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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 18 COUNTY OF LOS ANGELES

20 **SANTA BARBARA CHANNELKEEPER,**
 21
 Petitioner,
 22
 v.
 23
 24 **STATE WATER RESOURCES CONTROL**
BOARD, a California State Agency; CITY
 25 **OF BUENAVENTURA, a California**
municipal corporation,
 26
 Respondents.
 27
 28

Case No. 19STCP01176

**STATE AGENCIES' CASE
 MANAGEMENT CONFERENCE
 STATEMENT AND OBJECTION TO
 SETTING SCHEDULE ON A
 PROPOSED PHYSICAL SOLUTION**

Date: February 9, 2021
 Time: 1:30 p.m.
 Dept.: 10
 Judge: Honorable W. Highberger
 Trial Date: None Set
 Action Filed: September 19, 2014

1 **CITY OF SAN BUENAVENTURA, a**
2 **California municipal corporation,**
3 Cross-Complainant,
4 **v.**
5 **DUNCAN ABBOTT, an individual; et al.,**
6 Cross-Defendants.
7

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20 Respondent and intervenor State Water Resources Control Board (the “State Water
21 Board”), intervenor California Department of Fish and Wildlife (the “Department”), and cross-
22 defendant California Department of Parks and Recreation (“Parks”) respectfully request that the
23 Court allow the parties additional time to negotiate an agreed-upon physical solution. We
24 respectfully request that the Court postpone setting a schedule for consideration of an evidentiary
25 hearing on the proposed physical solution currently supported by a small number of parties, as
26 proposed by respondent and cross-complainant City of Santa Buenaventura and a few of its allies
27 (collectively, “the City”). Extending the negotiations period would provide an opportunity to
28 address major concerns parties have raised regarding the City’s proposed physical solution and to
account for critical scientific information the Department is set to release in draft form this very
month, by February 26, 2021.

In September 2020, the City released its proposed stipulated physical solution to resolve
this comprehensive adjudication. The State Water Board and the Department have been actively

1 engaged in negotiations with the City and in discussions with its experts, and have recently
2 indicated in writing the specific major areas of concern in which the State Water Board and the
3 Department seek changes to the proposed stipulated judgment. The City has not yet responded to
4 these concerns. Similarly, Parks has indicated in writing its concerns with the proposed physical
5 solution, and has begun a dialogue with the City about those concerns. Our understanding is that
6 many other parties, too, have indicated in writing their concerns with the City's proposal. The
7 City has indicated in discussions a receptiveness to modify its proposal in response to these
8 concerns. However, the City has indicated that its modified proposal will not be released until a
9 future date, at the end of February 2021. And the City has given no indication whether and how it
10 would address the major concerns raised by the State Water Board, the Department, Parks, and
11 other parties. The State Water Board, the Department, and Parks believe the Court's
12 consideration of the City's proposed physical solution would be premature and unwarranted at
13 this time as more time needs to be allowed for the parties to negotiate, as well as for additional
14 new parties to be included. This is especially true given the current procedural posture of the
15 case, which is not even at issue yet.

16 Let us remember that the City proposes to have the Court impose a physical solution on
17 the other parties, as the exclusive means to address the needs of the species (including endangered
18 steelhead) relying on the Ventura River and its tributaries. The City wants to have the Court
19 impose its proposed physical solution *without* all other parties' agreement. The City wants to
20 start down this road to an evidentiary hearing before having all the parties served, having any
21 discovery taken, and allowing for motion practice. And it wants to do so without adjudicating the
22 claims that are raised in petitioner Santa Barbara Channelkeeper's petition or the City's own
23 cross-complaint. Under the City's proposal, there would be no trial on the parties' respective
24 water rights or their reasonableness of use. The State Water Board, the Department, and Parks
25 respectfully submit that such dramatic relief should not be sought at a case management
26 conference, but should be sought by way of noticed motion.

27 There is no duty imposed on the Court to consider the City's proposed physical solution
28 on any particular timeline, as the City asserts in its case management statement. In fact, the cases

1 that the City has indicated support such a duty have to do with the Court's duty *after* a trial on the
2 merits. (*City of Lodi v. East Bay Muni. Util. Dist.* (1936) 7 Cal.2d 316, 341; *Tulare Irrigation*
3 *Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 574-75.) Moreover, there is no
4 reason to rush consideration of the City's proposal. The major components of the proposed
5 physical solution include: (1) flow restrictions at the Foster Park area — which the City has
6 already agreed to follow in a private settlement with petitioner Santa Barbara Channelkeeper; (2)
7 habitat improvement projects in selected areas — some of which are already ongoing and others
8 which will take many years to implement; and (3) a management structure for future
9 improvements to be determined in future years — on which the parties can continue to negotiate
10 and provide detail. Allowing the parties to continue to negotiate for a few more months would
11 not impact the viability of any of these components. Rather, it would provide an opportunity for
12 the parties to discuss concerns, refine and improve the proposal, and potentially reach agreement
13 on a path forward.

14 In addition, the State Water Board, the Department, and Parks believe that asking the
15 Court to consider the proposed physical solution and set a date for an evidentiary hearing at this
16 point in time would be premature, would disregard critical forthcoming scientific information,
17 and would raise numerous other procedural and substantive issues. The State Water Board and
18 the Department have attempted to meet and confer with the City about these issues, but have not
19 been able to reach agreement. There are at least six problems with setting the City's schedule.

20 First, as the Court knows, the Department and the State Water Board have been engaged
21 for several years in scientific investigations, respectively, of the flow needs of species in this
22 watershed and the interconnectedness of groundwater and surface water in this watershed. From
23 the beginning of this case being transferred to this Court, those two investigations have been
24 brought to the Court's attention in numerous joint filings with the Court, and the parties have all
25 understood that these investigations are essential to a complete understanding of flow
26 requirements for this watershed and to developing an appropriate and defensible physical solution
27 that will adequately protect the Ventura River's resources. The Department has completed some
28 of its flow investigation work, including its Watershed Criteria Report, and has scheduled a

1 public meeting for February 26, 2021, just a few weeks from now, to present both its draft flow
2 recommendations for the lower Ventura River and two technical reports. The Department's
3 remaining flow investigation work is scheduled to be finished this year. A draft of the State
4 Water Board's modeling work is scheduled to be released later this year, and the State Water
5 Board is scheduled to finish its modeling next year. The Department, State Water Board, and
6 Parks cannot support a rushed judgment in this case that would come before this essential work
7 has been completed, reviewed by the parties, and discussed. While that is occurring, the
8 negotiations should continue, and the stay should remain in place. A schedule on an evidentiary
9 hearing should not be set until that important work is complete, and can be digested by all
10 concerned.

11 Second, the City has not completed its service of all named parties in this action. That is
12 clear from the City's December 30, 2020 ex parte application for extension of time to serve
13 pleading and order extending time to serve, which explained that the City has over four hundred
14 cross-defendants left to serve and requested that the time to serve them be extended to April 1,
15 2021. The Court granted that application, and extended the deadline. Until those parties are
16 served, the case is at issue, and any defaults are taken, the Court does not know whether those
17 parties will have a material effect on the nature of this litigation. And the Court should not start
18 moving down the path towards considering the City's proposed physical solution without first
19 ensuring all those parties have been served, and are able to express their views on this process.
20 As the Court has expressed at various times in this case, to move forward with this case without
21 having all parties served risks depriving those unserved parties of due process. Certainly, no
22 evidentiary hearing or trial date that will affect the rights of hundreds of water rights holders
23 should be scheduled before service is complete and all known cross-defendants who wish to join
24 the action have had the chance to do so and express their views on the City's proposal.

25 Third, while this case is proceeding under the streamlined comprehensive groundwater
26 adjudication statutes (Code of Civil Procedure sections 830 to 852), the cross-claims as pled by
27 the City comprise much more than that. The City includes claims seeking to adjudicate surface
28 water rights, and its proposed physical solution would resolve those claims for the purposes of

1 this case. The streamlined comprehensive groundwater adjudication statutes provide, in part: “If
2 the Court finds that including an interconnected surface water body . . . is necessary for the fair
3 and effective determination of the groundwater rights in a basin, the court may require the joinder
4 of persons who claim rights to divert and use water from the surface water body . . . in a
5 comprehensive adjudication conducted pursuant to this chapter.” (Code Civ. Proc., § 833, subd.
6 (c), emphasis added.) But no one has asked the Court to make such a finding. That finding must
7 be made before the Court asserts jurisdiction over the surface water rights holders in this case and
8 seeks to include the surface water rights in this comprehensive adjudication conducted under the
9 streamlined comprehensive groundwater adjudication statutes. The finding should be made
10 before the Court sets a schedule on resolving the City’s proposed physical solution.

11 Fourth, the streamlined comprehensive groundwater adjudication statutes explicitly
12 address the Court’s adoption of a proposed stipulated judgment such as the City’s. (See Code
13 Civ. Proc., § 850, subd. (b).) Such a judgment in this case must meet the requirements for any
14 judgment under those statutes. (Code Civ. Proc., § 850.) By the explicit terms of the statutes, a
15 stipulated judgment may only be proposed and be binding on opposing parties if it “is supported
16 by more than 50 percent of all parties who are groundwater extractors in the basin or use the basin
17 for groundwater storage and is supported by groundwater extractors responsible for at least 75
18 percent of the groundwater extracted in the basin during the five calendar years before the filing
19 of the complaint.” (*Id.*, § 850, subd. (b).) There is nothing in the phrasing of this statutory
20 provision that makes it optional, as the City has argued, if the City desires to bind opposing
21 parties. This provision is a statutory requirement for the Court to be able to impose a judgment
22 on non-stipulating parties without a trial on the merits. (See also *City of Barstow v. Mojave*
23 *Water Agency* (2000) 23 Cal.4th 1224, 1250-51 [Supreme Court found that each party’s priority
24 rights to water must be adjudicated before the trial court imposed a physical solution on the
25 parties].) Given that hundreds of parties remain unserved, and the City has only indicated that a
26 handful of parties support its proposed physical solution, the City cannot have satisfied this
27 requirement. Since these percentage thresholds in Code of Civil Procedure section 850 are part of
28 the prima facie case that the City needs to make to have a stipulated judgment entered by the

1 Court, the City should make such a showing before starting down the process of seeking the
2 Court’s consideration of any proposed physical solution.

3 Fifth, the State Water Board, the Department, and Parks have serious concerns about the
4 uncertainty inherent in the proposal that has been shared so far, and have raised those concerns
5 with the City. The stipulated judgment must be consistent with section 2 of article X of the
6 California Constitution, that is, ensure there is reasonable use of water. (Code Civ. Proc., § 850,
7 subd. (a)(1).) Some examples of the uncertainty of the current proposal are as follows:

- 8 • The City’s proposed physical solution envisions the future adoption of a
9 management plan to govern activities under the proposed physical solution.
10 The City’s physical solution proposes a goal for that management plan of
11 returning the steelhead fishery in the Ventura River to “good condition,” but
12 that term is only vaguely defined in the proposed physical solution and there
13 are few constraints on how the management plan would define or implement
14 that term.
- 15 • The only flow restrictions in the proposed physical solution are located in one
16 location, at Foster Park. It is hard to see how that would ensure reasonable
17 use for the entire Ventura River watershed under the California Constitution.
- 18 • Moreover, those flow protocols contain an exception to minimum instream
19 flow protocols for situations where there exists “the inability of the City to
20 obtain sufficient usable replacement water from Casitas or other sources to
21 serve its customers,” which would seem to leave implementation of those
22 flow protocols to depend largely on the circumstances and/or the discretion of
23 the City.
- 24 • The proposed physical solution also proposes habitat improvement activities
25 such as gravel enhancement, boulder and large woody debris augmentation,
26 Arundo removal, and predator removal, but provides no standards as to how
27 much of that will occur. Thus, it is not possible to assess whether these
28 activities will have a significant impact.

- 1 • Lastly, after the first ten year implementation phase, there appears to be complete
2 discretion by the governing management committee as to the components of the
3 management plan.

4 Given all of these uncertainties, and others, it is difficult to understand how the Court would be
5 able to find — as it must (Code Civ. Proc., § 850, subd. (a)(1)) — that the City’s proposed
6 physical solution will be consistent with the reasonable use standard of section 2 of article X of
7 the California Constitution. Thus, it is hard to see how the City can even make a prima facie case
8 for entering this proposed physical solution as a judgment, and it makes no sense for the parties
9 and the Court to expend resources going down that path until these issues with the proposed
10 physical solution are addressed.

11 Sixth, even if the City could resolve the preceding five issues, the City’s proposed
12 litigation schedule does not reflect a reasonable schedule. At the present time, the differences
13 between the parties are quite significant in scope and degree. The City’s schedule is one
14 appropriate for a simple tort case, and simply does not provide sufficient time for discovery and
15 for expert discovery given the variety of issues in this case and their scientific complexity. This
16 is especially true given that the parties are still managing challenges associated with the COVID-
17 19 pandemic. In addition, there is the added complication that we do not know how the dozens of
18 cross-defendants that have so far appeared will engage with the evidentiary hearing process.
19 While the State Water Board, the Department, and Parks believe that no dates for an evidentiary
20 hearing should be set at this time, if the Court is inclined to do so, a reasonable schedule would
21 lead to an evidentiary hearing no earlier than January 2023, as laid out in the attached proposed
22 schedule. That timeline would give the parties in this case adequate time to prepare for the
23 evidentiary hearing, and it would provide the parties with six months to negotiate before the
24 parties started with motion practice and discovery. There is no guarantee the parties will reach a
25 settlement in that timeframe, but the parties could at least try to make progress, and perhaps
26 narrow the issues.

1 For these reasons, the Court should not set a schedule at this time, and certainly not the
2 schedule that the City proposes. The State Water Board, the Department, and Parks respectfully
3 suggest that the appropriate course of action would be for the Court to simply set another case
4 management conference in six months, to check on the progress of negotiations.

5 Dated: February 2, 2021

Respectfully Submitted,

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13 Dated: February 2, 2021

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19 Dated: February 2, 2021

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Exhibit A

SB Ch'Keeper v. SWRCB

Los Angeles Superior Court No. 19STCP01176

SWRCB and CDFW's revised proposed schedule on City's partially-stipulated proposed judgment
2-2-21

2-9-21	CMC
4-1-21	City provides revised proposed judgment based on discussion and comments to date (including CDFW's draft flow recommendations)
5-24-21	SB Ch'Keeper, SWRCB, CDFW, Casitas, and any other parties provide redline counter-offers on revised proposed judgment
6-21-21	Settlement conference via video
7-7-21	City provides CMC statement to Court (after meeting and conferring with other parties) with update on service, update on form answers, update on initial disclosures, report on proposed judgment discussions to date, and proposal as to future settlement discussions and/or judicial process; other parties may supplement or file separate CMC statements
7-14-21	City takes default of all parties that have not answered the complaint
7-14-21	CMC
7-29-21	Initial disclosure deadline for those filing form answers on 1-29-21, pursuant to Code of Civil Procedure section 842 (an earlier date applies to those filing earlier)

Optional additional dates [subject to change at 7-14-21 CMC]:

7-19-21	City files motion to set evidentiary hearing on partially-stipulated proposed judgment, accompanied by evidence supporting a prima facie showing on the requirements of Code of Civil Procedure section 850, subdivision (a), accompanied by evidence supporting thresholds in Code of Civil Procedure section 850, subdivision (b), and seeking a court finding under Code of Civil Procedure section 833, subdivision (c)
8-24-21	Hearing on City's motion [all future dates being subject to motion being granted or subject to change at hearing]
2-24-22	Deadline for fact discovery
3-17-22	Deadline for filing of motions regarding fact discovery
4-28-22	Expert disclosures
5-26-22	Supplemental expert disclosures
8-26-22	Deadline for expert depositions
9-16-22	Deadline for filing motions regarding expert discovery
12-2-22	Pre-trial statements (including trial witness lists and trial exhibit lists), filing of all direct testimony via declaration, motions in limine, and trial briefs due
12-9-22	Responses to motions in limine due
12-16-22	Pre-trial status conference
1-9-23	Evidentiary hearing (first day)