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CASITAS MUNICIPAL WATER DISTRICT,
12 a California special district

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE

15 SANTA BARBARA CHANNELKEEPER, a
California non-profit corporation,

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Petitioner,

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v.

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

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Respondents.

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23 CITY OF SAN BUENA VENTURA, a
California municipal corporation,

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Cross-Complainant,

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v.

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DUNCAN ABBOTT, et al.

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Cross-Defendants.

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Case No. 19STCP01176

Hon. William F. Highberger; Dept: 10

**STATUS CONFERENCE REPORT OF
CROSS DEFENDANT CASITAS
MUNICIPAL WATER DISTRICT**

Further Status Conference Hearing:

DATE: November 2, 2021

TIME: 2:00 p.m.

DEPT.: 10

Date Action Filed: September 19, 2014

Third Amended Cross Complaint Filed:

January 2, 2020

1 **STATUS CONFERENCE REPORT**

2 Cross-Defendants CASITAS MUNICIPAL WATER DISTRICT, a California special
3 district (“Casitas”), submits this Separate Status Conference Report (“Report”) in advance of the
4 Status Conference scheduled for November 2, 2021 at 2:00 p.m. Casitas understands that the
5 November 2 status conference will be primarily focused on the issue of experts, and expert
6 discovery, and the Court invited Casitas and other interested parties to submit reports on the
7 matter of experts prior Casitas did attempt to meet and confer with the City of Ventura
8 (“Ventura”) on numerous occasions over the last week in an effort to obtain Ventura’s
9 concurrence regarding the ability of Casitas to designate experts after the otherwise applicable
10 September 24 deadline initially set forth by the Court in its ruling of July 23, 2021.

11 During meet and confer, Ventura initially indicated it would not object to Casitas’
12 anticipated rebuttal experts. This was not surprising since rebuttal experts are specifically
13 authorized by Code of Civil Procedure §843(d), and are not addressed in the Court’s prior orders.
14 What was surprising was that Ventura in its Joint Status Conference Report filed earlier today
15 completely changed course. Ventura now makes the remarkable assertion, untethered to the plain
16 language of CCP § 843 (d) and (e), and the Court’s prior rulings, that rebuttal experts are really
17 just “supplemental experts” in disguise, and are accordingly also barred from testifying at trial
18 unless designated on or before the deadline for primary experts. Such an interpretation, as
19 discussed later herein, is nonsensical and directly contrary to CCP § 843, thereby necessitating
20 Casitas’ filing of this separate Status Conference Report.

21 For the reasons provided herein, Casitas now asks this Court to allow it to designate
22 experts—primary, supplemental and rebuttal—on or before December 10, 2021 since it is now
23 plain that Phase 1 of the litigation will be significantly broader than the Phase 1 proceeding
24 Ventura requested in its motion to bifurcate. Justice requires that Casitas, one of the largest water
25 suppliers in the Ventura River Watershed, and the owner/operator of many of the major facilities
26 on the Ventura River and tributaries, not be precluded from fully participating in the Phase 1 of
27 trial now that the actual scope of Phase 1 that Ventura and other parties seek is fully revealed per
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1 discussions that took place at the October 18 case management conference (“CMC”).¹

2 **I. THE OCTOBER PHASE I APPEARS TO HAVE EXPANDED SIGNIFICANTLY**
3 **FROM THE SCOPE INDICATED IN VENTURA’S MOTION FOR**
4 **BIFURCATION**

5 As discussed at some length during the October 18 CMC, Casitas did not designate experts
6 and did not submit an expert report for Phase 1 of trial because the scope of Phase 1 appeared
7 relatively narrow—a determination of basin boundaries and hydrologic connection (or not)
8 between certain groundwater and surface water resources within the Ventura River watershed. *See*
9 Motion to Bifurcate at p. 2:

10 “The City will and hereby does move: (1) for an order bifurcating this proceeding
11 such that the Court *try the issues of the boundaries of the Ventura River*
12 *Watershed (“Watershed”) and the four groundwater basins therein, as well as the*
13 *interconnectivity of the Watershed and the groundwater basins* in a first phase of
14 trial...The motion is based on the ground that conducting the trial of this matter in
15 separate phases, *with an initial phase of determining the boundaries of the*
16 *Watershed and groundwater basins*, will be conducive to judicial economy and will
17 promote the ends of justice.”

18 Casitas did not previously designate experts because a determination of hydrologic
19 connection and basin boundaries should have been a relatively straight forward matter, a task for
20 hydrogeologists and cartographers to opine upon, not a trial that requires the designation of
21 fisheries biologists, water rights historians, and botanists. But having sold the court on a narrow
22 bifurcation of issues to be tried in Phase 1, Ventura quickly pivoted. It now seemingly seeks a
23 determination not only of boundaries and hydrologic connection, but also a determination that
24

25 ¹ As Ventura observed in its points and authorities for its May 11, 2021 Motion to Bifurcate
26 (“Bifurcation P&A”), “[t]he Court has inherent authority to provide for the orderly conduct of
27 proceedings before it (Code Civ. Proc. § 1 28; *Santandrea v. Siltec Corp.* (1976) 56 Cal.App.3d
28 525, 529 [‘Every court has the inherent power to regulate the proceedings of matters before it and
to effect an orderly disposition of the issues presented.’]) The Court also has authority, if cause is
shown, to stage and sequence the timing of discovery for the convenience of parties and in the
interests of justice. (Code Civ. Proc. § 20 1 9.020, subd. (b).)” (Bifurcation P&A at p. 14.)
Casitas agrees.

1 pumping in the Ojai Basin materially affects the downstream fishery and Ventura’s claimed prior
2 rights, a finding of a cause and effect relationship, not simply a finding of a hydrologic
3 connection. Indeed, only one of Ventura’s four designated experts is a hydrogeologist. Casitas’
4 concerns regarding scope creep were further confirmed at the October 18 CMC where it soon
5 became apparent that not only was Ventura seeking a cause and effect determination regarding the
6 impact of upstream pumping on the health of the fishery,² but the East Ojai Group was also
7 seeking a determination of the impact of individual pumpers in the Ojai Basin on the downstream
8 fishery (albeit with very different conclusions).

9 All of the aforementioned experts, and the opinions they would propose to render, would
10 seem to stray fairly significantly from the narrow questions of watershed boundaries and
11 hydrologic connectivity, which were the purposes Ventura briefed in its motion to bifurcate. To
12 the extent that the Court is inclined to allow a broader exploration of cause and effect relationships
13 between groundwater pumping and specific impacts on fish and habitat, it needs to allow parties to
14 make additional expert designations given the clear expansion of the scope of trial in Phase 1.

15 **II. DESIGNATION OF CASITAS’ ONE PRIMARY EXPERT WITNESS WILL NOT**
16 **PREJUDICE ANYONE**

17 Casitas intends, if authorized by the Court, to designate Jordan Kear as its expert. Mr.
18 Kear would provide the same expert opinions for Casitas as are already disclosed in his existing
19 expert report produced on behalf of the City of Ojai. Thus, there are no new opinions at this time,
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21 _____
22 ² As noted at the October 18 CMC, Ventura’s designated experts include: (a) a historian who
23 will opine upon historical documents from 1920 to 1959 not related to hydrogeology; (b) a
24 fisheries biologist who has formed opinions on “the importance of migration, spawning, and
25 juvenile rearing habitat within the San Antonio Creek and its tributaries, including Lion Creek, to
26 the overall health and condition of Southern California steelhead inhabiting the Ventura River
27 watershed”; (c) a botanist who will opine on the presence of certain species of vegetation along
28 San Antonio Creek.

1 and there will be no new depositions; Mr. Kear will simply render opinions on behalf of two
2 cross-defendants rather than one. It is difficult to understand how the City could possibly be
3 prejudiced under such a scenario as there will be no delay, and no additional work. To the extent
4 that Casitas determines to have Mr. Kear provide any supplemental expert opinions, a decision
5 which it has not yet made, such opinions would be rendered before the existing December 10
6 deadline for supplemental disclosures and reports. There will be no additional delay and no
7 additional depositions, since Mr. Kear's deposition is currently scheduled for December 15, five
8 days after the cutoff for supplemental disclosures.

9 **III. THE COURT SHOULD CONSIDER CLARIFYING HOW AND WHEN**
10 **REBUTTAL EXPERT DISCLOSURES SHOULD BE MADE.**

11 In addition to Mr. Kear, Casitas envisions potentially designating two additional rebuttal
12 experts. The trial schedule approved by the Court on or about July 23, 2021 does not address
13 rebuttal and/or impeachment experts. CCP section 843 does. CCP section 843, subparagraphs (d)
14 and (e), state in pertinent part:

15 (d) Unless otherwise stipulated by the parties, a party shall make the disclosures of any
16 expert witness it intends to present at trial, *except for an expert witness presented solely*
17 *for purposes of impeachment or rebuttal*, at the times and in the sequence ordered by the
18 court.

19 (e) *The court may modify the disclosure requirements of subdivisions (b) to (d),*
20 *inclusive, for expert witnesses presented solely for purposes of impeachment or rebuttal.*

21 In modifying the disclosure requirements, the court shall adopt disclosure requirements
22 that expedite the court's consideration of the issues presented and shall ensure that expert
23 testimony presented solely for purposes of impeachment or rebuttal is strictly limited to the
24 scope of the testimony that it intends to impeach or rebut.

25 A couple of things are apparent from a cursory review of CCP § 843. First, contrary to
26 Ventura's assertions, rebuttal expert disclosures are quite distinct from supplemental expert
27 disclosures. The scope of opinions to be rendered are different, the dates and timing for
28 disclosures are different, and the process for disclosing reports is different. Second, rebuttal and

1 impeachment experts are specifically authorized even if not part of a prior court order or
2 stipulation of the parties.

3 In any event, the Parties current schedule does not include any time for the deposition of
4 rebuttal experts, and it does not specify the deadline for disclosure of rebuttal expert reports—
5 though CCP 843 (e) clearly contemplates that the Court has the authority to regulate the timing
6 and content of rebuttal expert reports. The Court should consider directing the parties to meet and
7 confer over adjustments to the schedule to facilitate rebuttal expert depositions, and such
8 depositions should presumably occur *after* the conclusion of depositions of primary and
9 supplemental experts. Casitas will be prepared to designate its rebuttal experts on or before
10 December 10.

11
12 Dated: October 28, 2021

RUTAN & TUCKER, LLP
JEREMY N. JUNGREIS
DOUGLAS J. DENNINGTON

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15
16 By: 

17 Jeremy N. Jungreis
18 Attorneys for Cross-Defendant
19 CASITAS MUNICIPAL
20 WATER DISTRICT,
21 a California special district
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18575 Jamboree Road, 9th Floor, Irvine, California 92612. My electronic notification address is mmartinez@rutan.com.

On October 28, 2021, I served on the interested parties in said action the within:

**STATUS CONFERENCE REPORT OF
CROSS DEFENDANT CASITAS MUNICIPAL WATER DISTRICT**

as stated below:

By transmission via E-Service to File & ServeXpress as listed on File & ServeXpress service list.

Executed on October 28, 2021, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Marisol Martinez

(Type or print name)

/s/ Marisol Martinez

(Signature)