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 9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 FOR THE COUNTY OF LOS ANGELES

12 SANTA BARBARA CHANNELKEEPER,  
 13 a California non-profit corporation,

14 Petitioner,

15 v.

16 STATE WATER RESOURCES CONTROL  
 17 BOARD, A CALIFORNIA STATE AGENCY;  
 18 CITY OF SAN BUENAVENTURA, a  
 19 California municipal corporation, incorrectly  
 20 named as CITY OF BUENAVENTURA,

21 Respondents.

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CITY OF SAN BUENAVENTURA,  
 23 a California municipal corporation,

24 Cross-Complainant,

25 v.

26 DUNCAN ABBOTT, an individual, et al.

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Cross-Defendants.

Case No. 19STCP01176  
 Assigned to Judge William F. Highberger  
 Dept.: 10

Complaint filed: September 19, 2014

**CROSS-DEFENDANTS ANDREW K.  
 WHITMAN, HEIDI A. WHITMAN,  
 NANCY L. WHITMAN, AND JOHN R.  
 AND NANCY L. WHITMAN FAMILY  
 TRUST'S STATUS CONFERENCE  
 STATEMENT**

1 Cross-Complainant City of Ventura is hammering forward attempting to obtain a  
2 “physical solution” that will impact thousands and thousands of water users and land owners in  
3 Northern Ventura County. A physical solution is clearly premature at this stage of the litigation.  
4 The cross-defendants have not had the opportunity to obtain evidence or establish, where  
5 appropriate, that they are not proper cross-defendants.

6 A premature solution is part of the City of Ventura’s strategy. Any physical solution  
7 requires this Court to exercise equitable jurisdiction. The City of Ventura smells to high heaven  
8 when equitable considerations are brought to the table. Despite a limited water resource the City  
9 of Ventura has handed out development permits that place unreasonable demands on the entire  
10 community.

11 To avoid the City’s irresponsible over-use of the water the City engages in a “cart before  
12 the horse” strategy. The City of Ventura wants this Court to use its power to adopt a physical  
13 solution before a full equitable consideration and before all of the relevant facts are before the  
14 Court.

15 The “physical solution” that the City of Ventura seeks is an equitable remedy designed to  
16 alleviate overdrafts and the consequential depletion of water resources in a particular area,  
17 consistent with the constitutional mandate to prevent waste and unreasonable water use and to  
18 maximize the beneficial use of California’s limited resource. *California American Water v. City*  
19 *of Seaside* (2010) 183 Cal.App.4th 471. Under the “physical solution doctrine,” a court  
20 adjudicating a water rights dispute may, within limits, exercise its equitable powers to impose a  
21 physical solution to achieve a practical allocation of water to competing interests. *State Water*  
22 *Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674. In water cases involving a physical  
23 solution, a trial court not only has the power but also has the duty to exercise its power to work  
24 out a solution consistent with the policy to beneficially use water. *Water Replenishment Dist. of*  
25 *Southern Cal. v. City of Cerritos* (2012) 202 Cal.App.4th 1063 [as modified on denial of reh’g,  
26 (Feb. 8, 2012) and review denied (May 9, 2012)].  
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1 The questions before this Court at this stage of the proceedings should be:

- 2 • How can the Court fashion an equitable solution that is designed to
- 3 alleviate overdraft and depletion of water resources, preventing waste
- 4 and yet maximizing beneficial use?
- 5 • How can the Court achieve a practical allocation of competing water
- 6 interests?
- 7 • How can this Court arrive at a solution that promotes the beneficial use
- 8 doctrine mandated by the California constitution?

9 To answer these questions this Court needs much more information.

10 Much of the current focus of this litigation is upon a tour to see the physical layout of  
11 relevant hydrology. While the depth of the Court's understanding of geography, geology and  
12 hydrology would be useful if the Court ultimately renders a physical solution, some or all of that  
13 knowledge may be meaningless and a waste of the Court's time depending on the scope of the  
14 solution. The following questions/factors are at least as important, if not more important, than  
15 the proposed tour:

16 **This Court Should Appoint a Special Hydrology Master:**

17 A comprehensive understanding of the geography, geology and hydrology of the four  
18 distinct ground water basins that the City of Ventura attempts to lay claims to is more important  
19 than direct visualization of the region encompassed by the litigation. How do the different basins  
20 interact - in the hydrologic sense? A birds-eye view is no replacement for a comprehensive,  
21 scientific understanding of multiple water systems. This Court should either appoint a hydrology  
22 master (as a consultant beholden to the Court only), or if the Court is not sufficiently familiar with  
23 candidates to fill the position, the Court can take proposals from the litigants. The proper  
24 candidate will be an expert in basin wide hydrological principals; will be neutral and unbiased;  
25 and will have knowledge of the region and its history.

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1           **This Court Should Determine Which Parties Should be Part of The Physical**  
2           **Solution:**

3           My clients and I are landowners in the Ojai Ground Water basin and, allegedly, the Upper  
4 Ojai Water basin. Should any of the overlying ground water owners be part of the process that  
5 leads to a physical solution? The litigation is steamrolling towards an adjudication/physical  
6 solution that will impact every party to the litigation. The Court should be engaged in making  
7 determinations as to who should be part of any final adjudication.

8           **(a) Does the City of Ventura enjoy Pueblo Water Rights?**

9           One determination that will streamline the scope of the proceedings is a determination of  
10 whether the City of Ventura enjoys “pueblo water rights.” The City of Ventura claims to have  
11 the ability to make a claim against groundwater in the Ojai Ground Water Basin and the Upper  
12 Ojai Ground Water Basin based upon historical “pueblo” water rights. Whether Pueblo water  
13 rights extend to groundwater may be a red-herring. Whether the Pueblo water rights even exist  
14 is entirely doubtful. According the California Lands Commission, the Pueblo designation was  
15 never granted to the City of San Buenaventura (See [https://www.slc.ca.gov/land-types/rancho-](https://www.slc.ca.gov/land-types/rancho-pueblo-presidio-mission-lands/)  
16 [pueblo-presidio-mission-lands/](https://www.slc.ca.gov/land-types/rancho-pueblo-presidio-mission-lands/)). It should follow that Ventura has no Pueblo water rights. The  
17 claim that Pueblo rights exist over ground water in the Ojai Valley should be moot. An early  
18 determination of the Pueblo rights question potentially allows thousands of overlying ground  
19 water rights holders to be dismissed from the litigation and exempt from any of this Court’s  
20 rulings.

21           **(b) Does the Procedure for a Physical Solution Include More Than One**  
22           **Ground Water Basin?**

23           It seems likely that the City of Ventura would have some claim to the Ventura River Water  
24 sufficient to justify an adjudication. The Ventura River has historically been part of the water  
25 supply for the City. However, there is no legal or logical connection between the Ojai  
26 Groundwater Basin, the Upper Ojai Basin and the City of Ventura. However, in the Third  
27 Amended Cross Complaint the City of Ventura claims the right to an adjudication and a physical

1 solution that encompasses four different water basins (Lower Ventura, Upper Ventura, Ojai and  
2 Upper Ojai). Overlying groundwater owners in the Ojai and the Upper Ojai basins are not proper  
3 parties to the adjudication sought by Ventura.

4 Cross-defendant City of Ojai has presented a compelling argument that the adjudication  
5 process does not extend beyond a single groundwater basin. The adjudication process does not  
6 permit or establish the Court’s ability to adjudicate water rights and solutions among the stake  
7 holders in multiple basins in a single adjudication.

8 Whether the City of Ventura has the legal standing to demand adjudication of water rights  
9 within multiple groundwater basins should be resolved before the overlying defendants are forced  
10 to go through any further litigation. If the City of Ojai is correct, thousands of defendants could  
11 be dismissed and avoid the pandora’s box that will be opened if this Court makes an adjudication  
12 that impacts the rights of parties to the litigation who shouldn’t be a party. Judicial economy  
13 demands that the important legal issues raised by the City of Ojai can be addressed by the Court.  
14 As stated, a determination that the right to an adjudication is limited to the Lower Ventura River  
15 or limited to the Upper Ojai and Lower Ojai groundwater basins will result in significant judicial  
16 economy (by eliminating the participation of thousands of cross-defendants).

17 **The Equities of City of Ventura Water Usage (Overdrafts) Must Be Known**  
18 **Before The Court Makes Substantive Decisions**

19 Whatever relief the City of Ventura seeks to obtain through its Third Amended Cross-  
20 Complaint is impacted by equity. Whether the City of Ventura is entitled to any relief at all is  
21 dependent upon coming to the Court with “clean hands.” This Court cannot and should not  
22 entertain any rulings granting the City of Ventura any relief until it receives evidence on the full  
23 history of the City of Ventura’s use of water over time. This should include the history of  
24 irresponsible issuance of development permits that have placed ever increasing demands upon an  
25 unsustainable water resource. By contrast, Ojai and the unincorporated areas of the County of  
26 Ventura have been severely restrictive in the issuance of development permits. The Court can’t  
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1 assess any equitable solutions along the Ventura River or within any of the groundwater basins  
2 without having information relevant to the City of Ventura's equitable condition.

3 **CONCLUSION**

4 The Court needs a special master/water expert before making any further decisions that  
5 may impact the rights of all parties. The Court should establish procedures that allow for early  
6 determination whether the City of Ventura has Pueblo water rights, whether an  
7 adjudication/physical solution can extend to more than one groundwater basin, and whether  
8 individual defendants are proper parties to the litigation.

9  
10 April 12, 2021

*/s/ Andrew K. Whitman*

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