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 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF LOS ANGELES

11 SANTA BARBARA CHANNELKEEPER, a California
 12 Non-Profit Corporation,

13 Petitioner,

14 v.

15 STATE WATER RESOURCES CONTROL BOARD, a
 California State Agency; CITY OF SAN BUENA
 16 VENTURA, a California Municipal Corporation,
 incorrectly named as CITY OF BUENAVENTURA,

17 Respondents.

18
 19 CITY OF SAN BUENA VENTURA, a California
 Municipal Corporation,

20 Cross-Complainant,

21 v.

22 DUNCAN ABBOTT, an individual; et al.,

23 Cross-Defendants.
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Case No. 19STCP01176

**STATUS CONFERENCE
 REPORT OF
 CROSS-DEFENDANT
 ROBIN BERNHOFT**

Date: February 9, 2021
 Time: 1:30 p.m.
 Dept.: 10
 Judge: Hon. W. Highberger

Trial Date: None Set
 Action Filed: September 19, 2014

1 STATUS CONFERENCE REPORT

2 Cross-Defendant Dr. Robin Bernhoft (Dr. Bernhoft) submits this Status Conference Report
3 in advance of the Status Conference scheduled in this case for February 9, 2021, at 1:30 p.m. Due
4 to fundamental disagreements on proposed scheduling, Dr. Bernhoft is unable to join in the City of
5 Ventura’s status report. Dr. Bernhoft is considering whether to join the presently available
6 stipulation to the proposed physical solution, but has not made a final decision, and in the meantime
7 must protect his rights as a party.

8 The City of Ventura has cast a wide net to shift its responsibilities under the Endangered
9 Species Act, and other laws, onto others. Dr. Bernhoft is a homeowner in the City of Ojai. He uses
10 a well at his home to irrigate landscaping. That is all. He is unaware of any basis on which the City
11 of Ventura (which pumps no groundwater in Ojai, as far as can be told) can demonstrate that his
12 domestic groundwater production in Ojai has any hydrologic or legal connection with the City’s
13 allegedly illegal surface water diversions.

14 Yet he and thousands of his neighbors have been dragged into the City of Ventura’s dispute
15 as cross-defendants. Their overlying groundwater rights are now subject to an expensive and
16 potentially years-long adjudication, for which they must spend hundreds of dollars in filing fees
17 and untold attorney fees and likely expert witness costs just for the privilege of meaningfully
18 participating. And, the City of Ventura has claimed that it has successfully acquired title through
19 prescription to at least some of Dr. Bernhoft’s and his Ojai neighbors’ overlying groundwater rights.
20 By necessary implication, the City claims it has taken those rights without due process or just
21 compensation.

22 There are two necessary factual predicates underlying these claims. First is that the
23 groundwater basin underlying Ojai is sufficiently connected with the basin underlying the City of
24 Ventura’s wells that, when Ventura illegally pumped groundwater to which it had no right, it was
25 pumping Dr. Bernhoft’s groundwater. Second, that the groundwater basin underlying
26 Dr. Bernhoft’s home in Ojai and that underlying the City of Ventura’s well are functionally the
27 same basin, to the point that the City of Ventura arguably has legal standing to demand that
28 Dr. Bernhoft and all of his neighbors submit to an adjudication of the Ojai groundwater basin.

1 If the City of Ventura cannot prove such a connection, then as a stranger to the Ojai basin
2 it should have no standing to insist that Dr. Bernhoft and his Ojai neighbors' groundwater rights be
3 adjudicated. Nor could the City of Ventura prove, no matter how much groundwater it may claim
4 to have illegally pumped in the past, that it took Dr. Bernhoft's groundwater rights fair and square
5 when it did so.

6 And yet, without proving any of these facts or the right to recover anything in this case, or
7 even submitting to discovery on these issues, the City of Ventura asks this Court to skip directly to
8 the remedy phase. The City of Ventura has not even finished joining the thousands of parties that
9 it has decided need to be part of this case, and cannot represent to this Court that the case is at issue.
10 The City of Ventura has spent years attempting to identify and then serve all of the cross-defendants
11 that it chose to sue, and has not yet completed that task. But it now argues that time is of the essence
12 and that we should give it a pass on the liability phase, and go straight to remedy.

13 Nor does the City of Ventura seek a remedy that all, or even many, of the cross-defendants
14 had a hand in negotiating. That limited negotiation was done within a small group of well-connected
15 parties who could afford to participate in a mediated settlement. The resulting document is lengthy,
16 technical, and complex, and may contain traps for the unwary small landowner. For low-volume
17 groundwater pumpers in Ojai, it may prove a fair settlement, and as indicated above Dr. Bernhoft
18 may yet agree to it. But as the City of Ventura concedes in its Status Report, the actual content of
19 the settlement proposal is being modified based on input from other parties, and the final form of
20 it is therefore not yet known.

21 Dr. Bernhoft is aware that the right of civil litigation in the courts—a basic element of a
22 free and self-governing people—requires that defendants respond to litigation, and that our
23 adversary system requires parties to advance their own evidence and arguments. He certainly does
24 not ascribe to this Court the inconvenience and intrusion of this lawsuit on him and thousands of
25 his neighbors in Ojai. He knows that the Court has the difficult task of managing this case consistent
26 with the rights of all the parties. Dr. Bernhoft recognizes, rather, that the City of Ventura is the one

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1 responsible for dragging him into its problems. All he asks of the Court at this time is that the proper
2 order of civil litigation be observed: liability first, and only then remedy, if any.

3 So, rather than the schedule proposed by the City of Ventura, Dr. Bernhoft asks that the
4 Court order the following in this case:

5 1. Set a date certain by which the City of Ventura is to complete service of cross-
6 defendants and submit any request for required court-approval of notice by publication on
7 remaining unserved cross-defendants. Dr. Bernhoft defers to the City of Ventura on how much time
8 it needs to complete those two tasks.

9 2. Set a later date certain by which non-responding cross-defendants are to appear or be
10 defaulted.

11 3. Leave the current stay in effect until after those two dates.

12 4. After those two dates, set a status conference to identify any potentially dispositive legal
13 issues and other legal issues which may narrow the factual issues in the case, and set a briefing and
14 hearing schedule on those issues. Among these issues are, without limitation, what proof of
15 hydrologic connection the City of Ventura would have to demonstrate between the Ojai basin and
16 other locations in order to prevail on its various claims, whether the City would have standing to
17 demand an adjudication as to any area covered by this lawsuit for which it cannot make the
18 necessary demonstration, whether as a matter of law it can prevail against the landowners of another
19 city under a pueblo water rights, treaty water rights, or municipal priority theory, and whether there
20 is any claim that can be brought under California's human right to water statute.

21 5. Once those preliminary legal issues are addressed, the Court should then consider
22 whether the case would be simplified by phased litigation of the factual question of whether there
23 is a hydrologic connection between the Ojai groundwater basin and the location of any of the City
24 of Ventura's pumps or diversions, and what the nature of that connection is. This factual issue
25 might narrow the case as to most if not all of the City of Ventura's claims against overlying
26 groundwater owners in Ojai.¹

27 ¹ The Court might also consider at that time whether to require the City of Ventura to present its
28 evidence of adverse pumping and constitutionally adequate notice of the same to Ojai basin

1 Dr. Bernhoft submits this alternative proposal as superior to the City of Ventura’s. This
2 proposal puts the steps of litigation in the right logical order, ensures that the City actually joins all
3 of the parties before starting discovery solely on its preferred remedy, and requires the City to prove
4 the elements of its claims before it buffalos thousands of Ojai homeowners into a “take it or leave
5 it” choice on a privately negotiated deal foisted on them by the City of Ventura.

6 DATED: February 2, 2021.

Respectfully submitted,

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landowners under its prescription claim.

1 **DECLARATION OF SERVICE**

2 I, Tawnda Dyer, declare as follows:

3 I am a resident of the State of California, residing or employed in Sacramento, California.
4 I am over the age of 18 years and am not a party to the above-entitled action. My business address
5 is 930 G Street, Sacramento, California 95814.

6 I hereby certify that on February 2, 2021, I electronically served the attached STATUS
7 CONFERENCE REPORT OF CROSS-DEFENDANT ROBIN BERNHOFT by transmitting a true
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1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 declaration was executed this 2nd day of February, 2021, at Roseville, California.

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