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7		Exempt from Filing Fees
8		Gov. Code, § 6103
9	SUPERIOR COURT FOR TH	IE STATE OF CALIFORNIA
10	COUNTY OF L	LOS ANGELES
11		
12	SANTA BARBARA CHANNELKEEPER,	Case No. 19STCP01176
13	a California non-profit corporation,	Judge: Honorable William F. Highberger
14	Petitioner,	STATUS CONFERENCE STATEMENT AND
15	v.	RESPONSE TO OSC
16	STATE WATER RESOURCES CONTROL BOARD, a California State Agency;	Date: December 9, 2021 Time: 2:30 pm
17	CITY OF SAN BUENA VENTURA, a California municipal corporation, incorrectly named as CITY	Dept: 10 310 North Spring Street
18	OF BUENA VENTURA,	Los Angeles, CA 90012
19	Respondents.	Action Filed: September 19, 2014
20		First Amended Complaint Filed: September 7, 2018
21		
22	CITY OF SAN BUENA VENTURA, a California	
23	municipal corporation,	
24	Cross-Complainant, v.	
25	DUNCAN ABBOTT;	
26	AGR BREEDING, INC; et al.	
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	{00260665.2} STATUS CONFERENCE STATE	MENT AND RESPONSE TO OSC

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STATUS CONFERENCE STATEMENT AND RESPONSE TO OSC

Cross-Defendant City of Ojai (Ojai) submits this status conference statement in advance of the status conference scheduled for December 9, 2021 at 2:30 p.m.

I. Order to Show Cause Regarding Boundaries

5 Ojai previously stated that it does not oppose a determination of boundaries with the caveat that the determination of boundaries is not used, interpreted, or relied upon as 6 7 establishing any fact or matter of law other than the physical boundaries of the four groundwater basins.¹ Counsel for Ojai communicated this position to counsel for Ventura. 8 9 Consistent with its position, Ojai objects to the Proposed Order to the extent it includes the text 10 shown below in bold:

2. Groundwater Basin Boundaries. There are four DWR-defined groundwater basins and subbasins (basin numbers 4-1, 4-2, 4-3.01, and 4-3.02) located wholly or partially within the Watershed, and their lateral boundaries are defined by DWR's Bulletin 118 as of the date of this order and as more fully set forth below. DWR may adjust these boundaries from time to time through updates to Bulletin 118, and they are subject to further refinement and future orders under the Court's continuing jurisdiction.

(Proposed Order, p.2:17-23, emphasis added). This text makes a determination of a question of 16 law that has not been established in this case. Moreover, whether the Ojai basin is subject to 17 the Court's "continuing jurisdiction" is one of the topics to be raised in Ojai's motion for 18 judgment on the pleadings. Therefore, it is inappropriate for the text of this Order to make 19 findings related to jurisdiction ahead of Ojai's motion for judgment on the pleadings and 20 21 without legal support.

Ojai proposes that the Court strike this improper language in bold above from the 22 Proposed Order so that it simply reads as follows: 23

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- 26 ¹ Prior to, and in meet and confer efforts regarding Ventura's request for an OSC, Ojai and other parties previously suggested that the parties stipulate to the watershed and basin 27 boundaries as there did not appear to be any conflict regarding the relevant facts. Ventura rejected that approach and insisted on bringing the instant OSC. 28 {00260665.2}

2. Groundwater Basin Boundaries. There are four DWR-defined groundwater basins and subbasins (basin numbers 4-1, 4-2, 4-3.01, and 4-3.02) located wholly or partially within the Watershed, and their lateral boundaries are defined by DWR's Bulletin 118 as of the date of this order and as more fully set forth below. DWR may adjust these boundaries from time to time through updates to Bulletin 118.

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II. Discovery Concerns

5 This Court previously set deadlines for the parties to produce their expert disclosures, 6 reports and materials relied upon pursuant to Code of Civil Procedure section 843. The City of 7 Ventura (Ventura) was required to produce its expert(s) report and materials no later than 8 August 30, 2021. Ojai and others were required to produce the same no later than September 9 24, 2021. On August 31, 2021, Ventura served three separate expert reports (one of which was 10 a combined report of two experts) and exhibits. Ventura provided 149 Exhibits in support of its 11 expert hydrologist's report in addition to 81 separate refences to studies and other materials.

Recently, however, Ojai learned that Ventura intentionally withheld the model that Ms.
Archer developed and relied upon in forming her opinions. (See Declaration of Holly J.
Jacobson ("Jacobson Decl.") ¶3, Attachment A) Withholding this model is not permitted under
Code of Civil Procedure section 843 or the discovery schedule set by this Court.

16 In response to East Ojai Group's request for the (untimely) production of the model prior to Ms. Klug's deposition, counsel for Ventura refused to produce it stating that it may be 17 further withheld until Ms. Archer's deposition in January under the Code of Civil Procedure 18 section governing general expert witness notices of deposition. (Jacobson Decl. at ¶3, 19 Attachment A; see also Code Civ. Proc. §2034.415) Counsel for Ojai informed Ventura that its 20 21 decision to withhold this information violated Code of Civil Procedure section 843(b)(2), which is the specific statute that governs production of discovery in cases brought under the 22 comprehensive groundwater adjudication statute such as this one, and was not justified by 23 section 2034.415. Counsel for Ojai further informed Ventura that the refusal to produce this 24 information directly impacted Ojai's ability to prepare for depositions and trials. Ventura 25 responded late on Friday, December 4th, that it would not produce the model. (Jacobson Decl. 26 27 at ¶3, Attachment A)

{00260665.2}

Ojai has serious concerns about the intentional withholding of the model that was used to create data that Ms. Archer relies upon throughout her expert opinion, including, but not limited to the prejudicial impact this has on Ojai's ability to complete its rebuttal report by January 7, 2021. Additionally, Ojai is concerned that there may be other opinions and data that are being withheld by Ventura related to Ms. Archer's opinions and work product that will not be discovered until her deposition on January 6, 2021 (a week before the Discovery cutoff date). If this proves to be the case, it will, obviously, further prejudice Ojai and other parties.

8 Ojai believes that there are two ways to address these concerns. First, the court can 9 grant a motion to strike and exclude all testimony and evidence related to the withheld 10 discovery. This option would lead to a somewhat draconian result in this instance, because 11 Ventura is relying on Ms. Archer's testimony to establish connectivity between the aquifer and 12 the surface waters and to meet its burden of showing that pumping by these defendants 13 significantly impacts the surface water flows, which are key factual questions in this case.

Alternatively, to remedy Ventura's improper withholding of the model relied upon by its
expert as the basis of her opinions, the court could direct Ventura to do the following:

- produce all withheld data, exhibits, or opinions of Ms. Archer no later than January 3rd, 2022;
- Permit the parties to conduct the initial deposition of Ms. Archer three to four weeks later (assuming there is a mutually agreeable date the week of January 27-28th);
- Allow parties to provide supplemental rebuttal opinions only as to Ms. Archer's modeling and modeling related opinions three to four weeks after her deposition on the modeling work and data occurs;
- Allow Ventura to depose any expert that provides a supplemental opinion on the limited issue of the modeling work and data within one to two weeks after the submittal.
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- 5. Move the trial date, but not the discovery cutoff date, to commence shortly after

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1	the depositions are finished and at a time that the court and the parties are	
2	available.	
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4	Dated: December 6, 2021 Respectfully submitted,	
5	Bartkiewicz, Kronick & Shanahan, PC	
6	Linskook.	
7	By: <u>JOUR</u> JENNIFER 7, BUCKMAN	
8	HOLLY J. JACOBSON Attorneys for CITY OF OJAI,	
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	STATUS CONFERENCE STATEMENT AND RESPONSE TO OSC	