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12 CITY OF SAN BUENAVENTURA

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

15 SANTA BARBARA CHANNELKEEPER, a
16 California non-profit corporation,
17
18 Petitioner,
19 v.
20 STATE WATER RESOURCES CONTROL
BOARD, etc., et al.,
21 Respondents.

Case No. 19STCP01176
Judge: Honorable William F. Highberger
**CITY OF SAN BUENAVENTURA'S
OPPOSITION TO MOTION
REQUESTING THE COURT TO
APPOINT A SCIENTIFIC ADVISOR
FOR HYDROGEOLOGY**
Date: June 21, 2021
Time: 1:30 p.m.
Dept: S10

22 CITY OF SAN BUENAVENTURA, etc.,
23 Cross-Complainant,
24 v.
25 DUNCAN ABBOTT, an individual, et al.
26 Cross-Defendants.
27
28

Action Filed: Sept. 19, 2014
Trial Date: Not Set

BEST BEST & KRIEGER LLP

1 **I. INTRODUCTION**

2 Respondent and Cross-Complainant the City of San Buenaventura (“City”) agrees that
3 under certain factual circumstances, the Court has the discretion to appoint a scientific advisor.
4 However, there is no need to appoint such a scientific advisor at this time, and the Court should
5 therefore deny, without prejudice, Cross-Defendant Claude Baggerly’s motion to appoint a
6 scientific advisor for hydrogeology.

7 In the anticipated first phase of this trial, the Court will receive significant professional
8 expert testimony on hydrogeology from multiple parties. These experts have been working on
9 these issues for many years. The City’s efforts to analyze the hydrologic features of the Ventura
10 River Watershed (“Watershed”) have been longstanding, as set forth in more detail herein.
11 Adding another expert at this time is not needed, would not be efficient, and would be an
12 unnecessary cost the parties should not have to bear. It would risk duplicative and unnecessary
13 expert discovery that will only delay the determination of this action on the merits.

14 While the parties have not yet made their expert designations, if the Court grants the
15 City’s motion to bifurcate, the City anticipates that both public agency and landowner parties will
16 present expert witnesses on the limited issues before the court on basin boundaries and
17 interconnectedness of the Watershed in the phase one trial. Thus, the Court will be provided the
18 comprehensive technical opinions it needs to fully understand the issues without appointing an
19 independent advisor. A duplicative expert will, in all likelihood, not have sufficient opportunity
20 in advance of a phase one trial to thoroughly analyze, test, and opine on complicated conditions in
21 the Watershed that the parties have extensively studied for years. The motion should therefore be
22 denied, without prejudice, because the Court will be well-positioned to rule in the phase one trial
23 on basin boundaries and interconnectedness.

24 **II. A COURT-APPOINTED EXPERT WOULD BE DUPLICATIVE,**
25 **UNNECESSARY, AND CONTRARY TO JUDICIAL ECONOMY**

26 Appointing an expert is not necessary because the Court is capable of making a
27 determination on basin boundaries and interconnectedness after evaluating the evidence at trial,
28 which will include testimony and reports from multiple professional experts. The Court will be

1 well-positioned to weigh the credibility of the parties' experts. In addition, it is anticipated that
2 the Court will receive as evidence other reports and studies that have been prepared by non-
3 parties that have studied the matters at issue in the phase one trial. These neutral reports were
4 prepared outside of the context of this litigation as part of an extensive and ongoing effort to
5 understand the hydrology of the Watershed. An additional expert to serve as a technical advisor
6 to the Court would duplicate the parties' extensive efforts analyzing the technical hydrologic
7 features of the Watershed, as well as these non-party reports. An appointed expert thus would
8 complicate the Court's consideration of the issues, and would not aid in judicial economy and
9 efficiency.

10 "[T]he trial court is never obliged to appoint an expert to assist it in making a factual,
11 much less a legal, determination under Evidence Code section 730 unless, as that section
12 provides, '*it appears to the court . . . that expert evidence is . . . required.*'" (*In re Eric A.* (1999)
13 73 Cal.App.4th 1390, 1394, emphasis original.) "[E]xperts appointed under section 730 are
14 necessary only when the court sees the need for an assessment by a disinterested and impartial
15 expert who is not advocating on behalf of a party to the action." (*Id.* at 1394, fn. 4, citing
16 *Mercury Casualty Co. v. Superior Court* (1986) 179 Cal.App.3d 1027, 1032-33; see also *People*
17 *v. Stuckey* (2009) 175 Cal.App.4th 898, 917.) Evidence Code section 730 does not allow the
18 Court to appoint an expert for the use of only one party, but instead contemplates that any expert
19 appointed will be available for all parties to call and examine as a witness. (Evid. Code §§ 730,
20 732 [all parties have same rights to cross-examine a court-appointed expert]; see also *People v.*
21 *Angulo* (2005) 129 Cal.App.4th 1349, 1361-62 [no due process right to confidentiality of
22 psychological evaluation of an appointed expert witness].) The Court will receive a range of
23 expert testimony and reports from the State, other public entities, and private parties that will
24 provide more than a sufficient basis to make the legal determinations necessary in the anticipated
25 phase one of trial.

26 **a. Experts Have Analyzed the Watershed for Several Years**

27 An expert advisor would duplicate the extensive efforts of both parties and non-parties in
28 analyzing the connection between the surface water and the four groundwater basins ("Basins") in

1 the Watershed. First, the City’s expert witnesses will testify to the technical issues to be
2 determined in the proposed phase one of trial on basin boundaries and interconnectivity. The
3 City has studied the hydrology of the Watershed, an historic source of its supplies, for more than
4 fifteen years. (Declaration of Susan Rungren (“Rungren Decl.”), ¶¶ 3-4.) In 2008, the City began
5 conducting studies of Ventura River flow conditions in order to continue to improve operations at
6 its Foster Park facilities. (*Id.* at ¶ 4; see also Declaration of Patrick D. Skahan (“Skahan Decl.”),
7 ¶ 2, Ex. A [2015 Urban Water Management Plan, at p. 3-5.) More recently, the City focused its
8 analysis on the specific issues to be presented to this Court at the proposed first phase of trial on
9 basin boundaries and interconnectedness. In its 2015 Urban Water Management Plan, the City
10 reported that it was studying the relationship between groundwater production and surface flows,
11 and future operational constraints on supplies from the Ventura River. (Skahan Decl., ¶ 2, at Ex.
12 A, p. 3-5.)

13 After Santa Barbara Channelkeeper filed this lawsuit in 2014, the City retained Cardno
14 Consultants as its intended expert witness regarding the Basins’ boundaries and the
15 interconnectedness of surface and groundwater within the Watershed. (Rungren Dec., at ¶ 5.) Its
16 consultants’ research regarding the hydrology and interconnectivity of the groundwater basins to
17 the Ventura River and its tributaries has been exhaustive, and at great expense to the City. (*Id.*)
18 Other parties, including cross-defendants the State Water Resources Control Board (“SWRCB”),
19 and the Ventura County Watershed Protection District (“VCWPD”), and non-parties the Ojai
20 Basin Groundwater Management Agency (“OBGMA”), and the Upper Ventura River
21 Groundwater Agency (“UVRGA”) have also studied the Watershed’s hydrology for several
22 years. (*Id.* at ¶¶ 6-8)

23 SWRCB, an original defendant in Channelkeeper’s action and intervenor in the City’s
24 cross-complaint, is likely to submit expert testimony covering basin boundaries and
25 interconnectedness. SWRCB: (i) informed the City that it would be studying the hydrology of the
26 Watershed in 2016, (ii) issued a Request for Qualifications for a consultant in 2017, and (iii) is
27 currently conducting ongoing monitoring and modeling work. (Rungren Decl., at ¶ 6.) Similarly,
28 VCWPD and OBGMA have studied the hydrology of the Watershed in connection with a

1 recharge project it implemented in the Ojai Valley Groundwater Basin starting in 2015. (*Id.* at ¶
2 7.) OBGMA and the UVRGA are currently preparing Groundwater Sustainability Plans and are
3 engaged in the process of studying their respective basin’s groundwater levels, groundwater
4 pumping, and the interconnectivity of the basins with the Watershed. (*Id.* at ¶8.) Thus, the Court
5 can expect the benefit of expert testimony backed by years of research and analysis submitted by
6 parties representing diverse interests in the Watershed, including members of the public. Cross-
7 Defendant cites dicta in *People ex rel Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th
8 1549, 1573, where the court acknowledged but did not appoint a body or board of disinterested
9 experts – *in lieu of expert witnesses called by the parties* – in cases where the public has a
10 significant health and welfare interest in accuracy “based on the whole scientific truth.” In this
11 case, there is no need to appoint an expert where public agencies and interested parties are taking
12 on active roles in the litigation and will present pertinent expert testimony on the whole scientific
13 truth.

14 **b. There is No Proper Showing that a Neutral Expert is Necessary For A Phase**
15 **One Trial on Basin Boundaries and Interconnectedness**

16 If the Court grants the City’s Motion to Bifurcate, the first issues to be considered in the
17 phase one trial will be narrow and targeted because the boundaries of the groundwater basins
18 within the Watershed are largely not in dispute, and there will be more than sufficient evidence
19 and expert testimony on interconnectivity in the Watershed. The Court will hear from multiple
20 experts and will be capable of making its findings on basin boundaries and interconnectedness
21 after evaluating the evidence at trial. No party has made a showing that the Court requires an
22 independent expert rather than the use of expert witnesses called by the parties and the other
23 neutral, factual reports that will be submitted in order to make findings.

24 First addressing Basin boundaries, the Department of Water Resources (“DWR”) through
25 Bulletin 118, has established boundaries for the Basins in the Watershed, specifically (1) the
26 Upper Ventura River Groundwater Basin (DWR Bulletin 118, Groundwater Basin Number 4-
27 3.01); (2) the Lower Ventura River Groundwater Basin (DWR Bulletin 118, Groundwater Basin
28 Number 4-3.02); (3) the Upper Ojai Valley Groundwater Basin (DWR Bulletin 118, Groundwater

1 Basin Number 4-1); and (4) Ojai Valley Groundwater Basin (DWR Bulletin 118, Groundwater
2 Basin Number 4-2). (Third Amended Cross-Complaint, ¶ 103.)

3 The City anticipates that the only significant basin boundary issue will be the relationship
4 between the boundaries of the Upper Ojai Valley Groundwater Basin and the boundaries of the
5 Watershed. Here, the City acknowledges that the boundaries of the Ventura River Watershed do
6 not encompass the entire Upper Ojai Valley Groundwater Basin. The City does not anticipate
7 significant dispute over how these boundaries related to one another, and an additional expert is
8 not required to address this issue.

9 Second, with regard to interconnection, numerous studies have been conducted over the
10 decades, including by State agencies, evaluating the connectivity of the Watershed, and the City
11 and other parties will provide the Court with ample evidence to evaluate the question of
12 interconnection.

13 **III. THE LIKELIHOOD OF FINDING A QUALIFIED IMPARTIAL EXPERT IS**
14 **LOW, AND THE RISKS OF UNNECESSARY DELAY ARE HIGH**

15 Cross-Defendant's proposal to locate a qualified and impartial "hydrology and geology
16 groundwater basin expert" with a minimum of five (5) years' experience in the Watershed by
17 advertising in the Ventura County Star newspaper (Motion, at p. 11) is not feasible because the
18 likelihood of finding a qualified, impartial expert who is familiar with the Watershed and not
19 already involved in the case is low, and the risks of unnecessary delay are high. Readers of the
20 Ventura County Star newspaper likely live within the Watershed and would likely have an
21 existing bias toward some users of water within the Watershed over others. Similarly, it is likely
22 that the pool of available qualified experts who have not already been contacted by parties in this
23 matter is small.

24 If Cross-Defendant's motion is granted, a phase one trial and ultimate resolution of the
25 issues will likely be substantially delayed. Simply advertising for, vetting, and then selecting a
26 candidate could delay ultimate resolution of this action for months. Any advisor would then need
27 additional time to analyze the pleadings, relevant reports, and studies and perform any necessary
28 independent analysis or testing. Such delay is unnecessary and threatens judicial economy

1 because the Court will already be presented the technical and legal issues necessary to understand
2 and rule on the issues.

3 Cross-Defendant’s Motion should be denied without prejudice because an appointed
4 expert would not be helpful to the Court at this stage of the proceeding. If, after hearing from the
5 parties’ experts who have been studying these issues for years, and reviewing the neutral evidence
6 prepared outside of the context of this litigation, the Court determines that additional expert
7 evidence is required, the Court can re-visit the issue of appointing an expert witness pursuant to
8 Evidence Code section 730 and or Code of Civil Procedure section 845. On the present record,
9 however, the motion should be denied without prejudice because the Court will be well-
10 positioned to rule in the phase one trial on basin boundaries and interconnectedness such that an
11 appointed expert is unnecessary and risks unnecessary delay in this action.


12 **IV. CONCLUSION**

13 For all the reasons herein, the motion for appointment of an expert scientific advisor
14 should be denied.

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Dated: June 1, 2021

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