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 CASITAS MUNICIPAL WATER DISTRICT

7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES
 10 SPRING STREET COURTHOUSE

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

12 Plaintiff,

13 vs.

14 STATE WATER RESOURCES CONTROL
 15 BOARD, etc., et al.,

16 Defendants.

17 CITY OF SAN BUENAVENTURA, etc.,

18 vs.

19 DUNCAN ABBOTT, an individual, et al..
 20

Case No.: 19STCP01176

*Assigned For All Purposes To:
 Hon. William F. Highberger; Dept. 10*

**CROSS-DEFENDANT CASITAS
 MUNICIPAL WATER DISTRICT'S
 OBJECTIONS TO CURRENT PHYSICAL
 SOLUTION PROPOSAL**

DATE: July 19, 2021

TIME: 3:00 p.m.

DEPT.: 10 – located at
 312 N Spring St, Los Angeles, CA

Date Action Filed: 09/19/2014

Trial Date: 02/14/2022

21 **TO ALL PARTIES AND TO THEIR ATTORNEY OF RECORD:**

22 At the Status Conference Hearing held July 6, 2019, the Court invited parties to detail, in
 23 cursory terms, their present grounds of difficulty with the current “Stipulated Judgment and
 24 Physical Solution” lodged by the Proposing Parties. This invitation was made with the
 25 understanding that positions expressed are non-binding as to later positions that may be asserted,
 26 need not be comprehensive as to all points in dispute, and are all subject to change as the terms of
 27 the Physical Solution proposal themselves may, and undoubtedly will, change.

28 Subject to those understandings, Cross-Defendant CASITAS MUNICIPAL WATER

1 DISTRICT (“Casitas”) hereby presents the following summary of major points it believes require
2 modification, or at a minimum substantial additional discussion, in the proposed Physical
3 Solution.

4 1. Cost Allocation to Casitas

5 Paragraph 7.7.2 calls for Casitas to bear 56.5% of the entire Management Committee costs,
6 allegedly based on water use. Casitas believes this is drastically disproportionate. In the first
7 instance, this is primarily a groundwater adjudication action, and Casitas’ groundwater production
8 is approximately 2,300 acre feet on average annually – hardly 56.5% of the entire production of
9 the four basins at issue. Second, Casitas’ water “use” is not all to end users. Instead, Casitas is in
10 part a diverter of surface water from the Ventura River at its Robles Diversion, pursuant to the
11 restrictions of a 2003 Biological Opinion issued by the National Marine Fisheries Service
12 (“NMFS”), which specifically restricts Casitas’ otherwise perfected appropriative rights to divert
13 107,800 acre feet yearly. These restrictions were put in place to protect the very steelhead whose
14 endangered status is driving this entire dispute.

15 In other part, Casitas is a wholesaler to a number of other water retailers. It is unclear how
16 the “use” by Casitas, vis a vis these retailers, has been determined. Assuming all other issues
17 regarding the composition and voting power of any regional water management authority that
18 emerges from a physical solution can be resolved, the appropriate yardstick of water “use” must be
19 defined and further refined, if it is an appropriate yardstick to use at all in allocating costs. It must
20 also include recognition of the substantial steelhead monitoring and protection efforts already
21 created by Casitas’ contribution to flows in the Ventura River under its 2003 Biological Opinion,
22 and the costs Casitas has already put to this effort. It cannot just presume such contributions away
23 as “baseline,” from which more will be required.

24 2. Voting Power

25 Paragraph 7.7.3.4 gives Casitas 2 votes of 7 total on the Management Committee, or 28.5
26 percent (roughly half of its proposed cost contribution). The Physical Solution therefore makes
27 Casitas a majority investor in the Management Committee, but a minority shareholder when it
28 comes to decision making. Casitas suspects few responsible parties would accept such an

1 arrangement, particularly when the Management Committee could conceivably result in water
2 management decisions Casitas currently makes (under federal guidance) being made instead by a
3 new committee.

4 3. Management Committee Membership

5 Casitas has structural qualms with the suggestion of Non-Voting members of the
6 Management Committee, since their role is undefined, and since the groundwater management
7 authorities proposed to be included as non-voting members may, at this juncture, question their
8 place in the adjudication at all. Such parties may, at some time, be appropriately considered for an
9 advisory committee role, rather than non-voting members. Still, Casitas believes that the Phase 1
10 determinations (now bifurcated) of basin boundaries, and interconnectivity between groundwater
11 production in various basins and stream flows affecting steelhead biology, need to be determined
12 before sustainable staffing of any regional water management authority can be determined.

13 4. Reservation of Water Rights

14 Casitas finds a fundamental disconnect in the reservation of future water rights
15 claims (*see*, ¶ 3.2) as a cornerstone of resolving a litigation whose very stated purpose is to
16 resolve water rights claims. Allowing future assertion of pueblo or pre-1914 rights, which are
17 challenging to prove, even more challenging to quantify, and save for public trust issues, could
18 trump all other water rights, offers the continuing spectre of future claims that could well upset the
19 entire balance on which the agreements leading to the Physical Solution “contract” is based. It is
20 understandable that those with such claims would hope to preserve them. But in this context,
21 particularly given the effort and frustration already expended to perfect the Court’s jurisdiction
22 over the wide net of co-defendants the City has cast, doing so preserves the unenviable prospect of
23 a party disgruntled with a Management Committee (or other future body) decision “going nuclear”
24 with new water priority claims, that could undermine fundamental presumptions of any physical
25 solution reached.

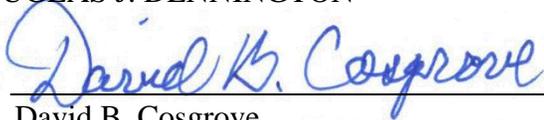
26 These are some of the major points Casitas has in opposition to the current Physical
27 Solution. This is not to say Casitas is diametrically opposed to all of it. There are aspects in the
28 Physical Solution proposal that Casitas finds productive. These include not affecting the

1 Biological Opinion (and thereby triggering potential reconsultation, with its glacial federal
2 processing time lines), leaving Coyote Creek and its degraded areas aside for more fruitful
3 devotion of flows to more productive habitat enhancement elsewhere, qualitative metrics on
4 steelhead health instead of rote devotion to flows, and refined definition of Ventura River reaches,
5 with an eye to steelhead biology. These are positive points to work from.

6 There remains much to discuss. Casitas hopes this elaboration of its present positons
7 proves useful to the Court, and other parties, in doing so.

8 Dated: July 13, 2021

RUTAN & TUCKER, LLP
DAVID B. COSGROVE
DOUGLAS J. DENNINGTON

9
10 By: 
11 David B. Cosgrove
12 Attorneys for Cross-Defendant
13 CASITAS MUNICIPAL WATER
14 DISTRICT
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1 **PROOF OF SERVICE**

2 *Santa Barbara Channelkeeper v. State Water Resources Control Board, et al.*
3 *and related cross-action*
4 **Los Angeles County Superior Court**
5 **Case No. 19STCP01176**

6 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

7 I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State
8 of California. I am over the age of 18 and not a party to the within action. My business address is
9 18575 Jamboree Road, 9th Floor, Irvine, California 92612. My electronic notification address is
10 mslobodien@rutan.com.

11 On July 13, 2021, I served on the interested parties in said action the within:

12 **CROSS-DEFENDANT CASITAS MUNICIPAL WATER DISTRICT'S OBJECTIONS TO**
13 **CURRENT PHYSICAL SOLUTION PROPOSAL**

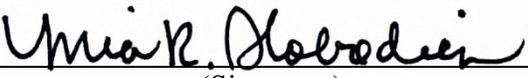
14 as stated below:

15 (Via E-Service to **File & ServeXpress**) I affected electronic service by submitting an
16 electronic version of the document(s) to **File & ServeXpress, LLC**, through the user interface at
17 <https://secure.fileandservexpress.com>, which caused the document(s) to be sent by electronic
18 transmission to the person(s) at the electronic service address(es) listed.

19 Executed on July 13, 2021, at Irvine, California.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Mia R. Slobodien
23 _____
24 (Type or print name)

25 
26 _____
27 (Signature)