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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

CITY OF OJAI'S LIMITED OPPOSITION
 TO VENTURA'S MOTION TO
 BIFURCATE AND PARTIAL LIFTING OF
 THE DISCOVERY STAY

Date: June 21, 2021
 Time: 1:30 p.m.
 Dept: S10

Action Filed: Sept. 19, 2014
 Trial Date: Not Set

CITY OF SAN BUENA VENTURA, a
 California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT;
 AGR BREEDING, INC; et al.

{00244364.1}

CITY OF OJAI'S LIMITED OPPOSITION TO VENTURA'S MOTION TO BIFURCATE AND PARTIAL
 LIFTING OF THE DISCOVERY STAY

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1 **INTRODUCTION**

2 The City of Ojai files this limited opposition to bring a few issues to the Court’s
3 attention. The City of Ojai agrees that the City of Buenaventura (“Ventura”) bears the burden
4 of proof to establish the statutorily required showing of connectivity between the basins if it is
5 going to seek a physical solution to apply to all Cross-Defendants. Holding a bifurcated trial,
6 with Ventura’s unsupported basin interconnected claims tested first, will allow Ventura to do
7 just that and permit many Cross-Defendants the opportunity to get out of a complicated
8 litigation matter that they believe they were unnecessarily drug into. However, as proposed,
9 the motion glosses over details and case management matters that will be necessary to get this
10 first phase ready for trial.

11 While the City would prefer to have the trial conducted as soon as possible, it remains
12 doubtful that there will be sufficient time to complete discovery before the proposed dates in
13 November 2021. As briefly explained below, the City of Ojai opposes the motion only to the
14 extent that the scope and timing of discovery should be determined prior to setting the trial
15 dates and that Phase 1 properly identify the legal issues that will be before the Court.

16 **A. Discovery Should be Defined, Limited, and Determined before the Trial Dates are**
17 **Set.**

18 Ventura’s motion acknowledges that expert and percipient witness discovery will
19 address the issue of the alleged interconnectivity of the basins. However, it offers no
20 information as to how many experts or witnesses this could involve and no limitations on the
21 burden discovery will place on named landowners in the Ojai and Upper Ojai basins. If there is
22 no limitation, Ventura could propound significant written discovery and notice depositions that,
23 while limited to the allegation of interconnectivity, would operate only as a means to annoy and
24 harass the landowner parties.

25 Given that the Initial Disclosures are being submitted by all Cross-Defendants, and
26 Ventura’s assertion that they have the information that they need to allege and prove that the
27 four separate basins are connected for purposes of adjudicating all rights therein, additional

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1 unlimited discovery is not needed. Further, given the sheer volume of individual landowners
2 that maintain there is no connectivity among the basins and no connection to their sources of
3 water, it is easy to see how discovery related to percipient witnesses could easily balloon out of
4 control.

5 Even if discovery was limited to expert opinions, it is unlikely that the parties would
6 have sufficient time to complete depositions and review the reports and files of experts before
7 the proposed November dates. Based upon the parties' comments and positions thus far, it is
8 reasonable to assume that each of the following parties is likely to disclose at least one expert
9 witness:

- 10 1. The City of San Buenaventura
- 11 2. Santa Barbara Channelkeeper
- 12 3. State Water Resources Control Board
- 13 4. Department of Fish and Wildlife
- 14 5. One or more landowners in the Ojai Basin
- 15 6. One or more of the landowners in the Upper Ojai Basin

16 With the number of parties involved, it may be difficult to conclude one or more of these
17 depositions in a single day. Additionally, because California is experiencing drought
18 conditions the likes of which it has not seen since 1977, qualified hydrologists in California are
19 already experiencing significant demands on their schedules unrelated to this litigation.
20 Therefore, it is likely that these qualified experts may have severely limited availability for
21 depositions and trial.

22 For all of the reasons above, the City of Ojai requests that the discovery on Phase I be
23 defined, limited, and further set following the hearing on this motion to avoid future motions or
24 issues relating to discovery and preparation for trial.

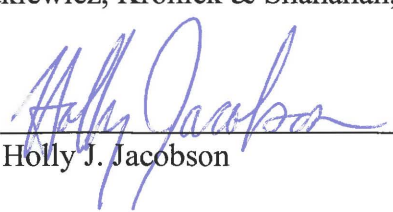
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1 **B. Phase I Must Address the Contested Issue of Connectivity and Statutory**
2 **Requirements.**

3 The first Phase of trial must be properly defined to resolve the foundational questions of
4 alleged connectivity and whether all of the named Cross-Defendants are proper parties to this
5 action. As such, Phase I must be dedicated to the questions of 1) whether the Code of Civil
6 Procedure, section 832 et. seq., provides that the Court can, or should, comprehensively
7 determine rights to extract groundwater among all rights holders across four separate basins in
8 one legal proceeding and if the answer to the first question is in the affirmative; 2) whether
9 there is sufficient evidence to support a finding that there is a surface water body or
10 subterranean stream flowing through known and definite channels that is interconnected with
11 the groundwater that is used, or subject to, the named Cross-Defendants' right to pump from,
12 such that any pumping would impact the flow of that surface water body or subterranean flow.

13 **CONCLUSION**

14 For the foregoing reasons, the City of Ojai respectfully requests that the Court grant the
15 motion to bifurcate in part and deny in part. Specifically, Ojai requests that the motion to
16 bifurcate be granted to allow the trial of Ventura's allegations in Phases, with the first Phase
17 dedicated to the questions identified above. Further, Ojai requests that the motion be denied
18 only in as much that discovery is to be defined, limited and further determined prior to the
19 setting of trial dates to reduce the likelihood of future motions regarding discovery disputes or
20 need to continue trial dates.

21 22 Dated: June 1, 2021 23 24 25 26	Respectfully submitted, Bartkiewicz, Kronick & Shanahan, PC By:  Holly J. Jacobson Attorneys for City of Ojai
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