

1 SHAWN HAGERTY, Bar No. 182435
shawn.hagerty@bbklaw.com
2 BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
3 San Diego, California 92101
Telephone: (619) 525-1300
4 Facsimile: (619) 233-6118

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

5 CHRISTOPHER M. PISANO, Bar No. 192831
christopher.pisano@bbklaw.com
6 SARAH CHRISTOPHER FOLEY, Bar No. 277223
sarah.foley@bbklaw.com
7 PATRICK D. SKAHAN, Bar No. 286140
patrick.skahan@bbklaw.com
8 BEST BEST & KRIEGER LLP
300 South Grand Avenue, 25th Floor
9 Los Angeles, California 90071
Telephone: (213) 617-8100
10 Facsimile: (213) 617-7480

11 Attorneys for Respondent and Cross-Complainant
12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

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

17 Petitioner,

18 v.

19 STATE WATER RESOURCES
20 CONTROL BOARD, etc., et al.,

21 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant

24 v.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.
27
28

Case No. 19STCP01176

Judge: Honorable William F. Highberger

APPLICATION BY CROSS
COMPLAINANT CITY OF SAN
BUENAVENTURA FOR ORDER FOR
PUBLICATION OF SUMMONS ON ROE
CROSS-DEFENDANTS; MEMORANDUM
OF POINTS AND AUTHORITIES

[CCP §§ 415.50]

Filed concurrently with:

1. Notice of Hearing;
2. Declaration of Marnie Prock;
3. [Proposed] Order

Action Filed: Sept. 19, 2014

Trial Date: Not Set

1 **TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS**
2 **OF RECORD:**

3 Respondent and Cross-Complainant, City of San Buenaventura (“CITY”) hereby applies
4 for an Order directing that the Summons of the Third Amended Cross-Complaint for Violation of
5 Reasonable Use; Violation of Public Trust; Declaratory Relief – Pueblo and/or Treaty Water
6 Rights; Declaratory Relieve – Prescriptive Water Rights; Declaratory Relief – Appropriative
7 Water Rights; Comprehensive Adjudication; Declaratory Relief – Municipal Priority; Declaratory
8 Relief – Human Right to Water and Declaratory Relief filed in this action on January 2, 2020
9 (hereinafter “Third Amended Cross Complaint”) be served on the 92 Roe Cross-Defendants
10 named in this action which remain unserved because the service addresses are fenced and gated,
11 by publication in a newspaper of general circulation, pursuant to Code of Civil Procedure
12 section 415.50.


13 This Application is made on the grounds that the Roe Cross-Defendants indicated above
14 have an interest in real property (the “Properties”), which are subject to the Court’s jurisdiction.
15 However, as outlined below, CITY has been unsuccessful in its personal service attempts
16 specified in Code of Civil Procedure sections 415.10 through 415.30 for several months. Thus,
17 CITY respectfully requests that this Court issue an order for service of the Summons by
18 publication of the Roe Cross-Defendants behind fence and gates.

19 CITY’s Application is based on this Application, the attached Memorandum of Points and
20 Authorities, the declaration of Marnie Prock, and the complete files and records in this action.

21 The CITY notes here that the Court set an Order to Show Cause hearing for June 21,
22 2021.

23 Dated: June 1, 2021

BEST BEST & KRIEGER LLP

24 By: 
25 SHAWN HAGERTY
26 CHRISTOPHER M. PISANO
27 SARAH CHRISTOPHER FOLEY
28 PATRICK D. SKAHAN
Attorneys for Respondent and
Cross-Complainant
CITY OF SAN BUENAVENTURA

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 1. INTRODUCTION

4
5 Respondent and Cross-Complainant, City of San Buenaventura (“CITY”) hereby applies
6 for an Order directing that the Summons of the Third Amended Cross-Complaint for Violation of
7 Reasonable Use; Violation of Public Trust; Declaratory Relief – Pueblo and/or Treaty Water
8 Rights; Declaratory Relieve – Prescriptive Water Rights; Declaratory Relief – Appropriative
9 Water Rights; Comprehensive Adjudication; Declaratory Relief – Municipal Priority; Declaratory
10 Relief – Human Right to Water and Declaratory Relief filed in this action on January 2, 2020
11 (hereinafter “Third Amended Cross Complaint”) be served on the 92 Roe Cross-Defendants
12 named in this action which remain unserved because the service addresses are fenced and gated,
13 by publication in a newspaper of general circulation, pursuant to Code of Civil Procedure section
14 415.50. Service on these remaining unserved Roe Cross-Defendants is requested to be by
15 publication pursuant to Code of Civil Procedure section 415.50 in the *Ventura County Star*, which
16 is a newspaper of general circulation in the County of Ventura which is the location of the
17 Properties. This newspaper is the one most likely to give notice to the Roe Cross-Defendants
18 because it is the major newspaper covering the area wherein the Properties at issue in this case lie,
19 and therefore where these Cross-Defendants are residing. (Code Civ. Proc., § 415.50, subd. (b).)

20
21 A copy of the Summons and Third Amended Cross-Complaint could not be served on
22 those Roe Cross-Defendants listed in Exhibit "A" by any of the following methods:

- 23
24 1. Handing a copy to the person to be served. (Personal service – Code Civ. Proc., §
25 415.10).
- 26
27 2. Leaving a copy, during usual office hours and in the office of the person to be
28 served, with the person who apparently was in charge and by thereafter mailing copies (by first

1 class mail, postage prepaid) to the person to be served at the place where the copies were left.
2 (Service on a corporation, partnership, association, or public entity - Code Civ. Proc., §
3 415.20(a)).
4

5 3. Leaving a copy at the dwelling house, usual place of abode, or usual place of
6 business of the person to be served in the presence of a competent member of the household or
7 person apparently in charge of his office or place of business, at least 18 years of age, who shall
8 be informed of the general nature of the papers and by thereafter mailing copies (by first class
9 mail, postage prepaid) to the person to be served at the place where the copies were left. (Service
10 on natural person, minor, incompetent, or candidate - Code Civ. Proc., § 415.20(b)).
11

12 4. Sending (by first class mail or airmail) a copy to the person to be served, together
13 with two copies of required form of notice and acknowledgement and a return envelope, postage
14 prepaid, addressed to the sender. (Service by mail - Code Civ. Proc., § 415.30).
15

16 5. Any other method (Code Civ. Proc., §§ 413.10, 413.30).
17

18 (*See* Declaration of Marnie Prock (“Prock Decl.”), filed concurrently herewith.) CITY
19 seeks an order from the Court to publish the Summons of its Third Amended Cross-Complaint for
20 the subject properties which are surrounded by fences and gates. As discussed herein, service of
21 the Summons by publication is proper because each Cross-Defendant has an interest in the
22 Property, which is subject to the Court’s jurisdiction. (*See* Code Civ. Proc. § 415.50, subds.
23 (a)(1)-(2).) Additionally, CITY has exhausted all reasonable efforts to serve such Cross-
24 Defendants in any other manner specified in Code of Civil Procedure sections 415.10 through
25 415.30. Thus, CITY seeks to serve the Roe Cross-Defendants by publication pursuant to Code of
26 Civil Procedure section 415.50 so that it may proceed with this Action.
27
28

1 I. LEGAL STANDARD FOR SERVICE BY PUBLICATION

2 A party may effectuate service by publication when it appears to the satisfaction of the
3 Court that a party to be served cannot with reasonable diligence be served by another method
4 specified in Code of Civil Procedure sections 415.10 through 415.30. Reasonable diligence
5 requires a “thorough systematic investigation and inquiry conducted in good faith by that party,
6 agent or attorney.” (*Watts v. Crawford* (1995) 10 Cal.4th 743, 749, n. 5 [citations omitted].)
7

8 In addition to the reasonable diligence requirement, the Court must also find the
9 following:

10 (1) A cause of action exists against the party upon whom
11 service is to be made or he or she is a necessary or proper party to
12 the action.

13 (2) The party to be served has or claims an interest in real or
14 personal property in this state that is subject to the jurisdiction of
the court.

15 (Code Civ. Proc., § 415.50, subd (a)(1)-(2).) Upon completion of service by publication, service
16 of the summons is deemed complete as required by Government Code section 6064. (Code Civ.
17 Proc., § 415.50, subd. (c).) All requisite facts are present to afford the Court authority to issue an
18 order for publication of the Summons pursuant to Code of Civil Procedure section 415.50.

19 II. SERVICE BY PUBLICATION IS APPROPRIATE BECAUSE CITY HAS
20 EXHAUSTED ALL REASONABLE EFFORTS TO SERVE KNOWN CROSS-
DEFENDANTS

21 Based on a thorough and systematic investigation in good faith, CITY cannot with
22 reasonable diligence serve the Cross-Defendants listed in Exhibit “A”, other than by publication.
23 Specifically, CITY has conducted exhaustive research through the Ventura County Assessor
24 records, real property records and TLO searches of records related to ownership of the gated
25 properties at issue. Additionally, over the past several months, CITY has attempted personal
26 service. CITY therefore seeks an order for publication pursuant to Code of Civil Procedure
27 section 415.50.
28

1 2. PUBLICATION IN VENTURA COUNTY STAR IS APPROPRIATE

2
3 A. The Ventura County Star is a Newspaper of General Circulation and will
4 Satisfy the Publication Requirements in this Action

5
6 Pursuant to Code of Civil Procedure section 415.50, subdivision (c), the duration of the
7 publication of the summons is determined by Government Code section 6064, which provides:

8
9 Publication of notice pursuant to this section shall be once a week
10 for four successive weeks. Four publications in a newspaper
11 regularly published once a week or oftener, with at least five days
 intervening between publication dates, are sufficient. The period of
 notice commences with the first day of publication and terminates
 at the end of the twenty-eighth day, including therein the first day.

12 *The Ventura County Star* is a newspaper of general circulation published and distributed
13 in Ventura County, where the Property is located, and which is most likely to give actual notice of
14 the pendency of the proceedings herein to the unserved Cross-Defendants. (Prock Decl., ¶ 12.)

15 III. CONCLUSION

16 Based on the foregoing, CITY respectfully requests that:

17 1. The Court issue an Order for Publication of the Summons as to the Roe Cross-
18 Defendants listed in Exhibit "A", and allow CITY to serve the Summons by publication in
19 *Ventura County Star* once a week for four consecutive weeks as soon as is reasonably practicable;

20 2. The Court Order that the published Summons shall name each Roe Cross-
21 Defendant as specified in Exhibit "A."

22 Dated: June 1, 2021

BEST BEST & KRIEGER LLP


23
24 By: 
25 SHAWN HAGERTY
26 CHRISTOPHER M. PISANO
27 SARAH CHRISTOPHER FOLEY
28 PATRICK D. SKAHAN
 Attorneys for Respondent and
 Cross-Complainant
 CITY OF SAN BUENAVENTURA

EXHIBIT A

EXHIBIT A

EXHIBIT A

GATED/FENCED ROE CROSS-DEFENDANTS FOR PUBLICATION

1.	Kelly Beckett, Roe 20
2.	Carolyn D. Bennett, Trustee of The Bennett Family Trust, Roe 23
3.	James S. Bennett, Trustee of The Bennett Family Trust, Roe 24
4.	Ileana Cataldo, Trustee of The Cataldo Family Living Trust, Roe 44
5.	John George Cataldo, Trustee of The Cataldo Family Living Trust, Roe 45
6.	Bruce Allen Chernof, Trustee of The Chernof/Garcia Living Trust, Roe 48
7.	James E. Clark II, Trustee of The James E. Clark II Family Trust, Roe 50
8.	Leslie L. Clark, Trustee of The Leslie L. Clark Trust, Roe 51
9.	Mary Claire Clark, Trustee of The James E. Clark II Family Trust, Roe 52
10.	Pamela Cooke, Successor Trustee of The Cooke Family Trust, Roe 55
11.	Patricia Clark Doerner, Trustee of The Richard E. Doerner and Patricia Clark Doerner 2003 Family Trust, Roe 64
12.	Richard Doerner, Trustee of The Richard E. Doerner and Patricia Clark Doerner 2003 Family Trust, Roe 65
13.	Niall Donnelly, Roe 68
14.	Donald Dufau, Trustee of The Donald D. Dufau Family Trust, Roe 69
15.	Roberta Dufau, Trustee of The Donald D. Dufau Family Trust, Roe 70
16.	Kathy Entzel, Trustee of The Entzel Trust, Roe 73
17.	Nathan Entzel, Trustee of The Entzel Trust, Roe 74
18.	Maria Olimpia Feig, Trustee of The Steve and Maria Feig Living Trust, Roe 76
19.	Steven Norman Feig, Trustee of The Steve and Maria Feig Living Trust, Roe 77
20.	Carl Fout, Trustee of The Carl Fout 2018 Trust, Roe 80

21.	Daniel Garcia, Trustee of The Chernof/Garcia Living Trust. Roe 89
22.	Gail Graham, Roe 98
23.	Gerrold Grigsby, Roe 100
24.	Karen Grigsby, Roe 101
25.	Guadalupe Guzman, Roe 102
26.	Ofelia E Guzman, Roe 103
27.	Holguin Family Ventures, LLC, a California limited liability company, Roe 116
28.	Arthur T. Jarvis III, Trustee of The Arthur T. Jarvis III Separate Property Trust, Roe 123
29.	Domlin A. Juul, Trustee of The Domline A. Juul Trust, Roe 127
30.	Dominick McCormick, Trustee of The Dominick and Stefanie McCormick Trust, Roe 154
31.	Stefanie McCormick, Trustee of The Dominick and Stefanie McCormick Trust, Roe 155
32.	Baulio Mejia, Roe 158
33.	Rosamaria Mejia, Roe 159
34.	Curtis Menefee, Roe 160
35.	Viollette Menefee, Roe 161
36.	Lisane S. Menezes, Trustee of The Menezes Community Property Trust, Roe 162
37.	Voltaire Gustavo K. Meneze, Trustees of The Menezes Community Property Trust, Roe 163
38.	John Minkel, Roe 165
39.	Theresa Minkel, Roe 166
40.	Linda F. Olive, Trustee of The Linda F. Olive 2017 Trust, Roe 179

41.	Emily Wilson Prather, Trustee of The Frank Lee Prather and Emily Wilson Prather Family Trust, Roe 193
42.	Frank Lee Prather, Trustees of The Frank Lee Prather and Emily Wilson Prather Family Trust, Roe 194
43.	Jan Preiczner, Roe 195
44.	Louis Preiczner, Roe 196
45.	Michael W. Price, Trustee of The Michael W. Price Trust, Roe 197
46.	Ellen Rakieten, Roe 200
47.	Rancho Dos Rios, LLC, a California limited liability company, Roe 201
48.	Robin K. Roy, Trustee of The RZF Trust, Roe 212
49.	Sandra Shinall, Roe 218
50.	Eitan Sloustcher, Roe 226
51.	Sara Sloustcher, Roe 227
52.	Robert Smith, Roe 229
53.	Elisabeth K. Treadwell, Roe 233
54.	Alexander Treadwell, Roe 234
55.	Ysabel Vega, Roe 237
56.	Dura Milton Williams, Trustee of The Dura Milton Williams and Honor Elizabeth Bliss-Williams Living Trust, Roe 245
57.	Honor Elizabeth Bliss-Williams, Trustee of The Dura Milton Williams and Honor Elizabeth Bliss-Williams Living Trust, Roe 246
58.	Catherine R. Zoi, Trustee of The RZF Trust. Roe 249
59.	Richard Adams, Trustee of The Richard N. Adams and Verna Joy Adams Revocable Trust, Roe 252
60.	Verna Adams, Trustee of The Richard N. Adams and Verna Joy Adams Revocable Trust, Roe 253

61.	Jennifer Kirsten Brewer, Trustee of The Nathan Ray Brewer and Jennifer Kirsten Brewer Trust of 2014, Roe 263
62.	Nathan Ray Brewer, Trustee of The Nathan Ray Brewer and Jennifer Kirsten Brewer Trust of 2014, Roe 264
63.	James Congdon, Trustee of The Congdon Family Revocable Trust, Roe 271
64.	Sandra Congdon, Trustee of The Congdon Family Revocable Trust, Roe 272
65.	Culbert Family Partnership, Roe 273
66.	Michael Flett, Roe 286
67.	Linda Anne Shufeldt Gidden Haque, Trustee of the Haque Family Trust "A", Roe 297
68.	Byron Kathleen Mitchell, Trustee of The Stephen Mitchell and Byron Katie Trust dated June 4, 2002, as amended, Roe 323
69.	Stephen Mitchell, Trustee of The Stephen Mitchell and Byron Katie Trust Dated June 4, 2002, as amended, Roe 333
70.	Niji Productions, Inc., a California corporation, Roe 328
71.	Daniel Wilber, Roe 368
72.	Jenna Wilber, Roe 369
73.	Thomas W Wilber, Roe 370
74.	Yvonne Wilber, Roe 371
75.	Rebecca Williams, Roe 374
76.	Scott Williams, Roe 375
77.	Nathan A. Bogetti, Roe 385
78.	Jennifer Eckersley, Trustee of The John Scott and Jennifer Jane Eckersley 2004 Family Trust, Roe 71
79.	John Eckersley, Trustees of The John Scott and Jennifer Jane Eckersley 2004 Family Trust, Roe 72
80.	Norman B. Garber, Roe 88

81.	Gail M. Light, Roe 138
82.	Mike Marietta, Trustee of The Marietta Living Trust, Roe 149
83.	Suzanne Naegle, Trustee Of The Sue Naegle 2018 Trust, Roe 176
84.	G. Oviatt, Roe 182
85.	Phyllis J. Oviatt, Roe 183
86.	Andrea Rich, Trustee Of The Andrea Rich Living Trust, Roe 204
87.	Rush Family Limited Partnership, a California limited partnership, Roe 213
88.	Frederick M. Silvers, Roe 219
89.	Sheron LLC, a California limited liability company, Roe 225
90.	John T. Vangel, Trustee of The Vangel Trust. Roe 236
91.	Christopher Noxon, Trustee of the Christopher Noxon Living Trust, Roe 329
92.	Edward W. Fredrick, Jr., Roe 393