

September 20, 2021

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1 APPEARANCES:
2

3 FOR PLAINTIFF: Best Best & Krieger, LLP
4 BY: Christopher M. Pisano, Esq.
5 300 South Grand Avenue
6 25th Floor
7 Los Angeles, California 90071

8 Best Best & Krieger, LLP
9 BY: Shawn Hagerty, Esq.
10 655 West Broadway
11 15th Floor
12 San Diego, California 92101

13 VIRTUAL TELECONFERENCE APPEARANCES:
14

15 FOR DEFENDANT: Rutan & Tucker, LLP
16 (Casitas) BY: Jeremy Jungreis, Esq.

17 FOR DEFENDANT: Holly J. Jacobson, Esq.
18 (Ojai)

19 FOR DEFENDANT: Brownstein Hyatt Farber Schreck, LLP
20 (Wood-Claeysens) BY: Scott Slater, Esq.

21 FOR DEFENDANT: Daniel Cooper, Esq.
22 (Santa Barbara
23 Channelkeeper)

24 FOR DEFENDANT: Claude R. Baggerly
25 (Self)

26 FOR DEFENDANT: Andrew K. Whitman, Esq.
27 (Heidi A. Whitman)

28 FOR DEFENDANT: Mark N. Melnick, Esq.
(State Water
Resources Control Board)

FOR DEFENDANT: David Osias, Esq.
(Jeffrey Bacon)

FOR DEFENDANT: Anthony Francois, Esq.
(Robin Bernhoft)

FOR DEFENDANT: Gregg Garrison, Esq.
(Rosanna Garrison)

FOR DEFENDANT: Gregory J. Patterson Esq.
(William Thatcher)

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Also present on LACourtConnect: Peter Duchesneau, Noah Golden-Krasner, Sophie Wenzlau, David Farkas, Lindley Fraley, Neal Maguire, Nathan Metcalf, Justin Fisch, Jeanne M. Zolezzi, David Greifinger, Dennis Corte, Patrick Rendon, Ryan Blatz, Laura R. Schreiner, Loa E. Bliss, Michael Ray Ozatalar, David A. Ossentjuk and Bradley Herrema

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1 CASE NUMBER: 19STCP01176
2 CASE NAME: Santa Barbara Channelkeeper VS.
3 State Water Resources Control
4 Board, et al.
5 LOS ANGELES, CALIFORNIA Monday, September 20, 2021
6 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 TIME: 9:48 A.M.
9

10 THE COURT: We're on the record in 19STCP01176, the
11 Ventura River water case. Santa Barbara Channel versus
12 State Board of Resources Control Board. Mr. Hagerty and
13 Pisano are in court. We've got a number of lawyers and
14 interested participants via LACourtConnect. Each time you
15 speak on LACourtConnect, please give your name.

16 Before we went on the record, I have been talking
17 with Mr. Hagerty about some ministerial matters having to
18 do with the status of the Court's order about the legal
19 consequence of using File & ServeXpress for the service of
20 papers, in particular Mr. Hagerty's well-advised request
21 that the Court clearly memorialize what had been asked for
22 when you-all first came before me in the summer or early
23 fall of 2019, which is to provide expressly that the use
24 of File & ServeXpress for service will be equivalent to
25 personal service for purposes of calculating deadlines.
26 Correct, Mr. Hagerty?

27 MR. HAGERTY: Yes, Your Honor.

28 THE COURT: Although a review of the records

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1 indicates that in 2019, I made certain orders that did
2 make it clear that the use of File & ServeXpress is
3 mandatory, those orders stopped short of saying it had the
4 legal effect of being the same as personal service. It
5 was a mutual request when the request was made in
6 October -- excuse me, in August of 2019.

7 Is there anybody who wants to be heard now to object
8 to the Court modifying the otherwise default Rules of
9 Civil Procedure which would allow two extra court days
10 when File & ServeXpress is used and provide instead that
11 there be zero extra court days? Anybody wishes to be
12 heard, please speak up now and state your name and the
13 reasons why you want to protest treating this the same as
14 personal service.

15 Hearing no response, the Court will provided in
16 today's minute order the use of File & ServeXpress going
17 forward, which will be deemed the legal equivalent of
18 personal service, and the provisions to the contrary in
19 the Code of Civil Procedure are deemed waived for good
20 cause found by the Court with the defending
21 cross-complainant, City of San Buenaventura to give notice
22 and the Court to make sure this is expressed in the minute
23 order.

24 I separately have before me an ex-parte from the
25 same City of San Buenaventura. I guess technically it's
26 an order to show cause having to do with publication of
27 summons. Is there anybody who wishes to be heard in
28 opposition to the order to show cause regarding the use of

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1 publication notice for certain deceased cross-defendants
2 and certain unserved defendants who are impossible to
3 locate due to their living in gated properties? Hearing
4 no objection, the proposed order is signed. It will be
5 filed, with the City of San Buenaventura to give notice.

6 So it seems like there's been some notable
7 developments, at least in terms of disclosures, since we
8 were last together. The joint report today is a little
9 bit summary in describing them, and I'm aware of the fact
10 Mr. Baggerly's renewed motion for the appointment of
11 scientific advisors is before the Court.

12 At the moment, the two things of note in terms of
13 newness are the issuance by the State Water Resources
14 Control Board of a draft sensitivity analysis about the
15 connectivity of groundwater and surface water and the
16 relevant watershed associated with a geological analysis
17 and the final study plan for the development of the
18 aforesaid model and some other incidental papers.

19 I'm going to invite Mr. Melnick to walk me through
20 them a little bit. I have gotten access to them thanks to
21 Mr. Melnick's approaching this morning through the
22 bulletin board on CaseAnywhere. I'll have more detailed
23 questions, but I would treat that as the first order of
24 business and then invite other counsel, including the City
25 of Ventura, as well as the plaintiff Santa Barbara Channel
26 Keepers as well as the Casitas Water District and others
27 to then speak to their take on this recently issued study.
28 Secondly, at least, to briefly talk at greater length

1 about what, if anything, can be learned from recent
2 disclosures by the City of Ventura by its own experts.
3 I'm sure I'll find out from Mr. Hagerty why it remains a
4 black box from the Court's point of view. Then I'm going
5 to ask whether any of those developments or other
6 considerations had any impact on negotiating to a more
7 unanimously approved fiscal solution. At the moment, I
8 understand that definitely some people are not persuaded
9 of its utility.

10 Then I intend to deal with Mr. Baggerly's motion,
11 although the very fact that he, I believe, should have
12 seen the Ventura city disclosures and soon will see
13 another batch of disclosures on Friday of this week unless
14 I'm educated otherwise. But I think, Mr. Hagerty, I
15 should have access to those disclosures, but I don't have
16 them yet. I would, in my mind's eye, probably want the
17 benefit of them before I try to deal afresh with
18 Mr. Baggerly's motion that I go find yet another expert in
19 addition to all those whose thoughts and opinions have now
20 been put on the table or in a few days will be.
21 Mr. Melnick, are you there?

22 MR. HAGERTY: Yes, I'm here, Your Honor.

23 THE COURT: Do you mind giving me a little bit of a
24 tour of the contents? I have the website opened. So
25 while I have opened the three PDF documents, I was trying
26 to open something else, the preliminary zip. It took a
27 lot of time for downloading, but maybe it did download.
28 There's a lot there, I think. At some point, it becomes a

1 lot of numbers that exceed my mathematical talents. But I
2 invite you to walk me through it just to sort of orient me
3 to what is there and what a nontechnical layman like me
4 might find utility in reviewing. The question to you,
5 Mr. Melnick, whether there were surprises relative to what
6 had been depicted by others in this case to be the
7 geological and environmental state of affairs of the
8 watershed in question and your sentiments as to whether
9 your client's study seems to be congruent with the draft
10 physical solution that has been offered up until now by
11 the City of Ventura and certain parties aligned with it.

12 Then I will start inviting comments on the same
13 study starting with the environmental plaintiff, Santa
14 Barbara Channel Keepers, moving to the City of Ventura,
15 moving on to the Casitas Water District, and then moving
16 on to others who want to talk, including the East Ojai
17 group. In part, I'm curious as to whether this will have
18 any impact on trying to negotiate an acceptable physical
19 solution. Mr. Melnick, you have the floor.

20 MR. MELNICK: Thank you, Your Honor. I guess I'm
21 not quite sure -- I think I'm hearing a lot of feedback.
22 I apologize for that.

23 THE COURT: On our end, the sound is nice and clean.

24 MR. MELNICK: Okay, good.

25 THE COURT: Do you have maybe two microphones on or
26 two speakers like a headset plus a computer speaker at the
27 same time?

28 MR. MELNICK: No. It seems fine right now. Let's

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1 go ahead. You raise several questions, Your Honor. I'm
2 not sure -- I can answer any questions you have about
3 what's on the website that has the model on it that is
4 accessible to the public.

5 THE COURT: I'll start with a question then. Is
6 that okay, Mr. Melnick?

7 MR. MELNICK: That's perfectly fine, Your Honor.

8 THE COURT: Thinking about the presumption of what
9 I'll call the East Ojai people, particularly the ones in
10 the upper watershed in physical terms, height terms, does
11 this study tend to show that all of the groundwater basins
12 are functionally interconnected with the surface flows, or
13 does it support a contrary conclusion that one or more of
14 the groundwater basins do not have relevant connectivity
15 or not material connectivity?

16 MR. MELNICK: Well, Your Honor is asking me to give
17 a preview of what we're going to disclose on Friday, so
18 I'll try to do that. I caution that, you know, I may --
19 I'm a lawyer, right, not a hired geologist, so I may miss
20 some of the nuance here that expert disclosures will have.

21 THE COURT: I don't expect this to be binding on you
22 or your client. I appreciate any kind of summary you can
23 provide, recognizing there may be differing opinions.

24 MR. MELNICK: I think what the model will show and
25 our expert disclosure will explain is that all the
26 groundwater basins are connected to the surface water
27 here. They vary in time and location. So the upper Ojai
28 folks, I would say the eastern edge of the upper Ojai

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1 groundwater basin has probably the smallest amount of
2 connectivity to the surface water in this watershed. And
3 that partly has to do with the fact that it straddles the
4 watershed boundary, but there's other reasons, too.
5 That's -- you know, the degree to which it's connected to
6 the surface water is pretty small in comparison to other
7 locations. It's also the case that not as much
8 groundwater is pumped in that location. So does that help
9 answer your question?

10 THE COURT: Yeah, it does. Is there anything else
11 about the study that you think will buck up the physical
12 solution as it is currently drafted or be a tool to
13 question, criticize or otherwise attack the current
14 drafted physical solution?

15 MR. MELNICK: I think the model will help explain
16 the need for some adjustments to flow requirements in this
17 watershed. And those don't -- we're having a discussion
18 with the City of Ventura and settling conversation about
19 how the physical solution that they proposed needs to be
20 adjusted to account for that.

21 THE COURT: That's notable in one sense. If my
22 memory is right, the current draft physical solution I
23 have the pleasure of reviewing appeared to accept that the
24 variability of flow currently observed in this watershed
25 due to our wet and dry cycles in the climate in the
26 watershed appear to be an acceptable context in which to
27 try to engage in other mitigation efforts for the
28 betterment of the fishery, particularly having to do with

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1 nonnative shoreline plants and the lack of sufficient
2 deposits of gravel in key places which appear to be the
3 primary way in which the physical solution proposes to
4 improve the fishery through matters beneficial apparently
5 to the fish separate and apart from the quantity of water
6 that flows through the stream in any given month of the
7 year. If I hear you right, your client appears to be
8 concluding that some further efforts to reduce export of
9 the water from the current natural flow may be needed in
10 order to sufficiently protect the fishery.

11 MR. MELNICK: That's accurate, Your Honor. Just to
12 elaborate, the habitat improvements that are proposed in
13 the physical solution are important. They will help.
14 They will have an impact. The existing flow restrictions
15 at Foster Park are important. Those need to continue.
16 But our view is there needs to be more.

17 One obvious thing that could happen is that the
18 Matilija Dam could come down. And I think everyone is in
19 agreement that would not be a good thing to happen. There
20 is a fair amount of work that has to happen for that to
21 happen. That will open up a huge stretch of habitat and
22 will have a huge impact. But there are probably other
23 things that need to happen.

24 THE COURT: One question before I pass it on to
25 Mr. Cooper. As I look at what I find when I open up the
26 public website, is there one or more documents that I
27 should start with in terms of finding a path to reading
28 and comprehending your client's work product? Is there a

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1 point where it gets too technical or just a bunch of
2 numbers on a spreadsheet that for someone like myself I'm
3 going to get very little by staring at a spreadsheet?

4 MR. MELNICK: I think, Your Honor, I would ask you
5 to leave the model to the experts and let them translate
6 what it does for the rest of us. I certainly can't work
7 through the model to get you any information. I think our
8 experts are going to produce a report on Friday which
9 explains the model outputs and gives a lot of useful
10 information for the Court and for the parties. I'm sure
11 that Dr. Archer, City of San Buenaventura's expert, will
12 be looking at the model seeing what it does. I'm sure
13 Mr. Patterson's expert will do the same.

14 I'm sure any other experts will do the same. It is
15 quite technical and, you know, I think with a lot of hard
16 work, a lot of people could get some valuable information
17 out of the model. I'm not sure it's worth the Court's
18 time to do that at this point.

19 THE COURT: For your purposes, the best way for me
20 to use time in the management of this case would probably
21 be something other than attempting to read any portion of
22 the material on the public website?

23 MR. MELNICK: I think that's right, Your Honor.

24 THE COURT: Okay. That's fine. I have no problem
25 with that. I'm going to take a short recess. The only
26 other thing competing this morning is set for 10:00. I
27 hope the lawyers in China are with us. I expect it will
28 take five minutes. We will go off the record.

1
2 (A recess is taken.)
3

4 THE COURT: Okay. We're back on the record.
5 Mr. Cooper, plaintiff's counsel, if memory serves me
6 right, you have struck what appears to be a full and final
7 compromise with co-defendant City of San Buenaventura, but
8 I don't recollect that you reached any similar such state
9 of equipoise with the lead defendant State Water Resources
10 Control Board. Is my memory right, Mr. Cooper?

11 MR. COOPER: Partially, Your Honor. So the
12 settlement that we have with the City of Ventura is
13 interim, the idea being there's some flows for fish at
14 Foster Park, a pumping shutoff at a minimum flow rate
15 in-stream while the physical solution is negotiated as
16 part of this adjudication. We are still part of this
17 litigation in terms of commenting, participating,
18 litigating if necessary the issue of appropriate
19 management of flows in the river to preserve public
20 resources including specifically Steelhead. So when you
21 say we reached equipoise with the City, we have an interim
22 resolution, but not a final resolution.

23 THE COURT: Fair enough. As to the State, are you
24 more settled with the State, or am I correct you are not
25 settled with the State?

26 MR. COOPER: We are not settled with the State. The
27 posture has changed a bit. Our claim against the State
28 was primarily to compel them to engage in protecting

1 public trust resources and put restrictions on the city's
2 water right. And because this is now adjudication, the
3 State in the form of the state board and California
4 Department of Fish and Wildlife are now engaged to protect
5 public trust resources as part of the adjudication
6 process. So our claim against the State is still alive,
7 but their interests have altered somewhat. We find
8 ourselves, at least generally, aligned with the State in
9 protecting fish going forward.

10 THE COURT: As to this new study that got released,
11 do you like it? Do you hate it? Do you want to explain
12 it to me? Mr. Melnick felt I didn't need to know much
13 about it.

14 MR. COOPER: Well, you know, a model is as good as
15 the data put in, so good data in, good results out. I
16 think it's laudable that the State made the model
17 available to the parties so that we can do our own model
18 runs and evaluate the impacts of various withdrawals at
19 various reaches of the river on flows seasonally and
20 compare that to the minimum flows for fish and then
21 provide that kind of testimony, expert review to the
22 Court. So the model is a very useful tool. I'm glad it's
23 finally available.

24 I laud the State for undertaking the exercise. The
25 State is correct in telling the Court that applying it and
26 using it and interpreting it is an expert-driven exercise.
27 I believe there are plenty of experts who will be running
28 the model and then advising the Court on what those model

1 runs mean and what data has gone into it.

2 THE COURT: Thank you. Unless you want to say
3 something else, I'll move to the City of Ventura.
4 Mr. Cooper?

5 MR. COOPER: I would like to comment quickly on the
6 physical solution, if possible.

7 THE COURT: Sure.

8 MR. COOPER: I just say, again, I think for the
9 Court to engage in a meaningful on a physical solution now
10 is premature. We're talking currently about jurisdiction.
11 I believe the trial was strictly about the scope of the
12 adjudication. I think the model and model runs speak
13 directly to that. The physical solution, we're just
14 not -- nobody is really in a position to talk about that
15 yet. Specifically the proposal put on the table by the
16 City and the other users aligned with them doesn't address
17 water. This is a water adjudication.

18 The Arendel removal and habitat enhancement
19 measures, while they're interesting and will be helpful,
20 that's the not the focus of this case. The focus is
21 water. Fish need water. Without water, the rest of that
22 stuff is kind of meaningless. And there's no water on the
23 table in the physical solution. They want to leave
24 everything status quo, and the status quo is what has
25 driven the species to the edge of extirpation. I would
26 say the physical solution is, from our perspective,
27 unacceptable. There is no point in engaging on that.
28 Let's get past the jurisdictional scope, and then we'll

1 deal with the physical solution, and our experts will go
2 on at that phase.

3 THE COURT: Thank you. Mr. Hagerty, Mr. Pisano?

4 MR. PISANO: Thank you, Your Honor. As the Court
5 observed on August 31, we complied with this Court's order
6 and we served on all parties our expert disclosures.

7 THE COURT: Right now I'm asking about the City's
8 comments about the State Water Resources Control Board.
9 If you're talking about disclosures, I'll get to that
10 next. I'm going to run through and after you talk about
11 the state model, I'm going to ask Casitas to talk and
12 Ojai. Keep your powder dry on your own disclosures.

13 MR. PISANO: With regards to the State's model, we
14 agree with Mr. Melnick and with Mr. Cooper that it is an
15 expert-driven exercise and it's not really appropriate or
16 ripe, if you will, to discuss it now.

17 THE COURT: Also sounds like it's incomprehensible
18 for those of us who just have a legal education.

19 MR. PISANO: It's difficult to follow on your own.
20 You really do need an expert's assistance.

21 THE COURT: In practical terms, at least at this
22 juncture, you're not ready to say whether you think it is
23 supportive of the current physical solution or not; you
24 can't just grab it and say, see, I won my case?

25 MR. PISANO: That's correct, Your Honor.

26 THE COURT: Casitas Water District, who is here
27 today for that entity?

28 MR. JUNGREIS: Good morning, Your Honor. This is

1 Jeremy Jungreis from Rutan and Tucker.

2 THE COURT: You're the guy who took over the case
3 when your partner retired?

4 MR. JUNGREIS: Something along those lines. Yes,
5 Your Honor.

6 THE COURT: Go ahead.

7 MR. JUNGREIS: Your Honor, just a couple quick
8 comments. First, Casitas received a model like everyone
9 else around August 31 and we're reviewing the model
10 results. We will have additional comments. We're going
11 through those with our consultant who has a lot of
12 in-depth knowledge of the various aspects of hydrogeology.
13 We're still evaluating, there are extensive comments on
14 the final study plan. We need to understand that.

15 We're going to need additional model files from the
16 State Water Board to better understand some of the model
17 assumptions and parameters of the model, and our
18 consultant is assisting us right now. For right now, Your
19 Honor, we're dug in. We're looking at the model, and we
20 will have comments in the future. At this point, I don't
21 think we can provide the kind of comments the Court is
22 asking for at this point.

23 THE COURT: Okay. Mr. Garrison, if memory serves me
24 right, you're counsel for the cross-defendants who
25 identified themselves as the East Ojai Group?

26 MR. GARRISON: Your Honor, this is Gregg Garrison.
27 I believe that is Greg Patterson.

28 THE COURT: Do I have Greg Patterson with me this

1 morning?

2 MR. PATTERSON: Yes, Your Honor.

3 THE COURT: With Mr. Garrison's helpful comments, it
4 is you who represents the East Ojai Group, am I talking to
5 the right guy?

6 MR. PATTERSON: You are talking to the right person,
7 Greg Patterson.

8 THE COURT: Same questions I put to Mr. Pisano and
9 Mr. Jungreis.

10 MR. PATTERSON: Your Honor, I think what you're
11 going to be seeing is a set of expert reports that are
12 going to be significantly divergent in their opinions. At
13 least with respect to my clients, we're mostly in the
14 upper East Ojai area. It won't come as any surprise that
15 from our perspective and from our analysis of all of the
16 various local reports and the data that is available, our
17 client's groundwater pumping do not contribute to the flow
18 of the river or its tributaries on the San Antonio Creek,
19 and this is really not a physical solution in the true
20 sense of the word.

21 This is a fish habitat restoration project. The
22 focus should be on whether groundwater pumping from our
23 client's wells, where they're located which is much deeper
24 than the aquifer that may be connected to San Antonio,
25 have any effect on the flow relative to the health of the
26 fishery. That's what this is really all about. So we
27 have a consultant for our clients who will be preparing a
28 report and submitting it on Friday. Other than that, I'm

1 not sure what else I can contribute. But there will be, I
2 think, just to alert the Court, significant differences
3 between -- especially between the City's report, somewhat
4 with respect to the State report, but certainly you're
5 going to see some fairly significant analysis that has a
6 different opinion outcome. And it's very technical. I
7 agree with everyone that it's very technical. There's
8 voluminous documents to sort through. I think the reports
9 are probably, if they were in hard copy form, would be
10 three or four feet high least. And so there's just a
11 significant amount of information to plow through for the
12 Court to understand what's actually going on here.

13 THE COURT: Thank you. In a moment, I will ask City
14 of Ventura to speak about their own disclosures, and in
15 that context I'll try to understand better whether the
16 parties are getting these disclosures even if the Court
17 doesn't, or for some reason the disclosures aren't going
18 to people like Mr. Baggerly in his capacity as a party.

19 Before I invite the City to talk about its own
20 disclosures, is there anybody else who wants to offer any
21 kind of color commentary at this time on the contents or
22 impact of the State Water Resources Control Board model
23 recently released to the parties and the public? If so,
24 state your name and make your point.

25 MR. BAGGERLY: Claude Baggerly. I have two
26 comments, Your Honor.

27 THE COURT: Go ahead.

28 MR. BAGGERLY: In terms of connectivity, it's only

1 possible in the global sense, according to the definition
2 of hydrologic connectivity. All water is connected
3 throughout the globe, but it's not so in relationship to
4 the basins. That's one thing we have to make sure that we
5 understand. The other thing that I'd like everyone to
6 understand is you have to have correct assumptions that
7 are critical to the margin of error of the model. The
8 margin of error of the model is going to be critical to
9 determine what flows are actually necessary to keep the
10 fish in good condition. Thank you, Your Honor.

11 THE COURT: Thank you, sir. Anybody else wish to
12 comment on the State Water Resources Control Board model
13 at this time?

14 MR. FRANCOIS: Your Honor, this is Tony Francois for
15 Dr. Robin Bernhoft, cross-defendant.

16 THE COURT: Go ahead.

17 MR. FRANCOIS: Perhaps it's obvious at this stage,
18 but one point we want to preserve is that in our view in
19 the context of litigation, this lawsuit, the expert work
20 and the model propounded by the state agency, the State
21 Water Resources Control Board is not entitled to any extra
22 credibility because they're a state agency in this
23 particular proceeding. We would preserve that. Also to
24 note that obviously we think the State, in order to
25 advance conclusions from the model, is going to have to
26 prove up all the foundational elements of the model. We
27 anticipate that will be a significant exercise for the
28 State to do. Those are just the two points we want to

1 preserve at this point.

2 THE COURT: Thank you, sir. Anybody else?

3 MS. JACOBSON: Holly Jacobson for the City of Ojai.

4 THE COURT: Go ahead, ma'am.

5 MS. JACOBSON: Just to make it clear, this is a
6 model that the State Water Resources Control Board has
7 released for public comment. The period of time where
8 they have said, here is what we have put together, here
9 are the assumptions and the data points we have used. If
10 you plug in X, Y and Z, you will get some result. Now,
11 it's subject to public comment right now because those
12 assumptions and how they created the model are subject to
13 criticism. It's not a true report or analysis. It's a
14 model that may be subject to change here or there. So I
15 just wanted to make that point, because that will be
16 crucial for the phase one trial from our perspective.

17 THE COURT: Thank you. I hope to get on to City of
18 Ventura, but I'll allow one last chance for commentary on
19 the model.

20 MR. GARRISON: This is Greg Garrison.

21 THE COURT: Go ahead, sir.

22 MR. GARRISON: I think the key point is that today
23 this hearing's proposed solution misses the mark. It's
24 really a habitat restoration, and there is no water on the
25 table. As counsel states for the City of Ventura, what
26 the Court really does need is an expert's assistant. And
27 as Mr. Patterson states, the experts will be wildly
28 divergent and there's three to four feet of physical data.

1 At this point, I would underscore these comments indicate
2 the need for an independent, neutral court expert. Thank
3 you, Your Honor.

4 THE COURT: Okay. Now I'm interested in hearing
5 what, if anything, Ventura city will share with me and in
6 particular to understand if I should anticipate seeing
7 these disclosures, whether the disclosures went to other
8 parties such as Mr. Baggerly, and if they went to him, why
9 it's a better course of wisdom that I not busy myself with
10 them.

11 MR. PISANO: Thank you, Your Honor. We did on
12 August 31 serve the expert reports on all parties who have
13 appeared.

14 THE COURT: Mr. Baggerly, by example, got it?

15 MR. PISANO: Mr. Baggerly got it. He's on the
16 service distribution list. The Court was not. We didn't
17 file it. We didn't provide it to the Court because we
18 complied with the statute, Your Honor. CCP is very clear.
19 In both 2034 and in 843, expert reports are served amongst
20 the parties. They are not filed and for good reason.
21 They are hearsay. They are not admissible evidence.

22 I think it's very important as we proceed, Your
23 Honor, because we have a complicated case with a broad,
24 all-encompassing physical solution that we really keep
25 ourselves grounded in the task at hand. The task at hand
26 is the issue of interconnectivity and the basin
27 boundaries. That's what our expert reports speak to.
28 That's what we assume the expert reports on the other side

1 on the 24th we will get will speak to. It's those issues
2 and those issues alone. Once we have all the expert
3 reports and supplemental reports, we'll be able to depose
4 the experts. Then in February, the experts will come in
5 here. They will each present their opinions. They will
6 first go before you wearing your hat as trier of law where
7 you will make the determination about whether they are
8 even permitted to testify.

9 And then they will go before you, assuming they can
10 testify, in your capacity as the trier of fact where you
11 will weigh their credibility, detail the sufficiency and
12 all that, and you will make a determination as to whether
13 you agree with the opinions of expert X or you agree with
14 the opinions of expert Y. That happens day in and day out
15 in courtrooms all over this state. It's all done pursuant
16 to the CCP and the evidence code, and the legislature in
17 their wisdom, they set forth these rules, and they're good
18 rules. There's a reason we have them. We should follow
19 them, Your Honor. That's why we didn't file the reports.
20 That's why we would object to anybody filing the reports
21 on --

22 THE COURT: Or serving them with the Court checked
23 as a party served?

24 MR. PISANO: Right.

25 THE COURT: And that's possible. I don't think
26 think you've done anything unethical or improper, I was
27 just curious. But you are offering a rather articulate
28 explanation of why the better course of wisdom is wait

1 until it all comes at the same time as part of a trial and
2 not dribbled out. If I wasn't the trial judge, it would
3 be different, but I am your trial judge.

4 MR. PISANO: Correct. At the end of the day, that's
5 what's motivating us in our decisions, to make sure we
6 have a fair and appropriate trial come February.

7 THE COURT: So I had some follow-up questions.
8 Perhaps they may shed light on the contents of the
9 expert's reports. I was going to ask Casitas what the
10 reaction was. Part of the answer is come this Friday,
11 you'll be getting competing experts. Perhaps that's the
12 more eloquent response rather than asking an attorney who
13 is not a hydrologist by training to give me informal
14 critique or commentary on your report. You would probably
15 say it's premature for me to ask for comments in today's
16 session on the record of people's reactions to the
17 reports.

18 MR. PISANO: I would agree with that, Your Honor.
19 Yes.

20 THE COURT: By the same token, Mr. Baggerly and
21 Mr. Garrison, Mr. Patterson, the East Ojai people
22 generally are now able to see what's in the report and
23 they will see what's served on Friday.

24 MR. PISANO: That's correct.

25 MR. PATTERSON: This is Greg Patterson. One quick
26 comment. Other than the State Water Board and the City
27 and my group -- and perhaps the City of Ojai, I'm not
28 sure -- but I am completely uncertain at this point as to

1 whether you're going to be getting much in the way of
2 other expert witness reports. Most of these folks who
3 have been sued can't afford one. These studies and an
4 expert witness report, from my personal experience, can be
5 in the six figures. And so most of these folks are going
6 to be without the ability to properly respond to the
7 City's efforts. I think that's another sort of something
8 to think about with respect to the City -- that the Court
9 possibly having someone neutral who can advise the Court
10 on some really technical stuff the Court hasn't seen
11 before.

12 And there's going to be a lot of activity between
13 now and the end of the discovery process that is going to
14 eliminate a lot more of these issues a little bit more
15 clearly. I don't disagree with the idea that maybe some
16 patience on the part of the Court might be appropriate
17 until some of this gets flushed out more thoroughly. The
18 Court should keep on the table the consideration that it
19 may need somebody to assist it in evaluating as a neutral
20 the various reports that may come in.

21 THE COURT: Your comments, Mr. Patterson, raise two
22 different theoretical issues to my perception. One, as a
23 neutral manager of a complicated case involving hundreds
24 and thousands of parties, some with lawyers, some without
25 lawyers, all of whom have material interests whether they
26 happen to be able to find a lawyer or not, there is a
27 tension between strict neutrality where I'm passive versus
28 some kind of more proactive case management where I try to

1 help those who come to court ill equipped to overcome the
2 apparent unevenness of the combat. One does that
3 cautiously, but in the provisions of self-help centers and
4 legal aid and pro bono work by lawyers, judges have for
5 generations been solicitous to find ways in which people
6 who are underrepresented can get access to essential
7 services so that the product of the litigation process is
8 closer to merits and not who has a stronger arm when you
9 arm wrestle.

10 That's separate from the question of whether or not
11 the Court in a highly complicated field needs to be
12 coached because as a fact finder it's incredibly difficult
13 to go past whether you like the cut of somebody's suit or
14 the sound of their voice or the logic of their
15 presentation or the confidence expressed by how they
16 convey themselves on the witness stand in deciding who is
17 the more persuasive expert. Someone with a rather modest
18 demeanor may be the repository of the better side of truth
19 in a highly complicated field as compared to some showman
20 who comes in or showgirl with great deal of confidence,
21 learned in Hollywood or otherwise, but basically
22 confidence for selling BS.

23 As to the first point, I have already suggested to
24 people like Mr. Baggerly that they ought to try to
25 coalesce around people who seem to be similarly situated
26 like the City of Ojai and Attorney Jacobson as well as
27 you, Mr. Patterson, and go basically tug at your sleeve
28 and see how they can find assistance from people similarly

1 situated. That process still exists. They also
2 theoretically could go try to find interested academics
3 who haven't otherwise been hired but who seem to be
4 involved in this line of work, whether they're doing
5 environmental studies at UC Merced or UC Santa Cruz or
6 California State, University of Channel Islands campus in
7 east side of Oxnard. I'm not sure if those institutions
8 have academic programs that have an interest in this
9 field, but there may be.

10 That's different than whether I need my own coach.
11 I'm going to see in Mr. Baggerly's motion is essentially a
12 question -- whether I need my own coach is different from
13 whether or not Mr. Baggerly needs to find help somewhere.
14 I say that in passing. I'm going to get to Mr. Baggerly's
15 motion shortly. Insofar as Mr. Baggerly needs help
16 finding advocacy, I have tried to informally, without
17 trying to step out of the role of a neutral, explain to a
18 layman how he could through the City of Ojai or the
19 collective desires of the clients represented by Mr.
20 Patterson find people with what appears to be common
21 cause, even if the Casitas Water District is not closely
22 enough aligned to be of any utility.

23 Any other comments you wish to offer as to Ventura's
24 disclosures, Mr. Patterson?

25 MR. PATTERSON: Not at this time, Your Honor. I
26 think the City has not disclosed its model. It has
27 refused to do so. That would be very helpful to us. That
28 will be dealt with in the process of discovery. We'll

1 deal with it then.

2 THE COURT: The City's experts have the outcome of
3 their model, but the model is a black box at the moment,
4 Mr. Patterson?

5 MR. PATTERSON: A lot of it is, Your Honor.

6 THE COURT: That will make interesting discovery.
7 But that's not before me today.

8 MR. PATTERSON: Yes, Your Honor.

9 THE COURT: Mr. Cooper for the plaintiff, do you
10 have any comments or reactions on Ventura's disclosures?

11 MR. COOPER: No, Your Honor. No.

12 THE COURT: Thank you. I'm going to ask a different
13 question of Mr. Hagerty and Mr. Pisano. At least it's
14 intended to be a different question. That is, if we step
15 back and ask how the negotiations about the physical
16 solution are going, I guess you're done with all the
17 meetings, if memory serves me right. Is there movement,
18 is something happening? Is the State Water Resources
19 Control Board disclosures a catalyst for any renewed
20 negotiations? Have your disclosures been? Do you think
21 this Fridays' disclosures will be? Should I do anything
22 to chum the water to try to bring you all together to sort
23 of negotiate some more?

24 MR. HAGERTY: Thank you, Your Honor. Shawn Hagerty.
25 I don't think the Court needs to do anything. I think as
26 Mr. Pisano was saying, at this point in time, sticking to
27 the statutory process is likely the best way to facilitate
28 additional discussion. I do think having the phase one

1 trial on calendar is a motivating factor. I do think that
2 without disclosing the substance of the discussions,
3 discussions are continuing and will continue. For those
4 who haven't had a communication with us, if you want to
5 talk, we are ready. We've always been ready and will
6 remain ready. We are in active discussions with various
7 parties, and we'll continue that with the goal of
8 achieving as much consensus as is feasible. We do think
9 we and the parties are capable of moving that process
10 forward, Your Honor.

11 The most important thing at this time for the court
12 process is to stick to the statute, move forward with the
13 process leading to the phase one. I think that is
14 probably the best thing the Court can do to continue to
15 motivate the parties to discuss things.

16 MR. GARRISON: Greg Garrison. There was a January
17 letter from the state attorney general to the City of
18 Ventura addressing the premature nature of the proposed
19 physical solution that I included in my papers for --
20 advocating for a court mutual expert. When I contacted
21 the City of Ventura wanting to discuss that letter,
22 counsel responded, that's confidential and we can't speak
23 to you about that. So getting back to Mr. Hagerty's
24 point, if these conversations of the proposed solution and
25 phase one elements of connectivity and four basins are
26 open, who is the City of Ventura talking to and when and
27 how often, because I've been cut out of those discussions.

28 MR. HAGERTY: Mr. Garrison, I'm always available to

1 talk to you. What you asked for was our response to that
2 letter which is a confidential settlement communication.
3 It had nothing to do with our willingness to talk to you.
4 I've said in court multiple times and I say again now, any
5 party who wishes to have conversations with us, we are
6 open and ready to have those conversations. I think, Your
7 Honor, there's been a lot of representations that are
8 repeatedly made in this context. If we get up and object
9 to each one, we would be here forever.

10 That's why I think at this point in time, these
11 types of discussions are not necessarily assisting the
12 facilitation of settlement. In some cases, they're
13 polarizing issues. There are representations of comments
14 made here without the need to have actual discussions, to
15 have backup facts and whatnot. So, Mr. Garrison, I will
16 happily give you a call immediately after this status
17 conference and we can talk. I look forward to doing that.
18 I look forward to doing that with any of the parties.
19 This is not the forum to do it, Your Honor.

20 MS. JACOBSON: This is Greg Garrison. Thank you,
21 Mr. Hagerty. But to my question, who are you speaking to
22 and who has the City of Ventura spoken to about the
23 proposed physical solution so I can do my own recognizance
24 and talk to the parties that you just represented to the
25 Court you're in open discussion with?

26 MR. HAGERTY: Mr. Garrison, I'd be happy to chat
27 with you offline about that. I think that's the
28 appropriate way to do that.

1 THE COURT: I'm not going to squeeze Mr. Hagerty to
2 be more precise in front of the Court on that.

3 MR. OSIAS: Your Honor, this is David Osias.

4 THE COURT: Are you East Ojai too in terms of the
5 geographical location?

6 MR. OSIAS: No, I have a single parcel owner who was
7 able to hire counsel.

8 THE COURT: Where is the parcel in geographic terms?

9 MR. OSIAS: It's arguably partially over the Ojai
10 groundwater basin, or perhaps not. Up in Cedar Canyon.

11 THE COURT: Go ahead.

12 MR. OSIAS: I just wanted to say, in answer
13 specifically to your question and without revealing any of
14 the contents and which way it went, I thought the expert
15 disclosure was -- of the City was helpful to settlement
16 discussions, and we've been engaged in them.

17 THE COURT: Good. Glad to hear that. So our next
18 time together -- I'm going to talk about Mr. Baggerly's
19 motion shortly; I haven't forgotten that -- is October
20 18th followed by November 15 followed by December 20.
21 Those should all remain on calendar, each at 1:30. Remind
22 me, Mr. Hagerty or Pisano, after this Friday's
23 disclosures, is there an additional disclosure deadline
24 for follow-ons, or is this Friday's deadline the last in
25 sequence?

26 MR. HAGERTY: One more, Your Honor. The September
27 24 disclosures are for specific parties, and then there's
28 one further disclosure October 22. Then, of course, there

1 will be appropriate supplemental disclosures after
2 depositions and whatnot.

3 THE COURT: Is there any obligation to do
4 supplemental disclosures as soon as this Friday stuff
5 comes out? Are you under any obligation to respond to it
6 by a statutory deadline, Mr. Hagerty, if somebody comes up
7 with expert information regarding the life of anadromous
8 fish or whatever?

9 MR. HAGERTY: There's a schedule date of December 10
10 for the exchange of supplemental expert disclosures. I
11 also think in 843, there are additional specific
12 requirements as it relates to deposition and things that
13 happen at deposition. We will comply with those
14 requirements.

15 THE COURT: Okay. I'm going to turn to
16 Mr. Baggerly's renewed motion. As indicated earlier,
17 although it's probable that in some ways Mr. Baggerly is
18 hoping I will find him an expert to help in his advocacy,
19 the motion, as I perceive it, is presented with a request
20 that the judge find as a neutral to give the Court
21 completely unbiased opinions that may or may not help
22 Mr. Baggerly's individual situation. Is that a correct
23 perception of what you believe you're asking for in your
24 motion, Mr. Baggerly?

25 MR. BAGGERLY: Spot on, Your Honor.

26 THE COURT: Having said that, I trust you've been
27 hearing me today and previously when I indicated that
28 insofar as you're trying to find someone to help advance

1 your cause, Mr. Baggerly, that you probably should tug on
2 the sleeve of City of Ventura and Mr. Patterson; I assume
3 you heard that suggestion?

4 MR. BAGGERLY: I have, and I did reach out. The
5 landscape of parties in support or in opposition remain
6 about the same.

7 THE COURT: Do you perceive there to be anybody such
8 as Mr. Patterson who is aligned with what you perceive to
9 be your position in this case?

10 MR. BAGGERLY: I do.

11 THE COURT: And do you, at least with Mr. Patterson,
12 have someone who seems to be aligned with your position on
13 the case, Mr. Baggerly?

14 MR. BAGGERLY: I don't know who his expert witness
15 is, but the parties that support my motion understand that
16 the Court really does need some help. That is basically
17 all I can say. The choice is yours, Your Honor.

18 THE COURT: Fair enough. Interestingly, in some
19 ways, the most persuasive supplemental argument I've heard
20 in favor of Mr. Baggerly's motion is the very fact
21 Mr. Melnick and Mr. Pisano/Mr. Hagerty view the content
22 and methodology of the expert analysis of the relevant
23 questions, including even the threshold question of
24 connectivity of certain groundwater basins and surface
25 flows to be so dense and technical as to not be worthy of
26 independent study by the Court. That suggests I may well
27 need an expert. If I need an expert, I don't want to wait
28 until the final status conference to discover I need an

1 expert, because finding such an expert is not going to be
2 a five-minute or five-day exercise. But having said
3 that --

4 MR. BAGGERLY: I agree, Your Honor.

5 THE COURT: Having said that, we're about to frame
6 the battle better when at least Mr. Patterson's expensive
7 expert, or presumptively expensive expert, puts his or her
8 cards on the table along with anybody else who may be
9 aligned. Mr. Patterson, do you have any perception that
10 City of Ventura or anybody else is coming forward with an
11 expert that is desirous of advancing a position similar to
12 your client's position?

13 MR. PATTERSON: Your Honor, I think there are
14 several local agencies who have generated reports who will
15 be supportive of our position. They're not actively
16 involved in the case, but they will be deposed. You're
17 going to see some additional material at some point. I
18 don't know at the moment of any other set of parties. I
19 don't even know if Casitas is submitting an expert witness
20 report. I don't know if City of Ojai is doing that. We
21 have the City, the State and us that will be submitting
22 reports by the 24th. Other than that, I just don't know.

23 THE COURT: Mr. Jungreis, do you know if your
24 client, Casitas Water District, intends to issue a report?

25 MR. JUNGREIS: Your Honor, we had a lot of robust
26 internal debate about that. The issue for us is timing.
27 As you know, we had some transition on our team. So
28 putting together an expert report by this Friday would

1 likely not be feasible for us. At this point, we were not
2 going to do it. If the Court were inclined to grant
3 additional time -- I wasn't going to ask for that, but
4 since you brought it up, that might be something we would
5 consider. At this point, given the timing involved, we
6 were not going to submit an expert report this Friday.

7 THE COURT: Mr. Jungreis, are you of the view that
8 the December 10 deadline for supplement reports would be
9 applicable and because you're responding to Ventura and
10 possibly others that if you submit a supplemental or
11 rebuttal report on December 10, you're able to have an
12 expert at the time of trial?

13 MR. JUNGREIS: I would assume so, Your Honor.

14 THE COURT: Do you have any sentiments on the topic,
15 Mr. Hagerty, Mr. Pisano?

16 MR. PISANO: I do, Your Honor. My understanding of
17 2034 -- and I don't have the research top of head -- is
18 that you need to disclose an expert in order to be able to
19 do a supplemental. That's under 2034. I haven't looked
20 at this issue under 843.

21 THE COURT: Did we set a deadline for rebuttal as
22 compared to supplemental, or were we silent on that topic?

23 MR. PISANO: Just supplemental.

24 THE COURT: We seem to be silent on the topic of
25 when a rebuttal report would be due?

26 MR. PISANO: Correct. It's not in the schedule.

27 THE COURT: Mr. Jungreis, I appear to be mistaken
28 referring to December 10. What's your theory about

1 whether you can still submit a supplemental at some
2 point -- excuse me, a rebuttal in the not-too-distant
3 future as opposed to waiving your client's right to ever
4 having an expert?

5 MR. JUNGREIS: At this point, we were prepared to
6 not put forth an expert. We realize the timing was such
7 it would be difficult to do so. Given our understanding
8 of the scope of phase one, it was supposed to be
9 relatively limited as to the issues that were to be
10 decided. We felt like that was not necessarily a problem.

11 To the extent there was an opportunity for
12 additional time to designate experts, it might be helpful
13 to the other parties that may wish to obtain experts. I
14 don't know, I'm new here. If I'm causing problems, I
15 apologize in advance. If there are parties seeking
16 experts, a short expansion of time would be helpful.

17 MR. PATTERSON: Greg Patterson. I'm looking at my
18 notes. I hope they're accurate. As I understand it, we
19 previously agreed there would be a November 12 date for
20 expert witness disclosures for those who did not
21 previously hire experts. So to the extent that a party
22 has not retained an expert as of today, I suppose, the
23 City graciously agreed to a schedule that would allow
24 those parties to have a November 12 date for expert
25 witness disclosures with a 12/10 date for supplemental
26 expert disclosures. So I think that's the schedule,
27 although Shawn may --

28 MR. HAGERTY: If I could jump in, Your Honor. There

1 was an earlier proposal that had those dates. That's what
2 Mr. Patterson is referring to. The Court will recall that
3 you modified that and you designated -- for September 24
4 you designated specific parties who needed to make their
5 disclosures. That would include Casitas.

6 The 22nd was for all other parties, basically with
7 the theory being that at that point in time, everyone
8 would have the City's information, the State's
9 information, Mr. Patterson's information, any other
10 information, and then other parties can make a
11 determination and disclose on October 22. I think Mr.
12 Patterson just remembered an earlier version of the
13 schedule that was discussed.

14 THE COURT: I'm not trying to modify what was
15 previously made and the record is what it is. I do
16 remember the City originally proposed there would be
17 concurrent, and over the City's objection, I put forward
18 its expert early. But then I did look to what I believe
19 to be the people most likely to have experts intended or
20 lined up. Whether there was any provision that gave them
21 a safe harbor if they had not hired an expert, I'd have to
22 go look and see what the record says. I haven't tried to
23 reconstruct that. Make your own judgment.

24 Ms. Jacobson for City of Ojai, do you anticipate
25 providing an expert for court this Friday?

26 MS. JACOBSON: Yes, Your Honor. We are working
27 diligently to make the Friday deadline. As previously
28 discussed, you invited the parties for this September 24

1 deadline to file an ex-parte motion if they needed
2 additional time. I am doing everything in my power to not
3 bother you with such a motion, but I may need a few more
4 days.

5 THE COURT: I'm here every day this week if you need
6 to come in on an ex-parte. Just set it for 10:00 a.m.

7 MR. SLATER: Scott Slater on behalf of the
8 Wood-Claeysens trust.

9 THE COURT: You're aligned with City of Ventura, I
10 believe?

11 MR. SLATER: We are. Your Honor, I would like -- we
12 did file supplemental papers in support of the City's
13 position. And I would like to point out that if the
14 Casitas Water District, the fact they elected not to file
15 an expert report that takes a different position speaks
16 volumes. They distribute water throughout the watershed.
17 Many of the parties are independently customers of
18 Casitas. Casitas has a history on the watershed which is
19 decades old.

20 They have expert witnesses that regularly interface
21 with the Department of Fish and Wildlife in California.
22 They are participant in discussions with the federal
23 government in the Department of Fish and Wildlife. They
24 understand the fishery condition. They have the capacity
25 to hire an expert. I would point out they haven't elected
26 to intervene to file a report on this position. Moreover,
27 there are multiple public agencies who sit in this
28 watershed and have the capacity to offer their own expert

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1 reports. They have chosen not to. We did hear from the
2 City of Ojai. It's great that they choose to come forward
3 and give the Court some confidence. I also want to point
4 out there are four state agencies involved in this
5 process. So the State and its government representatives,
6 half of the Department of Fish and Wildlife on behalf of
7 the State Water Resources Control Board, on behalf of the
8 parks, are represented in this process. The Court has the
9 benefit of all of those agencies who have the opportunity
10 to prepare and file additional points of view.

11 The largest agriculture user in the watershed is
12 Taylor Ranch. It is supportive of the filing. The
13 traditional triad, if you will, of interest in water
14 policy, you have consummative users, municipalities, you
15 have agriculture, and you have the environmental interests
16 represented privately by the Channel Keepers and by the
17 State of California. The plate is full. Everybody has a
18 fair opportunity. And to the extent somebody has a
19 divergent opinion and wants to offer, Mr. Patterson is
20 there to represent that more discrete interest.

21 More than 90 percent of the total production is
22 supporting -- sorry. When combined with Casitas, although
23 they have not formally declared, more than 90 percent of
24 the total production is involved in this proceeding. And
25 you have the opportunity to review the expert reports and
26 make a further determination about what else you see and
27 need after you see those reports. Thank you, Your Honor.

28 THE COURT: Mr. Slater, no criticism of you or Mr.

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1 Pisano, but Mr. Pisano explained why it was premature for
2 me to look at the reports. And insofar I discover I'm
3 confused when I look at the reports, I want to know when I
4 look at the reports -- and that is apparently some weeks
5 or months into the future. So that, in my way of
6 thinking, makes it premature to hire an expert. I also
7 hesitate to wait until the final status conference to make
8 the decision. You are suggesting I should try to read the
9 City of Ventura reports and what comes in this Friday,
10 Mr. Slater?

11 MR. SLATER: I think you have -- your authority is
12 largely founded only by the constitution. I think all of
13 us understand that this process is going to be an
14 elongated process. We're going to see you a long time.
15 You're going to have continuing jurisdiction. If ever
16 you're not confident of the information in front of you,
17 you can press a pause button. It's at the risk of the
18 moving parties who are the -- most have prejudice for us
19 not succeeding in an expeditious fishery restoration plan.

20 We are taking the risk now that you will have
21 sufficient information in front of you to come to the
22 correct decision, and we are pressing to move forward
23 because every day the fishery is at risk is a day that our
24 consummative use is at risk. We accept that if you are
25 not satisfied at any point that you can push the pause
26 button, hire an expert and come to the right conclusion or
27 get whatever help you need to get to that conclusion. So
28 my answer is, it's inherent in our moving forward. We

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1 think you have enough. We think you'll have a robust file
2 that will answer the questions or frame the issues for
3 you. And if a further pause is required because you can't
4 get there, we will accept that.

5 THE COURT: What I also hear you say, Mr. Slater, is
6 that it is likely that between the State's expert and the
7 East Ojai experts there's going to be something with a
8 different view as compared to the City of Ventura and the
9 aligning parties. And in that difference of opinion, I
10 hopefully will get a sufficient illumination to get at the
11 truth.

12 MR. SLATER: I think we're betting on that, Your
13 Honor. Our intention is that the differences will be
14 sharpened and that based upon the facts, the expert opinion
15 and the law that you will be able to come to the
16 appropriate conclusion to resolve that and for us to move
17 on.

18 THE COURT: Okay. Someone else wanted to talk, I
19 believe it was a woman's voice. Who else wanted to talk?

20 MS. JACOBSON: Holly Jacobson. I apologize for
21 interrupting.

22 THE COURT: Go ahead. You are Ojai's counsel.

23 MS. JACOBSON: Yes. I just wanted to object to
24 Mr. Slater's statements in general. It has nothing to do
25 with the question posed by the Court. Essentially, we are
26 arguing the merits of the issue and trying to infer that
27 Casitas's failure to disclose an expert weighed at all on
28 the issues. I found that highly inappropriate and wanted

1 to object for the record.

2 THE COURT: He infers it must be Casitas is aligning
3 itself with the City of Ventura even if it doesn't want to
4 say so publicly. That's what I thought I heard from
5 Mr. Slater.

6 MS. JACOBSON: That would be highly inappropriate.
7 You don't need an expert to necessarily destroy the other
8 side's case. You can cut holes in an expert without
9 having --

10 MR. JUNGREIS: Your Honor, this is Mr. Jungreis. I
11 would just say that I don't think we're asserting we're
12 aligning with anybody.

13 THE COURT: Fair enough. So, Mr. Baggerly, I'm
14 inclined to trail your motion to October 18 to see whether
15 or not in this combat of experts that's going to be more
16 evident this Friday that there is enough out there that it
17 appears that will do the job in classic style. I think
18 I'm also going to reach out to some of the judges who are
19 still alive who have done cases like this to see whether
20 any of them found utility in having an independent expert
21 since the problem from a judge's point of view would
22 appear to be in common with those kinds of cases such as
23 the Antelope Valley Water case.

24 And so I intend to do that as part of my judicial
25 diligence between now and October 18. Otherwise I'd wait
26 and see what you learn. Interestingly, Mr. Baggerly, this
27 leaves you-all to argue about whether or not this battle
28 of disclosed expert reports is or is not a sufficient

1 basis under which I as a veteran judge neutral can make a
2 fact decision including the threshold question of
3 competence of an expert to testify without my own coach,
4 even when you may be making those arguments without me
5 having direct access to materials on which your arguments
6 are based. Mr. Pisano and others think that's a better
7 course of wisdom, and probably there's some value to it,
8 although I do have my doubts. I'm willing to take it
9 slow.

10 Mr. Baggerly, you have the floor out of respect of
11 the fact that this is your motion and you would like me to
12 grant it today.

13 MR. BAGGERLY: Well, Your Honor, I want you to do
14 what's comfortable and right for you to do. If you want
15 to wait until October 18, I'll be glad to do that. I
16 would like to say one thing. I think it's pretty obvious
17 the City of San Buenaventura and their attorneys, the
18 proposing parties and the state agencies, obviously do not
19 approve of the presiding judge in this complex case taking
20 the initiative to receive unbiased, impartial and
21 knowledgeable information upon which you will be called to
22 render a decision that will be upheld in the courts in the
23 future because it's going to be correct if you get some
24 help. Let's wait until October 18, Your Honor.

25 THE COURT: One thing that the proponents of the
26 motion might do is to figure out in practical terms who by
27 profile this expert is and how I find such an expert.
28 Because if I am to have --

1 MR. BAGGERLY: I can give you his phone number.

2 THE COURT: I'll wait for October 18 to hear that.
3 Mr. Pisano?

4 MR. PISANO: Your Honor, I know we're going to take
5 this up on the 18th. I think it's important to keep in
6 mind because the Court made a comment after I spoke about
7 the need for an expert to understand technical and dense
8 models. Just because you need an expert to walk you
9 through a model does not mean that an expert should be
10 appointed under Evidence Code Section 730. Those are two
11 fundamentally different questions. By the way, another
12 point is, if you were to grant Mr. Baggerly's motion and
13 appoint someone under 730, this person would not be your
14 coach.

15 This person would be an expert on equal footing with
16 every other expert. This expert would prepare a report,
17 exchange it, be deposed and be subject to direct and
18 cross-examination at trial. It would not be the case that
19 this expert would discuss with you offline in chambers
20 what -- the way things are and the way things ought to be.
21 That's not what an expert under 730 does. The bottom line
22 is, the Court uses 730 when the Court determines there's a
23 hole, there's a gap. That's why they use the word
24 "require."

25 If you make a determination that the expert
26 presentations before you are insufficient for you to make
27 a determination of interconnectivity or basin boundaries,
28 that's when 730 would come into play. Frankly, I think if

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1 somebody thinks after September 24, they have the benefit
2 of these expert reports, my goodness, there's no way these
3 expert reports are going to guide the trier of fact or the
4 opinions that will be rendered will guide the trier of
5 fact, it's incumbent on that party to make a showing as to
6 why that is the case and why an expert under 730 is
7 needed. Until that time, it's premature.

8 THE COURT: Thank you. So, Madam Clerk, on calendar
9 today is the matter described as hearing on motion for
10 order by Claude Baggerly, et cetera. That is trailed to
11 October 18 of 2021 for further argument but no further
12 briefing unless the Court hereafter asks for same. I will
13 be interested in the status report for the next event.
14 Mr. Baggerly, you can join in that status report if you
15 wish, or you can file a unilateral status report between
16 now and October 18. You can use that status report as
17 your opportunity to comment on the disclosures that are
18 forthcoming this Friday.

19 The same opportunity exists for everyone else who is
20 interested in the motion brought by Mr. Baggerly insofar
21 as you join into the joint report organized under the
22 auspices of Mr. Hagerty and Mr. Pisano. If for some
23 reason you can't cooperate in a timely fashion, I'll take
24 unilateral reports as long as they're filed with dispatch
25 in advance of October 18.

26 What, if anything, useful should we talk about
27 today? I notice some of you are working on drone footage.
28 I'm not driving around the watershed. That will come when

1 it comes. Is there anything else that ought to be
2 addressed today, Mr. Hagerty?

3 MR. HAGERTY: I think that covers everything from
4 the City's point of view.

5 MR. WHITMAN: This is Andrew Whitman. I would like
6 to go back to the motion and your order that you not
7 receive any further briefing. That causes me a little bit
8 of concern because you've asked for input on how you would
9 go about selecting an expert. And then the City has
10 proposed what that expert is going to be allowed to do.
11 And I've learned from the time I've been involved and
12 everything that what the City says is essentially false or
13 just their version of the truth. I'd like to be able to
14 say what that expert can do for you.

15 So I would like to have permission to address in a
16 short brief both the issue of how Your Honor might select
17 an expert and what that expert's role would be on your
18 behalf.

19 THE COURT: What I indicated in my chit-chat with
20 Mr. Baggerly applies equally to you, sir. You can take
21 advantage of the opportunity to file a status report
22 either jointly with the City on October 12 since the 11th
23 is a public holiday, and/or some kind of unilateral
24 statement filed by yourself no later than, say, October 14
25 styled as a statute report but speaking to the issues in
26 the continued motion of Mr. Whitman and Mr. Baggerly,
27 particularly including what, if any, epiphanies have or
28 have not emerged from the battle of the experts as it gets

1 framed this Friday, along with whatever other things you
2 want to say; mindful I won't have seen what the experts
3 are saying, so you are commenting on a data set that is
4 unknown to me. Mr. Pisano has provided the most eloquent
5 explanation he can. I think for his purposes he was
6 sincere and not intended to be obfuscating that it is more
7 prudent to delay diving into these reports until we are
8 flush at the time of trial. It's possible that most are
9 out on the table that even if the depositions are underway I may
10 at some point want to get a taste test of what this arcane
11 stuff sounds like.

12 MR. BAGGERLY: Thank you, Your Honor. This is
13 Claude Baggerly. I would just like to add a little
14 objection to or addition to what Mr. Pisano said about
15 730. And that's not your only avenue of approach for
16 scientific advice. You have CCP Section 845 as well.
17 There are many, many things open to you to do what you
18 need to do if you need to do it. That's all, Your Honor.
19 Thank you.

20 THE COURT: Thanks, sir. Okay. So we've
21 accomplished everything you think we needed, Mr. Hagerty.
22 Do you have what you need to give notice?

23 MR. HAGERTY: Yes, Your Honor.

24 THE COURT: Is there anybody who needs something to
25 be taken up by the Court before I adjourn? Hearing
26 nothing, the Court is in recess. City of Ventura, give
27 notice.

28 MR. HAGERTY: Thank you, Your Honor.

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(The proceedings is concluded.)

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