

1 SHAWN HAGERTY, Bar No. 182435  
shawn.hagerty@bbkllaw.com  
2 BEST BEST & KRIEGER LLP  
655 West Broadway, 15th Floor  
3 San Diego, California 92101  
Telephone: (619) 525-1300  
4 Facsimile: (619) 233-6118

Exempt From Filing Fees Pursuant to  
Cal. Gov't Code § 6103

5 CHRISTOPHER M. PISANO, Bar No. 192831  
christopher.pisano@bbkllaw.com  
6 SARAH CHRISTOPHER FOLEY, Bar No. 277223  
sarah.foley@bbkllaw.com  
7 PATRICK D. SKAHAN, Bar No. 286140  
patrick.skahan@bbkllaw.com  
8 BEST BEST & KRIEGER LLP  
300 South Grand Avenue, 25th Floor  
9 Los Angeles, California 90071  
Telephone: (213) 617-8100  
10 Facsimile: (213) 617-7480

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,

17 Petitioner,

18 v.

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

21 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant,

24 v.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.  
27  
28

Case No. 19STCP01176

Judge: Honorable William F. Highberger

CITY OF SAN BUENAVENTURA'S  
REPLY TO RESPONSES AND LIMITED  
OPPOSITION TO MOTION TO  
BIFURCATE AND PARTIAL LIFTING OF  
THE DISCOVERY STAY

Date: June 21, 2021

Time: 1:30 p.m.

Dept: S10

Action Filed: Sept. 19, 2014

Trial Date: Not Set

1                   **I. INTRODUCTION**

2                   No party submitted an opposition to the concept of bifurcation, and therefore the Court  
 3 should bifurcate the trial of this matter into phases, with a first phase covering at least the two  
 4 following issues: (1) a determination of the Ventura River Watershed (“Watershed”) boundaries  
 5 and the boundaries of the four groundwater basins, and (2) a determination of the interconnection  
 6 between the surface water and groundwater in the Watershed, including the interconnection  
 7 between surface and groundwater and the four groundwater basins, the Ventura River, and its  
 8 tributaries. The only remaining issues to address are the scope, timing and process for phase one  
 9 discovery, the date for the phase one trial and whether additional issues should be addressed in  
 10 phase one. The City focuses this reply on these limited scope and timing issues.

11                   **II. FOUR PARTIES’ RESPONSES TO THE MOTION**

12                   As noted above, while no party opposed the motion to bifurcate trial, four parties filed  
 13 responses seeking clarification and expressing concerns about timing and scope of discovery and  
 14 trial. Specifically, the responses can be summarized as concerns with: (1) determining the scope  
 15 of permissible discovery in the first phase of trial; (2) scheduling and timing of discovery (both  
 16 percipient and expert); (3) the selection of a trial date; and (4) the specific issues to be addressed  
 17 in phase one. The comments of the four parties who filed responses are summarized as follows:

- 18                   1. The State Agencies<sup>1</sup> agree with an appropriate first phase on boundaries of the  
 19 Watershed and its four groundwater basins, and the issue of interconnectivity,  
 20 (citing Code Civ. Proc., § 840, subd. (b)(5)), and agree that the discovery stay  
 21 should be lifted “for the limited purpose of resolving the boundary issues.” (State  
 22 Agencies’ Response, at p. 3:9-16.) In addition, the State Agencies expressed  
 23 concerns with the City’s proposed trial schedule, and proposed an alternative  
 24 schedule based on a phase one trial set for February 7, 2022 (*id.* at pp 3-7);  
 25                   2. The City of Ojai “opposes the motion only to the extent that the scope and timing  
 26

27 <sup>1</sup> The State Agencies include Respondent and Intervenor State Water Resources Control Board,  
 28 Intervenor California Department of Fish and Wildlife, and Cross-Defendant California  
 Department of Parks and Recreation.

1 of discovery should be determined prior to setting the trial dates and that Phase 1  
2 properly identify the legal issues that will be before the Court” (Ojai’s Limited  
3 Opp., at p. 1:13-15). City of Ojai requested a further hearing on the scope of  
4 discovery, and commented that the first phase trial must consider whether the  
5 Court can determine rights in the four groundwater basins pursuant to Code of  
6 Civil Procedure section 832 (*id.* at pp. 2-3);

- 7 3. The Loa E. Bliss, 2006 Revocable Trust raised its concerns with the evidence of  
8 connectivity that must be presented in a first phase bifurcated hearing, and asserted  
9 that a basin by basin analysis is necessary (Response, at p. 2:8-9);
- 10 4. Cross-Defendant Robert Martin “does not oppose the City’s Motion to bifurcate”  
11 but does oppose the City’s proposed schedule, and submitted an alternative  
12 schedule based on a “late summer or early fall of 2022” trial date (Response, at p.  
13 4:4-7).

14 As explained further herein and in the City’s motion, interconnection will be an issue tried  
15 in the first phase of trial. The City agrees that discovery should be limited to the issues to be tried  
16 in this phase of trial. Moreover, given the discrete and expert-driven issues to be tried in the first  
17 phase of trial, the City maintains that a trial date in mid to late November 2021 is feasible.  
18 However, the City does not object to the February 7, 2022 trial date proposed by the State  
19 Agencies, which the City asserts is a reasonable “outside” proposal date based on expressed  
20 concerns with relevant discovery considerations under the streamlined comprehensive  
21 adjudication statutes. By contrast, the Court should reject Cross-Defendant Martin’s proposal of  
22 a later summer or early fall 2022 trial date because an earlier trial date is reasonable, feasible and  
23 appropriate to move this case forward.

24 **III. THE COURT SHOULD LIFT THE STAY ON DISCOVERY AND LIMIT**  
25 **DISCOVERY TO PHASE ONE TRIAL ISSUES ONLY, BUT SHOULD**  
26 **ORDER THE PARTIES TO MEET AND CONFER BEFORE ANY**  
**DISCOVERY IS PROPOUNDED**

27 In addition to bifurcating the case, the Court should partially lift the discovery stay it  
28 previously ordered. The City agrees with the City of Ojai that the scope of discovery should be

1 defined and limited, and that the parties should not be permitted to do discovery on issues  
2 unrelated to the specific and limited issues to be addressed in phase one. As such, while the City  
3 requests that the Court order a partial lifting of the discovery stay to allow for discovery only as  
4 to the issues to be tried in the first phase of trial, the City requests that the Court order the parties  
5 to meet and confer before any such discovery is propounded, in order to (1) determine if there  
6 may be a set of limited, agreed-upon written interrogatories and document demands that all  
7 parties who wish to participate in the first phase of trial will respond to, and (2) determine if there  
8 can be an agreed-upon list of witnesses who will be deposed solely on the issues to be tried in the  
9 first phase of trial. This meet and confer conference should take place within fifteen (15) days of  
10 the Court's order, and the City will facilitate the meeting via a zoom conference. If the parties  
11 cannot reach an agreement during this meet and confer within fifteen (15) days of the Court's  
12 order, a subsequent motion for protective order may be necessary. However, given the limited  
13 scope of issues to be tried in the first phase of trial, it would seem that the parties should first be  
14 ordered to meet and confer.

15 As part of a meet and confer process, the City requests that the Court also order the parties  
16 to consider timing of expert disclosures, and whether any witness testimony, including the  
17 testimony of experts, will be presented in writing pursuant to Code of Civil Procedure Section  
18 844. The State Agencies commented on the City's proposed schedule for expert disclosures and  
19 expressed concerns about deviating from the timing set forth in Code of Civil Procedure section  
20 843, subdivision (d). The State Agencies also appear to suggest that the parties submit direct  
21 testimony in writing pursuant to Section 844. (Response, at pp. 4:9-5:13.) Section 843 is clear,  
22 however, that the parties may stipulate, or the court may order, a different expert disclosure  
23 schedule. (Code Civ. Proc., § 843(d) ["If there is no stipulation or court order, the disclosure of  
24 an expert witness shall be made as follows . . ."].) The Section 843, subdivision (d) schedule  
25 only applies where no contrary stipulation or court order is made. Also, Section 844 is a  
26 permissive statute, and the Court has discretion to determine whether direct and rebuttal  
27 testimony will be received in writing. The City proposed an alternative expert disclosure  
28

1 schedule that is more consistent with timing under the Civil Discovery Act. The City does not  
2 see the need to have testimony be presented in writing and does not request that the Court order  
3 written testimony under Section 844, but that decision should be made after the parties meet and  
4 confer, and after the Court provides input as to its preference for the presentation of evidence at  
5 the first phase of trial. In sum, if the Court is not inclined to adopt the City's proposed pre-trial  
6 schedule now, the City requests that the Court set a trial date and order the parties to meet and  
7 confer regarding an appropriate pre-trial schedule based on the trial date. The Court can then  
8 make any order regarding the pre-trial schedule that may be necessary at the July 19<sup>th</sup> Case  
9 Management Conference.

10 **IV. THE CITY PREFERS A NOVEMBER 2021 TRIAL DATE BUT DOES NOT**  
**OBJECT TO THE STATE AGENCIES' PROPOSED TRIAL DATE**

11 The City proposes scheduling a first phase of trial in November 2021 because the two  
12 issues to be tried in the first phase of trial are discrete and largely expert witness driven. In  
13 addition, the case has already been pending for a lengthy time-period such that a November 2021  
14 first phase trial would represent an initial trial date that is more than seven years after Plaintiff  
15 Santa Barbara Channelkeeper sued the City in 2014. The City's proposed schedule for trial is  
16 consistent with the statutory requirements for percipient and expert discovery in the Civil  
17 Discovery Act, and the City requests a discovery schedule that largely tracks the Discovery Act.  
18 If the parties wish to stipulate and/or the Court orders deviations from the Civil Discovery Act  
19 schedule based on Code of Civil Procedure Sections 843 and 844, as discussed above, that can be  
20 set by the Court following a meet and confer conference, which the Court can order to occur  
21 within fifteen (15) days.

22 While the City believes that a November 2021 trial date is feasible, and allows the parties'  
23 sufficient time to prepare, the City does not object to the State Agencies' proposed February 7,  
24 2022 trial date, which will allow the parties some additional time to conduct limited fact-based  
25 and expert discovery. This alternative proposed trial date is reasonable as far as the City is  
26 concerned, but it is an "outside" date in terms of reasonableness. Cross-Defendant Martin's  
27 proposed trial date in late summer/early fall 2022 is not reasonable. It would result in  
28

1 unnecessary delay given the limited issues to be tried, and the need for the case to expeditiously  
2 move forward.

3 **V. THE CITY DOES NOT OBJECT TO THE CITY OF OJAI'S REQUEST**  
4 **THAT THE APPLICABILITY OF THE ADJUDICATION STATUTE TO A**  
5 **MULTIPLE BASIN ADJUDICATION SHOULD BE ADDRESSED IN THE**  
6 **FIRST PHASE OF TRIAL**

7 The City of Ojai requests that the Court determine the applicability of the streamlined  
8 adjudication statute as a whole to a multiple basin adjudication as part of the first phase of trial.  
9 Specifically, the City of Ojai seeks a determination on whether the Court is authorized under  
10 Code of Civil Procedure section 832 to consider the four groundwater basins in the Watershed  
11 and interconnected surface water as part of a comprehensive adjudication. As the City has  
12 previously explained, adjudicating multiple interconnected basins has long been part of the  
13 judicial power under common law and the streamlined adjudication statutes expressly do not  
14 change that common law. The City therefore has no objection to the Court considering this  
15 assertion of the City of Ojai in the phase one trial. The City believes that the Court can make this  
16 determination, if deemed necessary, after hearing the evidence that will be presented in the first  
17 phase of trial regarding basin boundaries and interconnectivity of the Watershed.

18 **VI. CONCLUSION**

19 For the reasons stated herein, the City respectfully requests that (i) the Court grant this  
20 motion to bifurcate, and order a first phase of trial on the issues of the basin and Watershed  
21 boundaries, interconnectivity and, if deemed necessary by the Court, the application of the  
22 streamlined adjudication statute to this case, (ii) schedule the first phase of trial in approximately  
23 mid to late November 2021 or no later than February 7, 2022, and (iii) lift the discovery stay  
24 solely for the issues that will be tried in the first phase, and order the parties to meet and confer

25 ///

26 ///

27 ///

28 ///

///

1 within fifteen (15) days of the Court's order to limit discovery and establish a reasonable  
2 discovery schedule based on the trial date established by the Court.

3  
4 Dated: June 14, 2021

BEST BEST & KRIEGER LLP

5  
6 By: 

7 SHAWN HAGERTY  
8 CHRISTOPHER M. PISANO  
9 SARAH CHRISTOPHER FOLEY  
10 PATRICK D. SKAHAN  
11 Attorneys for Respondent and  
12 Cross-Complainant  
13 CITY OF SAN BUENAVENTURA

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
82470.00018\34017364.3

BEST BEST & KRIEGER LLP