

Feb. 14, 2022 Revised Tentatives (10 a.m.)



**Trial Preparation for Dept. 10 during Covid times:**

- I have consulted court management at the Spring Street Courthouse regarding the marking and receipt of exhibits at trial. We will continue to do this via hard copy with stickers applied by the Judicial Assistant to show the assigned exhibit number and the exhibit’s status (e.g. marked for ID only or received in evidence and date of same). The “official” exhibits for the Judicial Assistant need to be brought to court suitably organized (after consultation with courtroom staff) at least three court days in advance of the first day of trial. I will also want two sets of three-ring binders [with divider tabs with exhibit numbers] with hard copies of each of the pre-marked exhibits, one for me and one for the Research Attorney by the same deadline. You will also need to provide three copies of any exhibits later identified as rebuttal and impeachment exhibits. If any such impeachment or rebuttal exhibit is first proffered virtually via Zoom by a remote appearing attorney (as will be allowed), you will then need to get three copies of same, properly identified, to the judicial assistant by messenger delivery directly to the courtroom the next business day.**

We absolutely need a detailed Joint Exhibit List at the time of Final Status Conference along the following format. Exhibit numbers to be numeric, not tied back to deposition exhibit numbering, and in number blocks assigned to the different parties which will actively participate in this trial.

Exh. #	Description	Pages	Off'd by	Prior Exh. #	Stip to authenticity	Stip to admissibility	Date marked for ID	Date Rec'd in evid.
1	Kear Report	82	Ojai City	3C to Kear Depo	Yes	No		

- The most important thing you can do to prepare for the Final Status Conference and for Trial is to develop that Joint Exhibit List so that it is complete, non-duplicative (i.e. City of Ventura Exh. 32 is same as City of Ojai Exh. 541, is also same as East Ojai Group Exh. 1034), correct as to document description and size (pages), and shows a bona fide effort to elicit agreement as to, at least, authenticity, and, hopefully, admissibility. If there is going to be a bona fide basis to object to authenticity and/or admissibility, it is important to surface these issues sooner, rather than later, so the proponent of the exhibit can contemplate its/his/her options. I do not want to waste precious court trial time going through needless undisputed evidence to establish authenticity and admissibility simply because someone wants to be obstructionist or is too lazy to do the homework in advance.
- City of Ventura will go first. All parties aligned with City of Ventura will go next in presenting a prima facie case and in examining witnesses. Parties clearly opposed to City of Ventura (e.g. City of Ojai) will go next in presenting their prima facie case and in examining witnesses. Cross-examination to follow in same sequence in reverse order (e.g. City of Ojai goes first for City of Ventura witnesses). Parties who decline to align clearly with either side (e.g. possibly Casitas Municipal Water District and/or some state parties) will go next in presenting their prima facie case (if any) and in examining/cross-examining witnesses).
- The Joint Witness List filed in advance of the Final Status Conference will list each witness a given party intends to call, state the general subject of such examination and the anticipated time required for direct and cross of such witness (by all parties actively involved in the trial) stated in quarter hour increments. While the Joint Witness List does not need to be sequenced in the intended order of proof, I will separately ask for that while conducting the Final Status Conference so be prepared to address this. Once a witness is called, all parties are to use that opportunity to elicit all testimony they intend to seek

from such witness, whether by direct examination, cross-examination or otherwise; for this reason the Joint Witness List should include a given witness name only once, tied to the first party most likely to call that witness. As noted above, the time budget for a given witness should, therefore, consider the time it will take for each and all of the many parties actively participating to cover such material as they feel a need to cover with such witness. While there will be a limited opportunity to recall a prior witness when you present your rebuttal case, all other witnesses will be examined as part of the collective presentation of each party's case-in-chief before ANY rebuttal examination is allowed to commence. If the time estimates suggest that this Court Trial cannot be conducted in the 15 court days allotted we will engage in a budgeting exercise to make it fit the time available. Do not assume that you will get any more court time for the trial of Phase 1.

5. Absent unforeseen public health or personal health problems, I anticipate presiding from the bench in the courtroom, using a ClearMask so you can see my protected face. Counsel and witnesses are encouraged to consider use of a ClearMask if they are participating in person. We need to be prudent about our conduct as a group, but the 6' social distancing requirement is not in effect at this time.
6. Experience teaches that you should NOT try to use LACourtConnect as the virtual platform for virtual attendance by witnesses or counsel at trial. From my one substantive experience doing a hybrid trial (i.e. some lawyers and witnesses in person/some lawyers and witnesses remote), you need to share the expense in some equitable fashion for an IT tech support person to be present in the courtroom to manage a Zoom or equivalent connection using the hardware pre-installed in the courtroom plus such additional hardware as may be needed; that person should have all of the pre-marked exhibits readily available on his/her computer for display to the witness and other participants. Experience with a court trial in early 2021 in BC701075 *Cinco Corp. v. Koren* teaches that a spare laptop with Wifi connectivity needs to be provided for the witness' benefit; this, most importantly, allows for the witness to privately review any new exhibits not provided in advance in hard copy via the Chat function on Zoom (or equivalent) which allows a person with such a laptop to do a PRIVATE scroll through a given new exhibit (e.g. rebuttal or impeachment) before examination on such document commences. If done with sufficient technical support, this should allow remote appearances by witnesses. I urge you to consult with the lawyers involved in the Cinco Corp. trial and to consider using the vendor they used or one of similar skill and experience.
7. Your IT people should come at least a week in advance to check out connectivity and install extra hardware as needed. The fixed large monitor behind the jury box, the monitor for the court reporter and the monitor for the witness stand are all "slaves" to the image on the second (right-side from Judge's perspective) computer screen on the bench. I will cooperate with your efforts to make that the Zoom link so that other counsel using the same link (remotely or in the courtroom) can control the screen in front of the witness (separate and apart from what will be available via the extra laptop provided to the witness).
8. The court reporter should be present in the courtroom in the normal location, and the witness should use the traditional witness stand.
9. Lunch food service is available nearby at the Sidewalk Café, first floor of Foltz Courthouse, across the street from Spring Street Courthouse, but we should break daily at 11:40 a.m. to avoid the lunch rush and resume trial at 1:10 p.m. Limited snack/coffee/pastry service + vending is available on lower Main Street floor of Spring Street Courthouse. There will be one 15-minute break in both the morning and afternoon sessions. While the Court can run a bit past 4:30 p.m. daily, we should be fully wrapped each day by 4:45 p.m.

10. Best parking is probably at the Cathedral lot on Temple Street @ Hill St. as the sidewalk path of travel to our courthouse does not directly pass by homeless camps.
11. I currently expect to hold court all five days a week. I currently plan to start the trial at about 9:30 a.m., saving the time 8:30 a.m. to 9:15 a.m. for other cases needing urgent attention or ordinary throughput.
12. Parties and attorneys can participate virtually via the Zoom (or equivalent) link and subject to technical limitations on the permissible number of “viewers” and security considerations regarding how such general access might be afforded, I would assume that the public could get “listen/observe only” access to the same Zoom link to attend virtually. Subject to prudent public health considerations and limitations, the public is also welcome to attend in person. Lawyers participating by Zoom (or equivalent) will probably be at something of a disadvantage as compared to those present in court since getting the Court’s attention is not as immediate when you are participating virtually. Parties who are serious about their involvement in the first-phase court trial should have at least one lawyer present in person in the courtroom during any phase of the trial of concern to such party.
13. I do want opening statements of no more than 45 minutes per side for the two main protagonists and 20 minutes per side for other active participants.
14. Insofar as all or most all of the active participants are prepared to stipulate to zones in the watershed and groundwater basins where there is agreed to be material interconnectedness, please – for everyone’s sake – prepare a Stipulation And [Proposed] Order to this effect. Just as in the case of proposed exhibits which should come into evidence quickly to avoid a waste of time, concessions as to locations where such interconnectedness exists should be made promptly. If most, but not all of the parties actively involved, agree to such interconnectedness, please advise the Court of same, so I can determine why one or more party is a hold-out and whether such resistance is based on a good faith factual or legal position.
15. Parties who have not already filed a Notice of Intent to Actively Participate in Phase 1 Trial by the deadline of December 2, 2021 per the Court’s Minute Order of November 15, 2021, will not be allowed to speak, object, offer evidence or otherwise participate during the course of the Phase 1 trial. The Court’s records show the following law firms have filed Notice of Intent to Actively Participate in Phase 1 Trial for one or more of their clients:

**Bartkiewicz, Kronick & Shanahan, APC (for City of Ojai)(filed Dec. 1, 2021)**

**Rutan & Tucker, LLP (for Casitas Municipal Water District)(filed Dec. 1, 2021)**

Brownstein Hyatt Farber Schreck, LLP and Hathaway Perrett Webster Poser

Chrisman & Gutierrez (i.e. Wood-Claeysens Foundation)(filed Dec. 2, 2021)

State AG for SWRCB (filed Dec. 2, 2021)

State AG for Dept. of Fish & Wildlife (filed Dec. 2, 2021)

Ryan Blatz Law (for Senior Canyon Mutual Water Co. et al.)(filed Dec. 2, 2021)

Manatt, Phelps & Phillips, LLP and Sigrid R. Waggener (for Area Energy LLC)(filed Dec. 2, 2021)

Ossentjuk & Botti (for Rob’t Martin)(filed Dec. 2, 2021)

Musick, Peeler & Garrett LLP (i.e. for “East Ojai Group”)(filed Dec. 2, 2021)

Best Best & Krieger LLP (i.e. for City of Ventura, aka City of San Buenaventura)

Gregg S. Garrison (for AGR Breeding et al.)(**served Dec. 2, 2021 at 4:41 pm. and filed Dec. 3, 2021 at 5:44 p.m.)(late filing accepted by Court)**

**Herum Crabtree Suntag and Law Offices of Lindsay F. Nielson (for Ventura River Water District and Meiners Oaks Water District)(filed Dec. 9, 2021)(late filing accepted by Court)**

**Note:** The various Notices served on FSX by Claude Baggerly etc., Andrew Whitman, etc. and possibly others do not appear to have ever been filed with this court. You were required to file, not just serve, your Notice of Intent. You will need to explain this and/or seek leave for the failure to timely file. You will be sanctioned at least \$500.00 per party for your failure to do so timely if relief is granted at all absent good cause shown for your failure to follow clear judicial directions.

16. Parties who have filed a timely Notice of Intent to Actively Participate in Phase 1 Trial who do not sign the Joint Exhibit List and Joint Witness List will be deemed to have abandoned their rights to appear actively during the Phase 1 trial. Such parties and their counsel (i.e. both those who never filed such a Notice and those who did not participate in the run-up to the Final Status Conference by signing the Joint Exhibit List and Joint Witness List) are welcome to observe in person in Dept. 10 to the extent that space is available or to take advantage of the Zoom (or equivalent) virtual link that counsel for the active participants have been directed to arrange per provisions above in this Tentative. If you wish to be relieved of this restriction, make an Ex Parte Application for good cause shown on Feb. 22, 2022 in Dept. 10 at 10 a.m.