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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,
 a California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL
 BOARD, a California State Agency;
 CITY OF SAN BUENA VENTURA, a
 California municipal corporation, incorrectly
 named as CITY OF BUENA VENTURA,

Respondents.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

STATUS CONFERENCE REPORT

Date: October 18, 2021

Time: 1:30 pm

Dept: 10

**310 North Spring Street
 Los Angeles, CA 90012**

Action Filed: September 19, 2014

First Amended Complaint Filed:
 September 7, 2018

CITY OF SAN BUENA VENTURA, a
 California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT;
 AGR BREEDING, INC; et al.

1 **STATUS CONFERENCE REPORT**

2 Cross-Defendant City of Ojai (Ojai) submits this status conference report in advance of
3 the status conference scheduled for October 18, 2021 at 1:30 p.m. On October 6, 2021, the
4 City of Ventura (Ventura) emailed a draft of its report to all parties who have appeared and
5 invited input and joinder. Ojai proposed revisions to that report regarding the scope of the
6 Phase 1 trial, some of which were incorporated into Ventura's October 11, 2021 revised draft.
7 To promote judicial economy and efficiency at the upcoming trial and to ensure an accurate
8 record of these proceedings, Ojai provides this separate status report to clarify the facts leading
9 up to, and resulting in, the motion to bifurcate and identify the scope of Phase 1.

10 **SUMMARY OF THE HISTORY AND PURPOSE OF PHASE I**

11 Beginning in spring 2021, Ojai raised concerns with the procedural process of this case
12 and specifically the Sixth Cause of Action for a groundwater adjudication pursuant to the
13 comprehensive groundwater adjudication statutes, Code of Civil Procedure sections 832, et seq.
14 At that time, Ojai objected to being required to file Initial Disclosures before all Cross-
15 Defendants were properly before the Court. For example, on March 10, 2021 Ojai explained
16 that “the scope of such an action [is restricted] to a single groundwater basin as defined in
17 Bulletin 118” and noted that “the general discussion in the Proposing Parties’ Brief fails to
18 address the threshold issue of jurisdiction and scope as it relates to the Ojai Basins. Absent a
19 finding that the sixth cause of action can proceed against the parties in the Ojai Basins, all
20 requests...related to the physical solution and moving the matter forward are premature.”
21 Thereafter, Ojai specifically requested the following:

22 Before additional parties in the Ojai Basins are required to appear or file initial
23 disclosures, determine the proper boundaries and scope of the sixth cause of
24 action for a comprehensive adjudication based upon the plain language of the
statutes.

25 Should the Court deem it necessary, schedule an evidentiary hearing where
26 Ventura will be required to prove its allegations that the basins are
hydrologically connected, contrary to the Department of Water Resources'
finding in Bulletin 118, prior to any hearing on the proposed physical solution.

27 The objection was renewed at case management conferences in response to significant
28 discussion as to when or whether to apply Code of Civil Procedure sections 849 and 850. In

1 Ojai’s objections it explained that the foundational issues of jurisdiction over four separate
2 groundwater basins had not yet been dealt with and pointed to Code of Civil Procedure sections
3 832-833. On March 15, 2021 the Court issued a tentative ruling stating, in part:

4 **Anticipated Motion To Set Evidentiary Hearing:**

5 The Court has barely scratched the surface on this contested issue¹, but it is
6 enough to say that a motion has to precede the setting of an evidentiary hearing.
7 The Court would assume that practical counsel for the parties urging the
8 Physical Solution would want to exhaust their settlement discussions with the
9 State’s representatives and other interested parties before they file such a
10 motion. The condition of the Court’s calendar is such that the concept of setting
11 a contested evidentiary hearing in January 2022 or some time thereafter should
12 not be a problem. It may well be that some preliminary motion practice needs to
13 be had in the second half of 2021 on whether the predicates for a proceeding
14 under C.C.P. § 850(b) have been established by the proponents of the Physical
15 Solution.

16 The motion to bifurcate was proposed by Ventura as a means to address the City of
17 Ojai’s concerns and in response to the Court’s invitation for a motion. As Ojai explained in its
18 limited opposition to the motion to bifurcate, and verbally at the hearing, Ojai does not oppose
19 the concept of holding a Phase I trial on Code of Civil Procedure section 833, but it does object
20 to the discovery and the proposed scope. Thus, Ventura’s statement that the motion and
21 proposed scope were "without objection" is factually incorrect.

22 Thereafter, at several conferences, Ojai reiterated that the applicable statute for the
23 scope of Phase I and the expert witness disclosures is Code of Civil Procedure section 832 et
24 seq., *because the Sixth Cause of Action was pled under that statute*. Thus, Ventura’s claim that
25 its description of the scope of Phase I "was not objected to" is factually incorrect. At all times
26 relevant, the purpose of Phase I has been to, in layman’s terms, determine “who is in and who is
27 out” or, according to the Court, “whether the predicates for a proceeding under C.C.P. § 850(b)
28 have been established by the proponents of the Physical Solution.”

The City of Ojai maintains that the statute – on which Ventura based its claim – controls
this process. Therefore, the appropriate questions for the Court to determine at trial in Phase I
are as follows:

- (1) whether Code of Civil Procedure, section 832 et. seq., provides that the Court can, or should, comprehensively determine rights to extract

1 groundwater among all rights holders across four separate basins in one
2 legal proceeding, and, if so,

3 (2) whether there is sufficient evidence to support a finding that there is a
4 surface water body or subterranean stream flowing through known and
5 definite channels that is interconnected with the groundwater that is
used, or subject to, the named Cross-Defendants' right to pump from,
such that any pumping would impact the flow of that surface water body
or subterranean flow.

6 Ventura proposed slightly different language as to the scope of Phase I, which, on its face, is
7 similar to, but is materially different from the purpose of the bifurcated trial – as was
8 highlighted by the recent disclosure of experts.

9 For example, Ventura has disclosed four experts for Phase 1. Only one expert is a
10 hydrogeologist. The other experts include:

- 11 • A historian who opines on historical documents from 1920 to 1959 not related to
12 hydrogeology.
- 13 • A fishery biologist who has formed opinions on “the importance of migration,
14 spawning, and juvenile rearing habitat within the San Antonio Creek and its tributaries,
15 including Lion Creek, to the overall health and condition of Southern California
16 steelhead inhabiting the Ventura River watershed.”
- 17 • A botanist who opines on the presence of certain species of vegetation along San
18 Antonio Creek.

19 Additionally, CDFW disclosed an environmental scientist who has developed an expert opinion
20 on “the composition and distribution of native species located in the Ventura River Watershed.”

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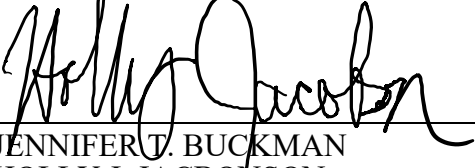
Based on the disclosures of these experts, Ojai is concerned that the scope of Phase 1 has been altered and has deviated from its purpose, as represented to the Court. This expansion of the issues will unnecessarily complicate what should otherwise be a simple and straightforward trial. Further, Ojai is concerned that the change in scope may unnecessarily increase the costs of litigation to the detriment of the smaller parties and individuals who have been brought before the Court in this matter. As such, Ojai requests clarification from the Court on the precise scope of Phase I.

Dated: October 12, 2021

Respectfully submitted,

Bartkiewicz, Kronick & Shanahan, PC

By: _____



JENNIFERT. BUCKMAN
HOLLY J. JACOBSON
Attorneys for CITY OF OJAI,

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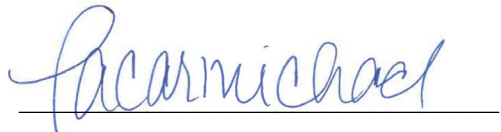
PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is BARTKIEWICZ, KRONICK & SHANAHAN, 1011 22nd Street, Sacramento, California 95816-4907. On October 12, 2021, following ordinary business practices, I electronically served the document described below via File & Serve Xpress, on the recipients designated on the Transaction Receipt located on the File & Serve Xpress website.

CITY OF OJAI'S STATUS CONFERENCE REPORT

I declare under penalty of perjury under the law of the State of California, that the above is true and correct.

Executed on October 12, 2021, at Rocklin, California.



Lori A. Carmichael