



1 JENNIFER T. BUCKMAN, State Bar No. 179143
 2 HOLLY J. JACOBSON, State Bar No. 281839
 3 BARTKIEWICZ, KRONICK & SHANAHAN
 4 A PROFESSIONAL CORPORATION
 5 1011 Twenty-Second Street
 6 Sacramento, California 95816-4907
 7 Telephone: (916) 446-4254
 8 Facsimile: (916) 446-4018
 9 E-Mail: jtb@bkslawfirm.com
 10 hjj@bkslawfirm.com

11 Attorneys for City of Ojai

Exempt from Filing Fees
 Gov. Code, § 6103

12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 13 COUNTY OF LOS ANGELES

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

16 Petitioner,

17 v.

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

23 Respondents.

24 CITY OF SAN BUENA VENTURA, a
 25 California municipal corporation,

26 Cross-Complainant,

27 v.

28 DUNCAN ABBOTT;
 AGR BREEDING, INC; et al.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

**CITY OF OJAI'S BRIEF REGARDING
 TIMING OF EXPERT DISCOVERY**

Action Filed: September 19, 2014

First Amended Complaint Filed:
 September 7, 2018

BARTKIEWICZ, KRONICK & SHANAHAN, PC
 WWW.BKSLAWFIRM.COM

1 **BRIEF REGARDING TIMING OF EXPERT DISCLOSURES**

2 As the City of Ventura admits in its brief, it elected to file its Cross-Complaint under
3 the Comprehensive Groundwater Adjudication statute, Code of Civil Procedure sections 830, et
4 seq., which establishes establishes specific "methods and procedures" that apply to a
5 comprehensive adjudication. (Ventura's Brief Regarding Discovery Schedule, p. 4, l. 26 – p. 5,
6 l. 1.) In invoking this statutory scheme, Ventura elected to proceed under the specialized
7 procedures the Legislature has adopted for the statutory adjudication of groundwater basins.

8 The Comprehensive Groundwater Adjudication statute contains a specific provision
9 governing expert discovery, Code of Civil Procedure section 843. Subsection (d) specifically
10 authorizes the Court to adopt orders for the sequence of expert disclosures that will facilitate
11 the Court's consideration of the issues presented in the various phases of the trial:

12 Unless otherwise stipulated by the parties, a party shall make the disclosures of
13 any expert witness it intends to present at trial, except for an expert witness
14 presented solely for purposes of impeachment or rebuttal, *at the times and in the
sequence ordered by the court.*

15 (Code Civ. Proc. § 843, subd. (d), emphasis added.) As Ventura acknowledges in its brief,
16 Section 843 specifically authorizes the Court to establish sequenced expert disclosures.
17 (Ventura's Brief Regarding Discovery Schedule, at p. 6, ll. 5-7.) This provision specifically
18 overrides the default rule established in the Civil Discovery Act, which requires mutual and
19 simultaneous disclosure of experts upon demand of a party to a civil action. (*Dozier v. Shapiro*
20 (2011) 199 Cal. App. 4th 1509, 1522, citing Code Civ. Proc., § 2034.210, subd. (a).)

21 The court must determine which of the two statutes governing expert discovery applies
22 in the context of this comprehensive groundwater adjudication. When confronted with two
23 potentially conflicting statutes, the court's role is to harmonize the law. (*People v. Pieters*
24 (1991) 52 Cal.3d 894, 899.) Courts "do not construe statutes in isolation, but rather read every
25 statute 'with reference to the entire scheme of law of which it is part so that the whole may be
26 harmonized and retain effectiveness.'" (*Ibid.*) When determining which statute applies under a
27 particular set of facts, courts avoid an interpretation that requires one statute to be ignored.

28 \\\

1 (*Stone St. Capital, LLC v. Cal. State Lottery Com.* (2008) 165 Cal.App.4th 109, 118; *Chatsky*
2 & *Associates v. Superior Court* (2004) 117 Cal.App.4th 873, 876.)

3 If inconsistencies in statutes cannot be reconciled, the more "particular or specific
4 provision will take precedence over a conflicting general provision." (*People v. Vessell* (1995)
5 36 Cal.App.4th 285, 289, citing Code Civ. Proc., § 1859 ["In the construction of a statute ...
6 when a general and particular provision are inconsistent, the latter is paramount to the former.
7 So a particular intent will control a general one that is inconsistent with it."]; *see also* Civ.
8 Code, § 3534 ["Particular expressions qualify those which are general."]) Consequently, when
9 "the general statute standing alone would include the same matter as the special act, and thus
10 conflict with it, the special act will be considered as an exception to the general statute whether
11 it was passed before or after such general enactment." (*People v. Gilbert* (1969) 1 Cal.3d 475,
12 479; *Stone St. Capital, supra*, 165 Cal.App.4th at p. 119.)

13 Here, both the Civil Discovery Act and the Comprehensive Groundwater Adjudication
14 statute contain provisions regarding the exchange of expert discovery. The Civil Discovery
15 Act's mandate requiring mutual and simultaneous exchange of experts upon demand of a party
16 to a civil cases took effect in 2005. (Code Civ. Proc., § 2034.210 (West's 2021).) A decade
17 later, in 2015, the Legislature passed the Comprehensive Groundwater Adjudication statute to
18 address the specific issues presented in litigating the rights to groundwater basins. (Code Civ.
19 Proc., §§ 830 (West's 2021).) Section 843 of the Comprehensive Groundwater Adjudication
20 statute, which took effect in 2016, is both later and more specific than the expert discovery
21 provision of Code of Civil Procedure section 2034.210. Ventura's interpretation of the statutes
22 to allow demand for mutual and simultaneous exchange of experts asks the court to ignore
23 Section 843's specific text authorizing the court to set other expert discovery schedules as
24 appropriate to the circumstances of the comprehensive adjudication. Such a construction runs
25 afoul of California's well-established principles of statutory construction. (*Stone St. Capital,*
26 *supra*, 165 Cal.App.4th at p. 118; *Chatsky, supra*, 117 Cal.App.4th at p. 876.) In the context of
27 this action, which Ventura chose to bring under the Comprehensive Groundwater Adjudication
28 statute, the later-enacted and more specific section 843 controls expert discovery. Hence, the

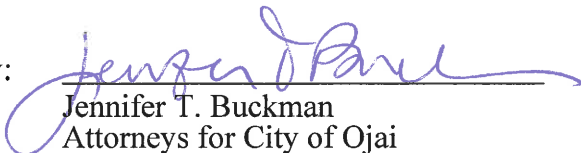
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Court has explicit authority to stage the exchange of expert reports, and no party is entitled to demand simultaneous exchange.

A staged exchange of experts would best conserve judicial resources in this case. Ventura claims the scientific evidence supporting connectivity of all four of the groundwater basins and the Ventura River is "indisputable," but it has, to date, failed to produce any of its evidence. Without having seen the evidence, Ojai can only speculate, but it is possible that there are many points on which the parties will agree. Neither the Court nor the parties will benefit from presentation of extensive scientific testimony about which there is no dispute. Rather, all parties and the Court will benefit from narrowing the issues and focusing the testimony on the points on which the experts disagree. If expert discovery is staged so that Ventura discloses its expert testimony on connectivity first, then the other parties can focus their expert testimony on those points of disagreement. Ojai respectfully submits that this staged discovery process will help the Court hone in on the issues that will require evidentiary hearing or trial.

Dated: July 14, 2021

Respectfully submitted,
Bartkiewicz, Kronick & Shanahan, PC

By: 
Jennifer T. Buckman
Attorneys for City of Ojai