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 Gov. Code, § 6103

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,
 a California non-profit corporation,

Petitioner,

v.

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

Respondents.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

**STATUS CONFERENCE STATEMENT AND
 RESPONSE TO OSC**

Date: December 9, 2021

Time: 2:30 pm

Dept: 10

**310 North Spring Street
 Los Angeles, CA 90012**

Action Filed: September 19, 2014

First Amended Complaint Filed:
 September 7, 2018

CITY OF SAN BUENA VENTURA, a California
 municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT;
 AGR BREEDING, INC; et al.

{00260665.2}

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

4 **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 references to studies and other materials.

12 Recently, however, Ojai learned that Ventura intentionally withheld the model that Ms.
13 Archer developed and relied upon in forming her opinions. (See Declaration of Holly J.
14 Jacobson (“Jacobson Decl.”) ¶3, Attachment A) Withholding this model is not permitted under
15 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
17 prior to Ms. Klug’s deposition, counsel for Ventura refused to produce it stating that it may be
18 further withheld until Ms. Archer’s deposition in January under the Code of Civil Procedure
19 section governing general expert witness notices of deposition. (Jacobson Decl. at ¶3,
20 Attachment A; *see also* Code Civ. Proc. §2034.415) Counsel for Ojai informed Ventura that its
21 decision to withhold this information violated Code of Civil Procedure section 843(b)(2),
22 which is the specific statute that governs production of discovery in cases brought under the
23 comprehensive groundwater adjudication statute such as this one, and was not justified by
24 section 2034.415. Counsel for Ojai further informed Ventura that the refusal to produce this
25 information directly impacted Ojai’s ability to prepare for depositions and trials. Ventura
26 responded late on Friday, December 4th, that it would not produce the model. (Jacobson Decl.
27 at ¶3, Attachment A)

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

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

- 16 1. produce all withheld data, exhibits, or opinions of Ms. Archer no later than
17 January 3rd, 2022;
- 18 2. Permit the parties to conduct the initial deposition of Ms. Archer three to four
19 weeks later (assuming there is a mutually agreeable date the week of January
20 27-28th);
- 21 3. Allow parties to provide supplemental rebuttal opinions only as to Ms. Archer's
22 modeling and modeling related opinions three to four weeks after her deposition
23 on the modeling work and data occurs;
- 24 4. Allow Ventura to depose any expert that provides a supplemental opinion on
25 the limited issue of the modeling work and data within one to two weeks after
26 the submittal.
- 27 5. Move the trial date, but not the discovery cutoff date, to commence shortly after
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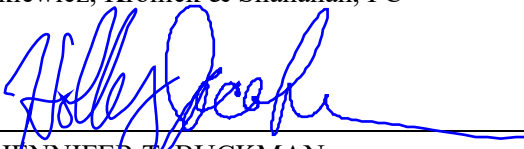
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the depositions are finished and at a time that the court and the parties are available.

Dated: December 6, 2021

Respectfully submitted,

Bartkiewicz, Kronick & Shanahan, PC

By: 
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HOLLY J. JACOBSON
Attorneys for CITY OF OJAI,