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Superior Court of California
County of Los Angeles

AUG 05 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

SUPERIOR COURT OF 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 BUENAVENTURA, a
California municipal corporation,
incorrectly named as CITY OF
BUENAVENTURA,

Respondents.

CITY OF SAN BUENAVENTURA, a
California municipal corporation,

Cross-Complainant

v.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

Exempt From Filing Fees Pursuant to Cal.
Gov't Code § 6103

JOINT INITIAL STATUS CONFERENCE
STATEMENT

CMC: Aug. 12, 2019

Time: 10:00 a.m.

Dept: SS10

Action Filed: Sept. 19, 2014

FAC Filed: Sept. 7, 2018

Trial Date: Not Set

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1 JOINT INITIAL STATUS CONFERENCE STATEMENT

2

3 Pursuant to Court Order, filed July 12, 2019, and California Rules of Court, rule 3.725,

4 the parties who have appeared in this action submit this Joint Initial Status Conference Statement.

5 On August 1, 2019, the following attorneys met by telephone to discuss this Statement:¹ Paul

6 Blatz for Cross-Defendants Troy Becker, Janet Boulten, Michael Boulten, Michael Caldwell, Joe

7 Clark, Michael Cromer, Linda Epstein, Etchart Ranch, Lawrence Hartmann, Ole Konig, Krotona

8 Institute of Theosophy, Stephen Mitchell, North Fork Springs Mutual Water Company, Shlomo

9 Raz, Sylvia Raz, Rudd Ranch LLC, Senior Canyon Mutual Water Company, Siete Robles Mutual

10 Water Company, Soule Park Golf Course, Ltd., Telos, LLC, Victor Timar, John Town, and

11 Trudie Town; Robert Kwong and David Cosgrove for Cross-Defendant Casitas Municipal Water

12 District; Cristian Arrieta for Cross-Defendants Ernest Ford and Tico Mutual Water Company;

13 Gregory Patterson for Cross-Defendants Robert C. Davis, Jr., James Finch, Friend's Ranches,

14 Inc., Topa Topa Ranch Company, LLC, and The Thacher School; ; Neal Maguire for Cross-

15 Defendant Rancho Matilija Mutual Water Company; Scott Slater and Joseph Chrisman for Cross-

16 Defendant Wood-Claeyssens Foundation; Deputy Attorney General Matthew Bullock for

17 Respondent State Water Resources Control Board (the "State Board"); and Shawn Hagerty and

18 Sarah Christopher Foley for Respondent and Cross-Complainant City of San Buenaventura

19 ("City"); Clynton Namuo for Cross-Defendants Bentley Family Limited Partnership and AGR

20 Breeding, Inc.; Tony Francois for Cross-Defendant Robin Bernhoft, LLC; Elsa Sham for Cross-

21 Defendant St. Joseph's Associates of Ojai, California, Inc.; and Nathan Metcalf for Cross-

22 Defendant Ventura County Watershed Protection District. The parties also exchanged drafts of

23 this Statement by e-mail.

24

25 ¹ The parties could not meet ten days before the Initial Status Conference in person because many

26 of them received notice of the Status Conference in the afternoon of July 29, 2019 or later. The

27 parties have previously met and conferred in person to discuss the issues herein. Daniel Cooper

28 of Cooper & Lewand-Martin, Inc., for Plaintiff Santa Barbara Channelkeeper ("Channelkeeper")

was unable to telephonically meet and confer but did so by e-mail. Plaintiff's counsel did not receive mail notice of the Initial Status Conference Order from the Court until August 1, 2019.

1 1. WHAT HAS BEEN DONE IN THE CASE

2
3 A. STATUS OF THE PLEADINGS

4
5 In September 2014, Channelkeeper filed a Complaint and Petition for Declaratory Relief
6 and a Writ of Mandate pursuant to Code of Civil Procedure section 1085 against the City and the
7 State Board. The Petition asked the Court to declare the City's use of Reach 4 of the Ventura
8 River from April through October is unreasonable, in violation of article X, section 2 of the
9 California Constitution, and to direct the State Board to perform alleged mandatory duties under
10 article X, section 2, Water Code section 275, and the public trust doctrine to prevent that
11 unreasonable use.

12 In response, City filed a Cross-Complaint, and later a First Amended Cross-Complaint,
13 against other surface water and groundwater users who it alleged affect the flow of water in the
14 Ventura River. Pursuant to Channelkeeper's motion, the Court struck City's First Amended
15 Cross-Complaint. City appealed the decision to strike its First Amended Cross-Complaint, and
16 the Court of Appeal reversed the decision in a published decision. (*Santa Barbara*
17 *Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176.)

18 Following the appeal, Channelkeeper filed a First Amended Complaint and Petition ("1st
19 Am. Complaint"). State Board's Answer to the original Complaint and Petition was deemed its
20 answer to the 1st Am. Complaint. City filed an Answer and a Second Amended Cross-Complaint
21 ("2nd Am. Cross-Complaint").

22 In its 2nd Am. Cross-Complaint, City named approximately one hundred Cross-
23 Defendants who divert water from the Ventura River or pump groundwater from the Upper
24 Ventura River, Ojai Valley, Lower Ventura River, and Upper Ojai Valley Groundwater Basins
25 (collectively "Ventura Groundwater Basins"), which it contends affect the flow of water in the
26 Ventura River. City's 2nd Am. Cross-Complaint alleges the following claims: (1) violation of
27 reasonable use under Article X, section 2 by Cross-Defendants; (2) violation of public trust by
28 Cross-Defendants; (3) declaratory relief regarding pueblo and/or treaty water rights; (4)

1 declaratory relief regarding prescriptive water rights; (5) declaratory relief regarding
2 appropriative water rights; (6) comprehensive adjudication and physical solution; (7) declaratory
3 relief regarding municipal priority; (8) declaratory relief regarding human right to water; and (9)
4 declaratory relief. As an adjudication action that includes adjudication of the Ventura
5 Groundwater Basins, the 2nd Am. Cross-Complaint involves, among other things, the
6 Streamlined Groundwater Adjudication Statutes (Code Civ. Proc., §§ 830-52) and the Sustainable
7 Groundwater Management Act (“SGMA”) (Wat. Code, §§ 10720-37.8).

8 Most Cross-Defendants have not filed responsive pleadings pursuant to an extension of
9 time granted by the San Francisco Superior Court allowing them to respond to the 2nd Am.
10 Cross-Complaint within 60 days after receipt of a Court-approved Form Answer. Also, as
11 discussed in section 1(B) below, it is likely additional parties will join this lawsuit. Therefore,
12 City believes it is premature to set deadlines to amend or file new pleadings. (Cal. Rules of
13 Court, rule 3.750(b)(2)(b)(3).)

14 The parties stipulated to transfer venue from San Francisco County Superior Court to Los
15 Angeles County Superior Court because venue in San Francisco imposed an unnecessary burden
16 on the numerous parties who reside or own property in Ventura County. The parties agreed that
17 the Los Angeles County Superior Court, Complex Civil Litigation Division, is a proper and
18 convenient venue for the complex adjudication of the Ventura River Watershed.

19
20 B. STATUS OF SERVICE²
21

22 As explained in section 1(A) above, City and State Board have answered the 1st Am.
23 Complaint.

24 With regard to additional parties, specific provisions of the Streamlined Groundwater
25 Adjudication Statutes require the City to apply for and obtain the Court’s approval of a “Notice of
26 Adjudication and Form Answer” that will be the vehicle for serving property owners within the

27 _____
28 ² Cal. Rules of Court, rule 3.750(b)(1) - (3).

1 Ventura River Groundwater Basins. (Cal. Code Civ. Proc., § 836.) City will seek this Court's
2 approval of the required Notice of Adjudication and Form Answer under Code of Civil Procedure
3 section 836 as soon as possible. This procedural step is critical for the purpose of moving this
4 case forward.

5 City has served nearly all named Cross-Defendants, but some Cross-Defendants are
6 avoiding service despite the City's diligent efforts. Accordingly, the San Francisco Superior
7 Court extended the time for City to file proof of service of the Summons and 2nd Am. Cross-
8 Complaint until 60 days after City is permitted to serve by mail and by publication as authorized
9 by California Civil Procedure Code section 836.

10 To date, the following Cross-Defendants have been served and appeared (the first four of
11 which are referred to as the "Moving Cross-Defendants"):

12 Casitas Municipal Water District
13 Meiners Oaks Water District
14 Rancho Matilija Mutual Water Company
15 Ventura River Water District
16 Senior Canyon Mutual Water Company
17 Ventura County Watershed Protection District
18 Wood-Claeysens Foundation

19 The following Cross-Defendants have been served and appeared through the Case
20 Management Conference statement filed on January 14, 2019:

21 AGR Breeding, Inc.
22 Troy Becker
23 Bentley Family Limited Partnership
24 Robin Bernhoft
25 Janet Boulten
26 Michael Boulten
27 Michael Caldwell
28 Casitas Municipal Water District
Joe Clark
Linda Epstein
Ernest Ford
Friend's Ranches, Inc.
Lawrence Hartmann
Krotona Institute of Theosophy
Ole Konig
Meiners Oaks Water District

1 North Fork Springs Mutual Water Company
2 Rancho Matilija Mutual Water Company
3 Shlomo Raz
4 Sylvia Raz
5 Rudd Ranch, LLC (specially appearing)
6 Senior Canyon Mutual Water Company
7 Siete Robles Mutual Water Company
8 St. Joseph's Associates of Ojai, California, Inc.
9 The Thacher School
10 Tico Mutual Water Company
11 Topa Topa Ranch Company, LLC
12 John Town
13 Trudie Town

14 The following Cross-Defendants have been served and appear through this Joint Initial
15 Status Conference Statement:

16 Michael Cromer
17 Robert C. Davis, Jr.
18 Etchart Ranch
19 James Finch
20 Stephen Mitchell
21 Soule Park Golf Course, Ltd.
22 Telos, LLC
23 Victor Timar

24 The following Cross-Defendants have been served, but have not yet appeared:

25 Duncan Abbott
26 Asquith Family Ltd.
27 Dewayne Boccali
28 Dwayne Bower
James R. Burgess
Casitas Mutual Water Company
Kevin Clark
Lisa Clark
Rebecca Collins
Thomas Collins
Essick Farm Management Company, LLC
Flying H. Ranch, Inc.
Wayne Francis
J&G Trust
John Galaska
Jurgen Gramckow
Gridley Road Water Group
Stephanie Gustafson
Dorothy Homes

1 Hermitage Mutual Water Company
2 Stephen Huyler
3 Cheryl Jensen
4 Brett Kantrowitz
5 Denise Kantrowitz
6 Jerry Kenton
7 Tim Krout
8 Betina La Plante
9 Lutheran Church of the Holy Cross of Ojai
10 Scott Luttenberg
11 Jeffrey Luttrull
12 Frederick Menninger
13 Margaret Menninger
14 Bill Moses
15 Ojai Water Conservation District
16 Old Creek Road Mutual Water Company
17 Rincon Water and Road Works
18 William Rusin
19 Mark Saleh
20 Sisar Mutual Water Company
21 Andrew Stasse
22 Thacher Creek Citrus, LLC
23 Lou Tomesetta
24 Ernesto Vega
25 Calvin Zara

16 The following Cross-Defendants have been dismissed:

17 Peter Cheney
18 Dave Dollan
19 Boyd Dron
20 Richard La Plante
21 Robert Martin
22 Stephen McLaughlin
23 Maynard Family Trust
24 Edward Mercer
25 Hixon Trust
26 Mercer Family Trust
27 Dave Mollan
28 Alice Newsom
Red Rock Ranch Properties, LLC
Sims Family Trust

25 The following Cross-Defendants have not been served:

26 Charles Cho
27 Richard Gilleland
28 Rancho de Cielo Mutual Water Company

George S. Stuart
John Taft

Following the Initial Status Conference and the Court's approval of the Notice of Adjudication and Form Answer under Code of Civil Procedure section 836, subdivision (b), City will serve by mail and publication pursuant to Code of Civil Procedure section 836, subdivision (d), the Cross-Defendants it has not been able to serve personally.

City expects additional parties will join the lawsuit as either cross-defendants or intervenors. Pursuant to Code of Civil Procedure sections 835, 836, subdivision (d), and 836.5, City must provide notice to affected public agencies, California Native American tribes, persons who have a permit or license to store or divert stored water, interested parties who have requested notice from a groundwater management agency, and owners of real property in the Ventura River watershed and Ventura River Groundwater Basins. This last category, in particular, will involve providing notice to hundreds or thousands of additional entities who may become Cross-Defendants. Accordingly, City believes it is premature to set a deadline by which all parties must be served.

City has already provided notice to the following interested entities pursuant to Civil Procedure Code section 835(a)(1)-(7):

Upper Ventura River Groundwater Agency
Ojai Basin Groundwater Management Agency
Ventura County
Santa Barbara County
City of Ojai
California Attorney General
California Department of Fish and Wildlife
State Water Resources Control Board
Department of Water Resources
United States Department of Agriculture Forest Service
Bureau of Reclamation
Bureau of Land Management
United States Attorney General

It is possible that the above-named parties will file answers (including form answers) or seek to intervene in this case.

1 Furthermore, these new parties and named Cross-Defendants may want to sue additional
2 parties. City estimates that it will likely be about six months before all of these potential
3 additional parties receive notice and appear. Therefore, City believes it is premature to set
4 deadlines to serve or add new parties or define classes of parties. (Cal. Rules of Court, rule
5 3.750(b)(2)–(b)(3).)

6 A copy of the current Proof of Service is attached as Ex. A.
7

8 C. ISSUES OF JURISDICTION, VENUE AND ARBITRATION CLAUSES
9

10 The parties are not aware of any issues regarding jurisdiction, venue, or arbitration
11 clauses. The State Board submitted a letter to the Honorable Kevin C. Brazile, Presiding Judge of
12 Los Angeles Superior Court, dated March 8, 2019 regarding judicial assignment of the case and
13 specifically requested coordination with the Judicial Council. The State Board asks this Court to
14 address the concerns raised in that March 8, 2019 correspondence.
15

16 D. RELATED ADMINISTRATIVE PROCEEDINGS AND LITIGATION
17

18 There are two existing administrative proceedings related to flows in the Ventura River.
19 First, the State Board and the California Department of Fish and Wildlife (“CDFW”), pursuant to
20 the California Water Action Plan (“WAP”), have identified the Ventura River as one of five
21 priority water streams for the development of water flow conditions that support habitat for
22 anadromous fish. CDFW is conducting an instream flow study to estimate the flows needed for
23 anadromous fish in the Ventura River. The State Board is also developing an integrated
24 groundwater-surface water model for the Ventura River that is expected to be completed in 2021.
25 Upon receipt of CDFW’s instream flow recommendation and completion of the model, the State
26 Board represents that it will consider the development and implementation of a plan to achieve
27 reasonable minimum flows in the Ventura River.
28

1 Second, the Upper Ventura River Groundwater Agency (“UVRGA”) was formed in
2 December 2016 by the Ventura River Water District, Casitas Municipal Water District, Meiners
3 Oaks Water District, Ventura Water (a City Department) and Ventura County.³ It is a
4 groundwater sustainability agency under SGMA and is charged with developing and
5 implementing a Groundwater Sustainability Plan (“Sustainability Plan”) that “must outline
6 measurable objectives and interim milestones to achieve the sustainability goal for the basin
7 within a 20-year time frame.”⁴ Because the Upper Ventura Basin is a medium priority basin not
8 currently in overdraft, UVRGA must complete its Sustainability Plan by January 31, 2022. Id.

9 There is also a related court proceeding.⁵ On November 2, 2017, Channelkeeper filed a
10 petition for writ of mandate against the State Board in San Francisco Superior Court, Case No.
11 CPF-17-515919. On April 20, 2018, Channelkeeper filed a first amended petition for writ of
12 mandate, challenging State Board’s decision to delist Reaches 3 and 4 of the Ventura River from
13 the State’s list of impaired waterways as impaired by pumping and diversions. There have not yet
14 been any further proceedings in that related proceeding. The State Board does intend to bring a
15 demurrer to the petition in this related proceeding.

16 Additionally, on July 9, 2019, Channelkeeper served City with a 60-Day Notice of
17 Violation and Intent to File Suit Under the Endangered Species Act (the “ESA”). In the 60-Day
18 Notice, Channelkeeper alleges that City’s operation of the Foster Park subsurface diversion
19 results in the unauthorized take of endangered Southern California Steelhead in violation of the
20 ESA, and that upon expiration of the 60 days Channelkeeper intends to file suit in federal court
21 seeking injunctive and other relief. City strongly disputes Channelkeeper’s claims and will assert
22 all available procedural and substantive defenses and will seek to have the case stayed or
23 dismissed should Channelkeeper proceed to filing suit.

24
25
26 _____
27 ³ <http://www.uvrgroundwater.org/about/>

28 ⁴ <http://www.uvrgroundwater.org/gsa-formation/sgma-overview/>

⁵ Cal. Rules of Court, rule 3.727(1).

1 E. PAYMENT OF COMPLEX FEE

2
3 The Court's Order dated May 15, 2019 requires each party to pay \$1,000 for complex fees
4 pursuant to Government Code section 70616. This section also provides that the total amount of
5 complex fees shall not exceed \$18,000. (Gov't Code § 70616(b).) The parties request that this
6 Court waive the complex litigation fees and refund those parties who have already paid the fee.
7 Precedent exists to grant this request. Judge Thomas P. Anderle—who is presiding over the
8 comprehensive adjudication of the Las Posas Valley Groundwater Basin, which is located in
9 Ventura County and similarly involves numerous parties and the determination of rights to an
10 important water resource—determined that it was not appropriate to levy complex fees in
11 groundwater adjudications and waived them.⁶

12 Alternatively, in light of the number of parties, already exceeding 100, and because the
13 \$18,000 cap would be exceeded, the parties propose that the Court modify the order “to ensure
14 that the total complex fees paid by the defendants, intervenors, respondents, or other adverse
15 parties appearing in the case do not exceed the limit and that the complex fees paid by those
16 parties are apportioned fairly among those parties.” (Gov't Code § 70616(d).) The parties also
17 request that the Court consider the issue of whether small or “de minimis” Cross-Defendants
18 should be excused from payment of any complex fee. City maintains that it is exempt from
19 paying the \$1,000 complex fee pursuant to Government Code section 6103. Additionally, even
20 though all parties stipulated to transfer venue to this Court, City paid for the entirety of transfer
21 fees, totaling \$1,435. The Court should also be aware that the following parties have already paid
22 the \$1,000 complex fee, and any equitable allocation should include partial reimbursement to
23 these parties, depending on the final allocation:

24
25 Topa Topa Ranch
26 Friends Ranch
The Thatcher School

27 ⁶ See Complex Case Management Conference Order in *Las Posas Valley Water Rights Coalition*
28 *et al. v. Fox Canyon Groundwater Management Agency et al.*, Case No. VENCI00509700.

1 Krotona Institute of Theosophy
2 Rancho Matilija Mutual Water Company
3 Ventura River Water District
4 Meiners Oaks Water District
5 Wood-Claeysens Foundation

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2. CORE LEGAL AND FACTUAL ISSUES

This is a complex case both procedurally and substantively. It involves complex questions about the Ventura River Watershed and the groundwater basins in the Watershed. It also involves one of the first applications of the Streamlined Groundwater Adjudication Statute. As described below, certain threshold questions need to be resolved before a complete plan for the case can be prepared.

A. SEVERANCE / BIFURCATION⁷

Channelkeeper requests that its Constitutional and Public Trust claims proceed separately from the City's cross claims and the adjudication. Channelkeeper believes that its claims can be resolved without discovery, without involvement of the Cross-Defendants, and on an expedited basis.

City believes Channelkeeper's proposed bifurcation will not avoid discovery or issues involving Cross-Defendants as explained in the Court of Appeal's published decision. (*Santa Barbara Channelkeeper, supra*, 19 Cal.App.5th at p. 1188.)

State Board believes Channelkeeper's request for severance is inconsistent with the Court of Appeal's published decision, and would be a waste of time and resources given the expected completion of CDFW's instream fish study in the next year.

City proposes that this case ultimately be trifurcated for expert discovery and trial into the following three phases: (1) establishment of the Ventura River watershed boundaries and

⁷ Cal. Rules of Court, rule 3.750(b)(4); Civ. Proc. Code, § 840(b)(5).

1 characteristics, establishment of the Ventura Groundwater Basins boundaries and characteristics,
2 and establishment of the interconnection, if any, between the surface waters and the basins; (2)
3 determination of the nature and proportionate quantity of the parties' water production rights, as
4 well as the needs of instream uses; and (3) establishment of a physical solution. (See also
5 MANAGEMENT OF COMPLEX CIVIL LITIGATION § 3.102.) Percipient discovery would not be phased.

6 The State Board does not object to the City's proposed phases for expert discovery and
7 trial of its 2nd Am. Cross-Complaint. As a part of phase 2, or as a separate phase that precedes
8 the determination of the parties' water rights, there should be a determination of the water
9 necessary to protect instream beneficial uses, such as the water necessary to protect anadromous
10 fish in the Ventura River and its tributaries. City agrees with State Board this issue should be part
11 of phase 2, but believes deciding it prior to phase 2 is inconsistent with the Court of Appeal's
12 published decision. (*Santa Barbara Channelkeeper, supra*, 19 Cal.App.5th at p. 1188.)

13 Moving Cross-Defendants do not object to City's proposed phase for expert discovery and
14 trial of its 2nd Am. Cross-Complaint. However, determination of the interconnection, if any,
15 between the surface waters and groundwater in the watershed must be a threshold determination
16 before initiation of any phases. City is proceeding with a comprehensive adjudication pursuant to
17 Code of Civil Procedure sections 830 to 852, which establish procedures by which "courts may
18 conduct comprehensive determinations of all rights and priorities to groundwater in a basin.
19 Surface water right holders may be included in the comprehensive adjudication portion of the
20 City's 2nd Am. Cross-Complaint only if the Court finds that including such surface water sources
21 "is necessary for the fair and effective determination of the groundwater rights in a basin. . . ."
22 (Code Civ. Proc., § 833, subd. (c).)

23 City believes Code of Civil Procedure section 833, subdivision (c), provides a mechanism
24 to ensure necessary surface water parties are joined, but does not preclude City from naming such
25 users now. The interconnectedness of a surface water body and groundwater basin is an element
26 that must be proven at trial. Section 833, subdivision (c), does not change the order of proof at
27 trial or create a threshold issue / phase for an adjudication.
28

1 B. PENDING AND POTENTIAL MOTIONS

2
3 Pursuant to the statutory deadline of Code of Civil Procedure section 836, subdivision (b),
4 City previously filed a Motion for Approval of Notice of Adjudication and Form Answer, which
5 the City took off-calendar pending transfer of this matter to this Court. The City plans to re-file
6 this Motion for Approval of Notice of Adjudication and Form Answer and seeks to set it for
7 hearing as soon as possible. Court approval of the Notice of Adjudication and Form Answer is
8 necessary for City to serve landowners in the Ventura River Watershed and to obtain information
9 about persons reporting extractions and/or diversions from the Ventura River Watershed.

10 Moving Cross-Defendants previously filed a Motion to Stay the entire proceeding,
11 pursuant to Code of Civil Procedure section 848, which was also taken off-calendar. The State
12 Board supports that Motion. Channelkeeper may join Cross-Defendants' Motion, or file its own
13 motion, to stay the City's 2nd Am. Cross Complaint and the adjudication until Channelkeeper's
14 claims are resolved. Certain other Cross-Defendants support this Motion. City believes the
15 Motion to Stay will unnecessarily delay this action because the administrative proceedings will
16 not resolve the issues in this action.

17 Recently, the parties negotiated a stipulation for a partial stay to avoid the need for a
18 motion to stay. The partial stay will allow the parties to continue their preliminary
19 settlement/mediation discussions (see section 4(B), below), ensure other necessary parties are
20 joined in the lawsuit, provide a process to exchange information necessary for settlement
21 discussions, and will not delay the case if mediation is unsuccessful. Immediately after the Initial
22 Status Conference, the parties will seek to file a stipulation for partial stay.

23 Channelkeeper intends to file a Motion for Separate Trial pursuant to Code of Civil
24 Procedure section 1048(b) within 30 days of the Case Management Conference. As explained in
25 section 2(A) above, City believes a separate trial of Channelkeeper's claims against it is neither
26 efficient nor permissible.

27 At an appropriate time, and especially if the Court severs the 1st Am. Complaint from the
28 2nd Am. Cross-Complaint or dismisses the claims against the State Board, the State Board may

1 move to intervene on the City's 2nd Am. Cross-Complaint, since it is technically only a party on
2 the Channelkeeper's 1st Am. Complaint, is not yet a party to the 2nd Am. Cross-Complaint, and
3 has an institutional interest in any water rights adjudication. Other state agencies may join the
4 State Board or file separate motions to intervene. In addition, City is considering naming the
5 State Board and CDFW in the adjudication.

6 Various Cross-Defendants, whose water usage could be considered de minimis compared
7 to other water users, anticipate bringing a motion to create a "cut-off" point that dismisses all
8 water users under a certain threshold of water usage, likely after initial disclosures have been
9 completed. Alternatively, the motion would classify those small water users separately to help
10 manage the case more efficiently and mitigate the litigation costs for those small users by
11 allowing them to be handled on a collective or class basis. The Streamlined Comprehensive
12 Adjudication Statute explicitly provides for such a case management order. (See Code. Civ.
13 Proc., § 833, sub. (d).) City agrees de minimis parties should be dismissed or classified
14 separately. This will depend upon the number of such parties and their water usage. The State
15 Board does not have an objection to such a cut-off, provided it is set an appropriate place.

16
17 3. DISCOVERY ISSUES

18
19 A. REFERENCE / SPECIAL MASTER

20
21 At an appropriate point, the State Board believes the Court should consider whether it
22 should appoint a special master or make a reference to the State Board to assist it in resolving the
23 highly technical issues that the 2nd Am. Cross-Complaint raises. The Streamlined
24 Comprehensive Adjudication Statute explicitly provides for this. (See Code Civ. Proc., § 845;
25 see also Wat. Code, §§ 2000-48.) The parties have begun to discuss this. A motion may be
26 appropriate at some point. City believes a reference to the State Board or appointment of a
27 special master by the Court is not necessary and will delay this action.
28

1 B. DISCOVERY IN THE CHANNELKEEPER CASE

2
3 Channelkeeper believes that its Section 1085 Writ of Mandamus Petition is a record case,
4 and Channelkeeper submitted its evidentiary support with the Petition. Channelkeeper's case can
5 be resolved on the documents submitted by the parties via an expedited trial. No disclosures or
6 discovery are required or appropriate for resolution of Channelkeeper's action.

7 City believes Channelkeeper's proposed bifurcation will not avoid discovery, trial
8 witnesses and exhibits, or issues involving Cross-Defendants as explained in the Court of
9 Appeal's published decision. (*Santa Barbara Channelkeeper, supra*, 19 Cal.App.5th at p. 1188.)

10 The State Board does not have a position as to whether there can or should be discovery
11 on Channelkeeper's first cause of action against City. The State Board agrees with
12 Channelkeeper that there is no need for discovery on the writ of mandate claims brought against
13 the State Board. Channelkeeper's claims against the State Board are in the nature of challenging
14 an omission, not a decision, and so the State Board believes there will not be an administrative
15 record as one would normally expect in a writ of mandate case; however, Channelkeeper and the
16 State Board can submit their evidence on the writ of mandate claims when they are briefed and
17 prior to the hearing on the merits of those claims. The State Board does not agree that these
18 procedural attributes of Channelkeeper's claims justifies proceeding on them first, as is discussed
19 elsewhere in this case management statement and in the Court of Appeal's opinion.

20
21 C. INITIAL DISCLOSURES⁸

22
23 As mentioned in section 3(B) above, Channelkeeper does not believe initial disclosures
24 apply to its claims.

25 City proposes that the parties who have appeared as of this Initial Status Conference shall
26

27 ⁸ Civ. Proc. Code, § 842; Cal. Rules of Court, rule 3.750(b)(10); MANAGEMENT OF COMPLEX CIVIL
28 LITIGATION § 2.30[2].

1 provide their initial disclosures under Code of Civil Procedure section 842 on September 27,
2 2019. The initial disclosures would also include information related to surface water and would
3 be related to all phases. Other parties shall provide their initial disclosure within six months of
4 appearing in this action. City further proposes that the initial disclosures include the same surface
5 water information as required for groundwater information under section 842, and that the
6 disclosures may include supporting documents. Thereafter, every party shall have a continuing
7 duty to supplement its disclosures as it becomes aware of further information.

8 Moving Cross-Defendants believe that City's requested initial disclosure deadline should
9 apply only to groundwater right holders until a finding is made by this Court pursuant to Code of
10 Civil Procedure section 833(c) that including surface water right holders in the comprehensive
11 adjudication is necessary. City disagrees for the reasons set forth in section 2(A) above.

12
13 D. DOCUMENTS⁹
14

15 City proposes that when a party first produces documents, each party shall select a unique
16 three letter prefix for the bates numbering of the documents it produces in this case. City shall
17 keep an index of the prefixes. The production of percipient documents will include information
18 related to all phases. For percipient and expert depositions, Channelkeeper's exhibits shall begin
19 numbering at 1, Respondents' exhibits shall begin numbering at 5,000, and Cross-Defendants'
20 exhibits shall begin numbering at 10,000. Each Respondent and Cross-Defendant will begin
21 numbering at 5,000 and 10,000, respectively, using their unique three letter prefix. Parties shall
22 not use new numbers for exhibits previously numbered at deposition. Finally, the parties shall
23 meet and confer on selecting an on-line document depository for all documents, depositions, and
24 written discovery produced in this case.

25
26
27 _____
28 ⁹ Cal. Rules of Court, rule § 3.750(b)(10); MANAGEMENT OF COMPLEX CIVIL LITIGATION § 2.30[2].

1 E. PROTECTIVE ORDER

2
3 If private parties desire a protective order for confidential information, City proposes the
4 parties stipulate to a protective order for confidential records of private parties. Cross-Defendant
5 Wood-Claeysens Foundation proposes the form Stipulation and Protective Order (Confid. and
6 Highly Confid. Desig.) approved by the Los Angeles County Superior Court.¹⁰ City does not
7 object provided it is modified to address public agency issues.

8
9 F. E-FILING AND E-SERVICE¹¹

10
11 Pursuant to California Rules of Court rule 2.251, Code of Civil Procedure section 1010.6,
12 and the Court's Initial Status Conference Order, the parties request the Court order that all service
13 be made by electronic service, subject to the exception, based upon a proper showing, that it
14 would pose an undue hardship on a party. The parties request that electronic service by 5:00 p.m.
15 be deemed same day personal service. The parties' preferred web-based electronic service
16 provider is File & ServeXpress. The parties further request that the Court order that all filing be
17 made by electronic filing once electronic filing is implemented for the Complex Civil Litigation
18 Division.

19 The Attorney General's Office is concerned about service on Cross-Defendants that City
20 has named and served but who have not appeared. Cross-Defendants that have not yet made an
21 appearance did not meet and confer prior to this Initial Status Conference. Nor did City serve
22 them with its previously filed Motion for Approval of Notice of Adjudication and Form Answer.
23 City maintains that it has complied with the service requirements of California Code of Civil
24 Procedure section 1014 and that it need not serve Cross-Defendants who have not appeared with
25 procedural motions. The Attorney General's Office and City disagree about this issue, and would

26
27 ¹⁰ See MANAGEMENT OF COMPLEX CIVIL LITIGATION app. B.6 at 38-49 (L.A. Cty. Sup. Ct. Stip. and
Protect. Order – Confid. and Highly Confid. Design.).

28 ¹¹ Civ. Proc. Code, § 839; MANAGEMENT OF COMPLEX CIVIL LITIGATION § 2.30[2].

1 ask the Court for direction. As a courtesy, City plans to serve all parties, including those who
2 have not appeared, when it re-files its Motion for Approval of Notice of Adjudication and Form
3 Answer.

4
5 G. DISCOVERY SCHEDULE¹²
6

7 Because there are several threshold issues to resolve that may significantly alter the
8 direction of this case and because settlement discussions are progressing, City and State Board
9 believe it is premature to set a discovery schedule and a plan for the discovery of electronically
10 stored information. Moving Cross-Defendants agree with this position. Cross-Defendants Wood-
11 Claeysens Foundation, Thacher School, Friends' Ranch, Topa Topa Ranch and Krotona Institute
12 of Theosophy, Tico Mutual Water Company, and Ernest Ford also agree with this position.
13

14 H. CODE OF CIVIL PROCEDURE SECTION 583.310
15

16 The parties are willing to stipulate that discovery and/or pleading stays entered by the
17 Court for case management purposes shall not be considered in determining the statutory period
18 for bringing the case to trial under Code of Civil Procedure section 583.310.
19

20 4. RECOMMENDED DATES AND TIMES
21

22 A. NEXT STATUS CONFERENCE¹³
23

24 The parties recommend the next status conference be set in approximately six (6) months.
25
26

27 ¹² Cal. Rules of Court, rule 3.750(b)(5)

28 ¹³ Cal. Rules of Court, rule 3.750(b)(13).

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28

1 C. FILING DEADLINE FOR PROPOSED MOTIONS

2
3 City requests that Court set a hearing date on its Motion for Approval of Notice of
4 Adjudication and Form Answer as soon as possible and that the briefing schedule be set in
5 accordance with Code of Civil Procedure section 1005(b).
6

7 Dated: August 5, 2019

COOPER & LEWAND-MARTIN, INC.

8
9 By:  For ^{w/ permission} SCF

DANIEL COOPER
Attorneys for Petitioner SANTA
BARBARA CHANNELKEEPER

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1 C. FILING DEADLINE FOR PROPOSED MOTIONS

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5 accordance with Code of Civil Procedure section 1005(b).
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7 Dated: August 5, 2019

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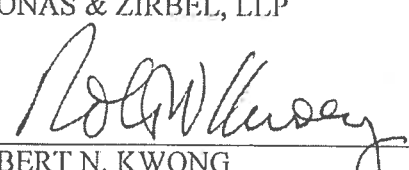
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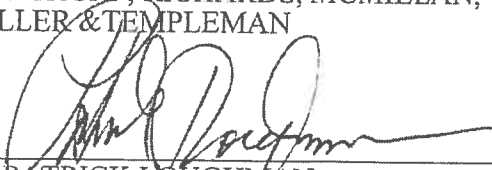
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14 SPRING STREET COURTHOUSE

15 SANTA BARBARA CHANNELKEEPER,
16 a California non-profit corporation,

17 Petitioner,

18 v.

19 STATE WATER RESOURCES
CONTROL BOARD, a California State
20 Agency;
CITY OF SAN BUENAVENTURA, a
21 California municipal corporation, etc.,

22 Respondents.
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Case No. 19STCP01176

Exempt From Filing Fees Pursuant to Cal.
Gov't Code § 6103

PROOF OF SERVICE

Status Conf.: August 12, 2019
Time: 10:00 a.m.
Dept.: 10

Action Filed: September 19, 2014
Trial Date: Not Set

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CITY OF SAN BUENAVENTURA, a
California municipal corporation,

Cross-Complainant

v.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

FAC Filed: September 7, 2018

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 within action; my business address is Best Best & Krieger LLP, 2001 N. Main St. Suite 390, Walnut Creek, CA 94596. On August ____, 2019, I served the within document(s):

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
- ☐ I caused such envelope to be delivered via overnight delivery. Such envelope was deposited for delivery by United Parcel Service following the firm's ordinary business practices.
- ☐ by transmission via **E-Service to File & ServeXpress** to the person(s) set forth below. Local Rules of Court 2.10 (P).
- ☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on August ____, 2019 at Walnut Creek, California.

Irene Islas