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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF LOS ANGELES

12 SANTA BARBARA CHANNELKEEPER, a
 13 California non-profit corporation,

14 Petitioner,

15 v.

16 STATE WATER RESOURCES CONTROL
 17 BOARD, a California State Agency; CITY OF
 18 SAN BUENAVENTURA, a California
 municipal corporation, incorrectly named as
 CITY OF BUENAVENTURA,

19 Respondents.

20
 21 CITY OF SAN BUENAVENTURA, a
 22 California municipal corporation,

23 Cross-Complainant,

24 v.

25 DUNCAN ABBOTT, an individual, et al.,

26 Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger
 Dept. 10 (South Spring Courthouse)

**JOINDER IN CITY OF SAN
 BUENAVENTURA'S BRIEF ON
 ISSUES OF FACT AND LAW FOR THE
 PHASE 1 TRIAL**

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 Dept.: SS10

Action Filed: Sept. 19, 2014
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1 The Wood-Claeysens Foundation joins in the City of San Buenaventura’s (“Ventura”)
2 Brief of Phase One Issues and writes separately to emphasize several points.

3 It is important to underscore that water rights do not encompass ownership of the corpus
4 of the water. Instead, they represent a relative priority right to make perennial beneficial use of a
5 shared common “res” in compliance with California statutory and common law. Phase One is
6 necessary to establish the boundaries of a hydrologically interconnected common res comprised
7 of surface water within the Ventura River, subsurface flow beneath it, and tributary percolating
8 groundwater.

9 Groundwater and surface water are commonly physically integrated as dependent parts of
10 the hydrologic cycle. (*Cappaert v. United States* (1976) 426 U.S. 128, 142-143 citing *Water*
11 *Policies for the Future – Final Report to the President and to Congress of the United States by*
12 *the National Water Commission* 233 (1973)) Although the Legislature in California was slow to
13 acknowledge this reality, the Courts were not. (*See We Don’t Do Groundwater: A Morsel of*
14 *California Legal History*, J. Sax, (2003) 6 Univ. Den. L.V. 270, 281-286)

15 In those instances where surface and groundwater supplies have been demonstrated to be
16 interconnected, the courts have held them to constitute a common “res” to which water rights
17 attach. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 251.). For example,
18 the California Supreme Court has unequivocally held that rights to surface water extend to
19 tributary groundwater basins that are interconnected with the Los Angeles River and for the
20 protection of its surface water rights. (*Los Angeles v. Glendale* (1943) 142 P.2d 289, 292-293;
21 *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 251.) The interconnected
22 hydrology of groundwater and surface water has led courts to provide relief for surface water
23 users against groundwater pumping, groundwater users against adverse impacts of surface water
24 diversions (*City of Lodi v. East Bay Municipal Water District* (1936) 7 Cal.2d 316, 344-345;
25 *United States v. Fallbrook* (S.D. CA 1958) 165 F.Supp. 806, 847.) and to adjudicate rights among
26 several hydrologically interconnected groundwater basins. (*See City of Barstow v. Mojave Water*
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1 *Agency* (2000) 23 Cal.4th 1224; *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d
2 199.)

3 Likewise, the application of the Public Trust Doctrine at issue in this case protects the
4 triad of public trust uses (navigation, recreation, and fisheries) from harm that may result from
5 diversions from navigable water ways, non-navigable water ways tributary to navigable water
6 ways, and withdrawals from tributary groundwater basins. (*National Audubon Society v. Superior*
7 *Court* (1983) 33 Cal.3d 419, 437; *Environmental Law Foundation v. State Water Resources*
8 *Control Board* (2018) 26 Cal.App.5th 844, 859.)

9 The question to be answered by Phase One is simply whether the Ventura River, its
10 underflow, and the designated groundwater basins are hydrologically interconnected. The
11 Ventura River Watershed (“Watershed”) as described, constitutes the outer limits of the physical
12 area (the boundaries of the “res” subject to adjudication). By resolving the question of whether
13 each of the basins are included, the Court will have the ability to order a physical solution that
14 protects public trust resources and other beneficial uses while distributing responsibilities among
15 all parties and properties within the Watershed.

16 The Court has jurisdiction over these parties because they all possess claims to a shared
17 water supply by virtue of their: (i) position of landownership in relationship to a river (riparian
18 rights); (ii) position of landownership overlying a groundwater basin tributary thereto (overlying
19 rights); and (iii) historical conduct (appropriative rights). Consequently, it is both logical and
20 customary in adjudications that the boundaries and characteristics of the shared res be established
21 so that parties may raise all their claims and assert their defenses to their use of the common res
22 and to address their individual and cumulative impact of their conduct on public trust resources.

23 It is not as if all parties will be hopelessly tied to decades of legal proceedings. In the
24 event that individual parties and their respective uses within the Watershed are subsequently
25 found to be de minimis, they can be characterized as such and shielded from the burden of future
26 proceedings. This result is consistent with decades of experience in common groundwater
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1 adjudications as well as the streamlining contemplated by Code of Civil Procedure section
2 833(d).


3 To move forward in a manner other than as proposed by Ventura would subject the parties
4 and the Court to the risk that the subsequent determinations of rights and responsibilities would
5 be incomplete and piecemeal. Without answering the ultimate question of what is the “res” - the
6 process could be upended for countless reasons. Moreover, implementation of a management
7 strategy in support of a physical solution untethered to the reality of the hydrologic
8 interconnection of the resource is unlikely to succeed.

9 In the long run, successfully governing the commons requires clearly defined boundaries
10 of the resource. The Court’s Constitutional duty to consider and impose a physical solution and a
11 management plan of any kind remains paramount. Toward this end, Ventura’s brief provides a
12 reasonable roadmap to defining the res and the parties' relationship to it, each other and the
13 dependent public trust resources. The relative responsibilities, if any, are all deferred to another
14 day.

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Dated: November 8, 2021

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