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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF LOS ANGELES

11 SANTA BARBARA CHANNELKEEPER,
 12 a California non-profit corporation,
 13
 14 Petitioner,

Case No. 19STCP01176
 Assigned to Judge William F. Highberger
 Dept.: 10

Complaint filed: September 19, 2014

15 v.

**CROSS-DEFENDANTS ANDREW K.
 WHITMAN, HEIDI A. WHITMAN,
 NANCY L. WHITMAN AND JOHN R.
 AND NANCY L. WHITMAN FAMILY
 TRUST’S JOINDER IN MOTION TO
 APPOINT WATER EXPERT TO ASSIST
 THE COURT**

16 STATE WATER RESOURCES CONTROL
 17 BOARD, A CALIFORNIA STATE AGENCY;
 18 CITY OF SAN BUENAVENTURA, a
 19 California municipal corporation, incorrectly
 20 named as CITY OF BUENAVENTURA,

21 Respondents.

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CITY OF SAN BUENAVENTURA,
 24 a California municipal corporation,

25 Cross-Complainant,

26 v.

27 DUNCAN ABBOTT, an individual, et al.

28

Cross-Defendants.

This brief is submitted to clarify that ANDREW K. WHITMAN, HEIDI A. WHITMAN,
 NANCY L. WHITMAN AND JOHN R. AND NANCY L. WHITMAN FAMILY TRUST join

1 in the request that the Court appoint a special water expert to assist it with making science-based
2 decisions required by this litigation.

3 Any decision made by this Court in this litigation should begin with the understanding
4 that the CITY OF SAN BUENAVENTURA created the issues which led to this litigation. The
5 CITY (any reference to CITY hereafter shall refer to CITY OF SAN BUENAVENTURA) has
6 overused and abused the extraction of water from the Ventura River and that has resulted in a
7 threat to a species of Steelhead Trout. Despite these facts, the CITY has failed to undertake
8 measures to reduce the CITY's use of Ventura River water and has instead persisted in approving
9 development permits that increase the demand against the limited Ventura River water resource.
10 The litigation persists because the CITY wants to impede, restrict or eliminate other persons or
11 entities' use of water in the greater Ventura River and Ojai Valley watershed. At the same time,
12 the CITY persists in granting additional development permits and increasing the demand against
13 Ventura River water. Furthermore, the CITY has unreasonably joined/sued every person or entity
14 with a potential claim to greater Ojai water rights into the litigation without any justification. The
15 vast majority of the cross-defendants have done nothing to contribute to the dire consequences
16 for the Steelhead Trout in the Ventura River.

17 The appointment of a neutral water expert to assist this Court is something completely
18 within this Court's discretion. It is within the trial court's discretion under Evidence Code section
19 730 to determine whether an expert is needed. *Collins v. Superior Ct.* (1977) 74 Cal.App.3d 47,
20 52. In this case, there is ample evidence to support the use of that discretion. The Court is aware
21 of significant disparity between the resources of the CITY in contrast to the resources of what the
22 Court has openly referred to as the "pip squeak" cross-defendants. This is another way of the
23 Court acknowledging the differences in resources between the CITY and the overlying
24 landowners who have been involuntarily brought into the litigation without regard to whether
25 they contribute to the reduction of available water in the Ventura River.

26 The disparity in resources means that the 'pip squeak' cross-defendants likely won't have
27 the resources to retain water experts to review mountains of scientific hydrology and geology data
28 related to the interplay of riparian water and ground water – while this does not mean there will

1 be no opposing experts, it does predict that the cross-defendants' experts are unlikely to respond
2 with the same vigor as the CITY's experts. There is no obligation that the Court appoint an expert
3 to protect the interest of a weaker litigant. However, there is an absolute duty and obligation on
4 the part of the Court to make the correct decisions based on an appropriate understanding of the
5 relevant considerations and scientific data. The appointment of a water expert will make it much
6 more likely that the decisions made by this Court will be made based upon a correct understanding
7 of the water science.

8 This Court has been vocal in informing the litigants that the science involved in the
9 hydrology and geology issues asserted by the CITY is beyond the Court's comprehension.

10 The CITY has already made many assertions that are patently false. For instance, the
11 CITY asserts that it is a "Pueblo" and it enjoys Pueblo water rights. However, any reasonable
12 review of California records will reveal that the CITY was never designated a Pueblo and is not
13 among any government listing of California pueblos. This demonstrates that the CITY plays fast
14 and loose with the truth. This Court should expect that the experts the CITY retains will be
15 instructed that their opinions need not be confined by fact or science. As acknowledged
16 repeatedly by this Court, the hydrology and geology which will be critical to determinations by
17 the Court involves complex science. The Court should exercise its authority to appoint a water
18 expert who is a both neutral and an unbiased adviser to the Court.

19 Disparity of resources is not a prerequisite to the appointment of the expert. The need to
20 be correct on a technical or scientific issue that is beyond the understanding of the Court is the
21 primary factor. An expert's opinion testimony does not achieve the dignity of substantial
22 evidence where the expert bases his or her conclusion on speculative, remote or conjectural factors.
23 *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 487. When the trial court accepts an
24 expert's ultimate conclusion without critically considering his or her reasoning, and it appears the
25 conclusion was based on improper or unwarranted matters, the Court of Appeal must reverse the
26 judgment for lack of substantial evidence. *People ex rel. Brown v. Tri-Union Seafoods, LLC*,
27 (2009) 171 Cal.App.4th 1549, 1567-68. The appointed expert can assist this Court in making the
28 threshold assessment of which expert testimony is worthy of consideration (based upon accepted

1 scientific principals) and which expert testimony should be excluded because it is speculative,
2 conjectural and not based upon recognized science. More than a century ago, the California
3 Supreme Court proposed that rather than relying on expert witnesses called by the parties, the
4 trial courts should summon a disinterested body or board of experts to give their opinion and
5 reasons to the court and jury regardless of the consequences to either litigant. *Estate of Dolbeer*
6 (1906) 149 Cal. 227, 243. The Evidence Code now provides for a similar remedy, authorizing
7 courts to appoint experts to investigate and render a report on the matter in question, subject to
8 cross-examination by the parties. (Evid. Code, §§ 730, 732.) Resort to such a procedure can
9 reduce the risk of a decision based on anything but the most valid scientific investigation and
10 assessment. *People ex rel. Brown v. Tri-Union Seafoods, LLC*, supra, 171 Cal.App.4th 1549,
11 1573–74.

12 The interests of justice will be served by the appointment of the expert because this will
13 assure that highly technical and scientific information can be examined, assessed and resolved by
14 the Court with the assistance of a neutral unbiased scientist.

15 Respectfully submitted,

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17 Dated: July 15, 2021

/s/ Andrew K. Whitman

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20 attorney for HEIDI A. WHITMAN, NANCY
21 L. WHITMAN and the JOHN R. and
22 NANCY L. WHITMAN FAMILY TRUST
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