient of the Subpoena may not produce any Confidential
23 Materials or Highly Confidential Materials pursuant to the Subpoena prior to the date specified
24 for production on the Subpoena.

25 12. Nothing in this Stipulation and Protective Order shall be construed to preclude the
26 Designating Party from asserting in good faith that the Model or any Information therein requires
27 additional protection. The Stipulating Parties shall meet and confer to agree upon the terms of
28 such additional protection.

1 13. If, after execution of this Stipulation and Protective Order, the Model is Disclosed
2 by a Stipulating Party or an outside expert of a Stipulating Party, other than the Designating Party
3 to any person or entity other than in the manner authorized by this Stipulation and Protective
4 Order, the Stipulating Party responsible for the Disclosure shall bring all pertinent facts relating to
5 the Disclosure of the Model to the immediate attention of the Designating Party.

6 14. Nothing in this Stipulation and Protective Order shall affect the admissibility into
7 evidence of any exhibits derived from the use of the Model by any Stipulating Party, or abridge
8 the rights of any person to seek judicial review or to pursue other appropriate judicial action with
9 respect to any ruling made by the Court concerning the issue of the status or use of the Model.

10 15. This Stipulation and Protective Order shall continue to be binding after the
11 conclusion of this Proceeding, except that a Stipulating Party may seek the written permission of
12 the Designating Party or may move the Court for relief from the provisions of this Stipulation and
13 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction to enforce,
14 modify, or reconsider this Stipulation and Protective Order, even after the Proceeding is
15 terminated.

16 16. Within thirty (30) days after the settlement or other termination of the Proceeding,
17 the undersigned Stipulating Parties shall instruct their designating experts that all Information
18 transferred electronically per Section 5.a must be deleted and/or destroyed and shall likewise
19 certify to counsel for the Designating Party that all such Information has been deleted and/or
20 destroyed.

21 17. After this Stipulation and Protective Order has been signed by counsel for all
22 Stipulating Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the
23 terms set forth herein with regard to the use and custody of the Model.

24 18. The Stipulating Parties and all signatories to the Certification attached hereto as
25 Exhibit A agree to be bound by this Stipulation and Protective Order pending its approval and
26 entry by the Court. In the event that the Court modifies this Stipulation and Protective Order, or in
27 the event that the Court enters a different Protective Order, the Parties agree to be bound by this
28 Stipulation and Protective Order until such time as the Court may enter such a different Order.

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This Stipulation and Protective Order may be executed in counterparts.

Dated: December 21, 2021

BEST BEST & KRIEGER LLP

By: Christy Pini

SHAWN D. HAGERTY
CHRISTOPHER M. PISANO
Attorneys for Respondent and Cross-
Complainant
CITY OF SAN BUENAVENTURA

Dated: December 21, 2021

MUSICK, PEELER & GARRETT LLP

By: /s/ Gregory J. Patterson

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

Dated: December 21, 2021

BARTKIEWICZ, KRONICK & SHANAHAN

By: /s/ Holly J. Jacobson

JENNIFER T. BUCKMAN
HOLLY J. JACOBSON
Attorneys for the CITY OF OJAI

Dated: December 21, 2021

RUTAN & TUCKER

By: /s/ Jeremy Jungreis

JEREMY JUNGREIS
Attorneys for CASITAS MUNICIPAL
WATER DISTRICT

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ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

Dated: _____

THE HONORABLE WILLIAM F. HIGHBERGER

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EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____ [NAME],

_____ [POSITION AND EMPLOYER], am
about to receive the electronic MODFLOW program codes, files and databases that comprise the
Regional Groundwater – Surface Water Flow Model developed by Ventura’s designated expert,
Dr. Claire Archer of Cardno (the “Model”), supplied in connection with the Proceeding, (**Case
No. 19STCP01176.**) I certify that I understand that the Model provided to me is subject to the
terms and restrictions of the Stipulation and Protective Order filed in this Proceeding. I have
been given a copy of the Stipulation and Protective Order; I have read it, and I agree to be bound
by its terms.

I understand that the Model, as defined in the Stipulation and Protective Order shall not
be Disclosed to anyone except as expressly permitted by the Stipulation and Protective Order. I
will not copy or use, except solely for the purposes of this Proceeding, the Model obtained
pursuant to this Stipulation and Protective Order, except as provided therein or otherwise ordered
by the Court in the Proceeding.

I further understand that I am to retain the Model provided to me in the Proceeding in a
secure manner, and that it shall remain housed on only one computer, with the ability of remote
access as described herein, until termination of my participation in this Proceeding, whereupon
the Model will be returned to counsel who provided it to me and/or otherwise certified that
Model files have been deleted and/or destroyed per this Agreement.

I declare under penalty of perjury, under the laws of the State of
California, that the foregoing is true and correct. Executed this _____ day of _____, 20___, at
_____.

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DATED: _____

BY: _____

Signature

Title

Address

City, State, Zip

Telephone Number