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In Pro. Per.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,

A California non-profit corporation,

Petitioner/Plaintiff,

v.

STATE WATER RESOURCES CONTROL

BOARD, a California State Agency,

CITY OF SAN BUENAVENTURA, a California

municipal corporation.

Respondent/Defendant

) Case No. 19STCPO1176

) Judge: Honorable William F. Highberger

) **REQUEST FOR JUDICIAL RULING ON**
) **THE SCOPE OF THE PHASE 1 TRIAL FOR**
) **THE DETERMINATION OF BASIN**
) **BOUNDARIES AND**
) **INTERCONNECTEDNESS OF**
) **GROUNDWATER BASINS IN THE**
) **VENTURA RIVER WATERSHED**

Date: November 15, 2021

Time: 1:30 p.m.

Action Filed: Sept. 19, 2014

Trial Date: February 14, 2022

CITY OF SAN BUENAVENTURA, a California

municipal corporation, incorrectly named as

CITY OF BUENA VENTURA,

Cross-Complainant

v.

Duncan Abbott, an individual. et al.,

Cross-Defendants

1 **RESPECTFULLY REQUESTING A RULING BY THE COURT TO SECURE**
2 **THE LEGAL SCOPE OF THE PHASE 1 TRIAL ACCORDING TO NEW AND**
3 **ESTABLISHED LAW GOVERNING GROUNDWATER**

4
5 **THIS CASE CAN BENEFIT BY THE ESTABLISHMENT OF BOUNDARIES TO**
6 **PREVENT SCOPE CREEP OUTSIDE THE JURISDICTION OF THE NEW**
7 **GROUNDWATER LAWS**

8
9 The proceedings of the Phase 1 Trial would be better maintained within its jurisdiction of
10 authority if the court could provide a ruling to prevent scope creep. The court can
11 accomplish the needed jurisdictional protection by mandating the Phase 1 Trial to be
12 governed solely and completely by Code of Civil Procedure Sections (CCP) 830-852.
13 The court may make a ruling that states: this comprehensive adjudication suit will be
14 explicitly governed by the statutes in Code of Civil Procedure Sections (CCP) 830-852
15 and Article X Section 2 of the California Constitution. This ruling will help to make clear
16 who is a legitimate party to be included in the comprehensive adjudication and who is not
17 to be included.

18
19 The Expedited Comprehensive Adjudication statutes in the Code of Civil Procedure
20 Sections 830-852 are the new laws related to the administration, protection, and
21 governance of groundwater in a basin. The Sustainable Groundwater Management Act
22 (Water Code Section 10720 et seq.) was approved by the California Legislature effective
23 2015. Even the appellate court ruling that allowed the CITY OF SAN
24 BUENAVENTURA to file a Cross-Complaint against all the water rights holders in the
25 Ventura River Watershed failed to recognize the relevant importance of these new
26 groundwater statutes in its ruling on January 30, 2018 (19 Cal.App.5th 1176).

1 The Phase 1 Trial should have a narrow scope and be limited to basin boundaries
2 according to Department of Water Resources Bulletin 118, and to the interconnectedness
3 of *groundwater* between legitimate groundwater basins where groundwater is located in
4 saturated alluvium. Interconnectivity must be limited by the court to ascertain whether
5 groundwater in one basin is migrating into another groundwater basin. Interconnectivity
6 must never be confused with **hydrologic connectivity** which is a scientific fact
7 recognizing that on a **global scale** all water is connected. Using hydrologic connectivity
8 to explain interconnectivity between groundwater basins is wrong, prejudicial to this
9 case, and contrary to accepted science.

10
11 In her brief dated March 22, 2021, Ms. Holly Jacobsen, attorney for the City of Ojai, states:

12 When a statute conferring jurisdiction specifies the procedure to be followed, the
13 procedural requirements are themselves jurisdictional.” (*Franczak v. Liberty Mut.*
14 *Ins. Co.*, (1977) 19 Cal. 3d 481, 489.) Thus, if a court acts beyond the statutorily
15 defined procedure, it exceeds its jurisdiction. (*Safer v. Superior Court* (1975) 15
16 Cal.3d 230, 242 (citing *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280,
17 290.)

18 The comprehensive groundwater statute statutory frameworks (Code of Civil
19 Procedures §§ 832 et seq.) authorize the superior court to determine the rights of
20 parties to extract groundwater from a single basin. The plain text of these statutes
21 confirms that Ventura’s proposal to adjudicate four separate basins in one
22 proceeding exceeds the jurisdiction created by the statutory framework.

23
24 The court will no doubt remember that the CITY OF SAN BUENAVENTURA, in their
25 3rd Amended Cross-Complaint, stated the law governing this Cross-Complaint is the
26 Expedited Comprehensive Adjudication Statutes resident in the Code of Civil Procedure
27 Sections 830–852. These statutes provide direction on how to legally implement the
28 Sustainable Groundwater Management Act (SGMA), including its policies, mandates,

1 regulations, and implementation schedules for this new law. Groundwater finally has a
2 law that recognizes that resource as equal to surface water after 170 years of statehood.

3
4 The court should, by ruling, state that the procedure to be used is in Code of Civil
5 Procedures in Sections 830-853.

6
7 **DUE PROCESS IS A FUNDAMENTAL WAY OF PROTECTING *LIFE, LIBERTY***
8 ***AND PROPERTY* AS STATED IN THE U.S. CONSTITUTION BILL OF**
9 **RIGHTS.**

10
11 The Code of Civil Procedure Sections 830-852 governs groundwater in **alluvial**
12 **groundwater basins**. The scope of Phase 1 Trial must be confined to this legal principle
13 because that is the law as it is written for groundwater basins. This new law precludes
14 reliance on common law from pre-SGMA surface water cases or groundwater cases prior
15 to the adoption of CCP Sections 830-852 regarding groundwater as pointed out by
16 Deputy Attorney General Marc Melnick on March 15, 2021, in his brief, *State Agencies'*
17 *Status Conference Report and Supplemental Briefing on Physical Solution Doctrine*. Any
18 attempt by the CITY OF SAN BUENAVENTURA or the Proposing Parties to expand
19 the scope of the Phase 1 Trial into surface water bodies, surface water, or subterranean
20 streams should be precluded and determined to be outside the authority and jurisdiction
21 of this court according to current groundwater laws.

22
23 A riparian/overlying landowner who has a groundwater right but does not exercise their
24 right to extract or store groundwater would have no impact on the flow in the Ventura
25 River, the habitat in the riverine area or any animals or insects living there. Extractors of
26 *de minimus* amounts of groundwater may not materially impact the flow in the Ventura
27 River if they pump from deeper aquifers than the perched aquifer close to the surface.
28 Extraction of groundwater from the deeper aquifers in a bedrock confined groundwater

1 basin may not impact the flow in the Ventura River because the groundwater does not
2 escape. The fact that the riparian/overlying “parties” are in jeopardy of having their
3 water rights, their landholdings and their money removed from them if the Proposing
4 Parties are successful in this lawsuit by having to pay the CITY OF SAN
5 BUENAVENTURA’S legal fees is stark evidence that the protection of their rights
6 through closely monitored due process is essential. Some of the noticed parties may not
7 be legitimate parties in this case and should be removed.

8
9 The court, as the tryer of fact, should try the case in a manner that protects the water
10 rights of owners of property who do not extract groundwater and should litigate
11 reasonableness of use first.

12 13 **ARTICLE X SECTION 2, CALIFORNIA CONSTITUTION**

14
15 Article X, Section 2 of the California Constitution contains many provisions that restrain
16 and control one of the most contentious and controversial dual regulatory issues in our
17 state: appropriative and riparian water rights. The black letter law of the Constitution
18 makes it clear that the Constitution requires the use of water to be (1) usufructuary, used
19 but not owned; (2) that it be limited to only beneficial uses; (3) that the water use must be
20 reasonable; (4) that there must not be any unreasonable method of use; and (5) that there
21 shall not be any waste of water! Finally, nothing in this Constitutional Section shall be
22 construed to deprive any landowner of riparian/overlying water rights to use the water to
23 which they are entitled. This represents California Water Rights 101. The court should
24 not have any difficulty in recognizing legitimate groundwater rights in alluvial basins.

25
26 **Any water rights reductions from existing users will place an extra burden on**
27 **Casitas Municipal Water District to provide “back-up” water to those customers,**
28 **subjecting both the Ojai Basin and Lake Casitas to excessive reductions and**

1 **potential water shortages! This should not be considered a reasonable method of**
2 **use.**

3
4 The Doctrines of Reasonable Use and Reasonable Method of Use, Public Trust,
5 Prescriptive Rights upstream and harming all other water users in the watershed should
6 be considered according to 23 CCR 780, which sets forth the State's authority to
7 condition water rights. This authority is further strengthened by the California Supreme
8 Court in 1983:

9 *The state is not confined by past decisions and has the power to reconsider*
10 *allocations, even though such decisions were made after due considerations of*
11 *their effect on the public trust. Decisions which failed to weigh and consider public*
12 *trust uses present an even stronger case for reconsideration." 33 3d 419. National*
13 *Audubon Society v. Superior Court.*

14
15 Compliance with Article X, Section 2, of the California Constitution would be difficult if
16 not impossible to prove based on reasonable use, reasonable method of use, public trust
17 values not being protected, and, to add injury to insult, no less than 150 years of water
18 waste.

19
20 The court should limit the comprehensive adjudication to a single basin per the statutes or
21 litigate each groundwater separately.

22 23 **CONCLUSION**

24
25 We respectfully request that the court provide a rule that the scope of the Phase I Trial be
26 contained and limited by the statutory requirements of Code of Civil Procedure Sections
27 830-852 and California Water Rights Doctrines located in Article X Section 2 of the
28

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28

1 Adhering to the official, legal definition of groundwater in this case is crucial. The
2 definition resides exclusively in the Code of Civil Procedure Sections 830 to 853. This is
3 the new law having to do with groundwater and in this case, the definition should be
4 rigorously applied without precedence to cases decided by superseded laws or by prior
5 surface water common law.

6
7 As stated above, the court should, by ruling, state that the procedure to be used is Code of
8 Civil Procedures in Sections 830-853.

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20 Dated: November 8, 2021

Claude R. Baggerly

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24 Patricia E. Baggerly

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