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CITY OF SAN BUENAVENTURA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER, a
California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL
BOARD, etc., et al.,

Respondents.

CITY OF SAN BUENAVENTURA, etc.,

Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.,

Cross-Defendants.

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TO GOVERNMENT CODE SECTION 6103

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 19 2021

Sherril R. Carter, Executive Officer/Clerk of Court

Case No. 19STCP01176

Judge: Hon. William F. Highberger

PROPOSING PARTIES' REPLY TO
OBJECTIONS TO DRAFT PROPOSED
PHYSICAL SOLUTION

Date: July 19, 2021
Time: 3:00 p.m.
Dept: SS10

Action Filed: Sept. 19, 2014
Trial Date: Feb. 14, 2022

1 I. INTRODUCTION

2 Pursuant to the Court's order at the July 6, 2021 status conference, the City of San
3 Buenaventura (City), Ventura River Water District, Meiners Oaks Water District, the Wood-
4 Claeysens Foundation, and the Rancho Matilija Mutual Water Company (collectively, Proposing
5 Parties) submit the following reply to the objections to the draft proposed physical solution (PPS)
6 filed by (1) Casitas Municipal Water District (Casitas), (2) Claude R. and Patricia E. Baggerly
7 (Baggerly), (3) East Ojai Group, (4) State Water Resources Control Board and California
8 Department of Fish and Wildlife (State Agencies), (5) the Whitman parties (Whitman), (6)
9 Jeffrey S. Bacon as trustee of the Villa Nero Trust (Villa Nero Trust), and (7) Gregg and Rosanna
10 Garrison (Garrisons).

11 At this time, the Proposing Parties are not asking the Court to take action on the PPS or to
12 resolve any issues discussed in this reply. Rather, the lodgment of the PPS and the comments
13 submitted illustrate the vital need for the PPS and demonstrate for the Court how this case could
14 be resolved, without the need and expense of completing a comprehensive adjudication of water
15 rights, a costly process that can take decades, by providing an adaptive management physical
16 solution to address the challenges that the Ventura River Watershed is currently facing without
17 curtailing water usage. The Proposing Parties recognize that the PPS is in draft form, subject to
18 further negotiation and refinement prior to trial, and they continue to work with parties that are
19 willing to reasonably negotiate. The Proposing Parties continue to make suggested changes based
20 on that meet and confer process. Nevertheless, the Proposing Parties remain steadfast in their
21 belief that a local solution, preferably one that maximizes consensus and substantial stakeholder
22 support, is the best way to protect the Watershed and those who depend on it in compliance with
23 the California Constitution and the public trust doctrine. Accordingly, the Proposing Parties wish
24 to continue to meet and confer with interested parties in order to improve the PPS.

25 II. REPLY TO OBJECTIONS BY CATEGORY

26 A. Cost Allocation/Assessment

27 Casitas and the East Ojai Group object to the cost allocations in the PPS. Casitas
28 specifically objects to its 56.5% allocation for advanced costs whereas the East Ojai group objects

1 to the equalization of cost allocations among surface water diverters and groundwater producers.

2 The PPS specifically recognizes, at page 67, footnote 13, that the percent allocation to
3 Casitas reflects its groundwater and surface water production, some of which is delivered to the
4 City, Meiners Oaks Water District, and Ventura River Water District, among others. The PPS
5 recognizes that further negotiations with Casitas are necessary to ensure an equitable distribution
6 of the costs associated with this water that Casitas diverts from the Watershed but then delivers to
7 others for further distribution and/or use. The Proposing Parties welcome further meet and confer
8 efforts with Casitas on this point, as expressly reflected in the draft PPS in footnote 13.

9 The cost allocation in the PPS reflects the fact that the problems the PPS addresses are
10 Watershed challenges and that everyone has a role to play in improving the conditions in the
11 Watershed. The most efficient way to raise the funds necessary to pay for the implementation of
12 the measures required to face these Watershed challenges is to share the costs among all that
13 directly take water from the Watershed above a de minimis level. Indirect water users, e.g., City
14 and Casitas customers, would similarly contribute monetarily to the solutions through their water
15 rates. Water use is a proxy for contribution; it does not constitute a traditional assessment or
16 groundwater charge.

17 Casitas and the East Ojai Group appear to misread the purpose and the need for the
18 funding necessary to address the problems in the Watershed. This case is not “primarily a
19 groundwater adjudication action” as Casitas suggests. The problems in the Watershed are, in
20 large part, a result of the significant changes that human improvements made to the Watershed to
21 provide both surface and groundwater for the benefit of everyone in the Watershed. The East
22 Ojai Group objects under the incorrect assumption that the PPS needs to carve out individual cost
23 determinations per party based on individual effect on Watershed or even individual effect on the
24 fishery. This would be highly costly, burdensome, and inefficient and is not supported by the
25 law, which provides that courts can impose reasonable costs on the parties in order to fund the
26 physical solution, including, e.g., uniform, flat, and/or volumetric costs. (See *Tulare Irrigation*
27 *District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 574; *Antelope Valley*
28 *Groundwater Cases* (2021) 62 Cal.App.5th 992, 1021.)

1 Again, this is a Watershed-wide problem for which a Watershed-wide solution is required.
2 In the absence of a physical solution that addresses, avoids, and mitigates the material adverse
3 impacts on instream uses, limitations on all consumptive uses may be required. The Court of
4 Appeal has already confirmed this reality, recognizing that the City is not the sole user of the
5 Ventura River and is not solely responsible for its health, when it allowed the City to name other
6 interested parties in this lawsuit. (*Santa Barbara Channelkeeper v. City of San Buenaventura*
7 (2018) 19 Cal.App.5th 1176, 1193-94.) California Courts will not allow reasonable physical
8 solutions to die a “death by a thousand cuts” by entertaining arguments from and excluding
9 individual parties who claim that their usage is minimal and not properly subject to the Court’s
10 jurisdiction. (See *Antelope Valley Groundwater Cases* (2020) 59 Cal.App.5th 241, 272.)

11 The funding mechanism in the PPS also includes several provisions to provide parties
12 additional funding options and to maintain fairness over time. De Minimis users are exempted
13 from the assessment. Parties subject to the assessment may propose measures that they will self-
14 perform to obtain credits against the assessment. The assessment will be re-evaluated regularly.
15 The parties can seek to use other funding options—such as a parcel tax—to fund the costs of the
16 PPS. The parties are also encouraged to seek grants or other third-party sources of funding to
17 reduce the assessment. The PPS therefore includes options and incentives to reduce the costs to
18 individual parties and to encourage fairness.

19 The Proposing Parties contend that the existing cost allocation is a fair way to distribute
20 these costs and address this Watershed issue. However, as noted above, the Proposing Parties
21 remain open to meeting and conferring on these issues.

22 B. Management Committee (Representation and Voting)

23 Casitas, the East Ojai Group, and the State Agencies object to voting protocols and
24 Management Committee composition. As set forth in the PPS at Section 7.2, the Court
25 establishes and will oversee the Management Committee, which will be an arm of the Court. It
26 would consist of five public and private entity representative voting members as well as ex officio
27 members representing the County of Ventura, environmental interests, and the groundwater
28 management entities established under the Sustainable Groundwater Management Act. The

1 Court could remove any Management Committee member not acting in the interests of the
2 Watershed/physical solution. The voting requirements of the PPS, set forth in section 7.7.3.4,
3 shall prioritize consensus decision-making, with weighted majority voting only required when a
4 consensus cannot be reached.

5 The Management Committee is not a separate regulatory agency, nor is it duplicative. It
6 is an arm of the Court and serves to resolve principally technical issues that require
7 administration. It will bring related decisions under one roof and provide certainty where
8 regulatory agencies have left uncertainty and numerous layers of bureaucracy as set forth in the
9 East Ojai Group brief at pages 2:9 through 3:11. A Court-sanctioned Management Committee
10 will cut through the red tape. Rather than duplicating existing efforts or creating another level of
11 government, the Management Committee, with the Court's continuing oversight, will glue
12 together and help facilitate at a Watershed level the various efforts of other agencies and parties
13 with a legally enforceable solution.

14 C. Instream Flows and Adaptive Management

15 The State Agencies claim that the PPS "provides absolutely no new improvements to
16 water flow in the Ventura River watershed." This is not correct. The PPS includes express
17 provisions with respect to flow at Section 7.3.5. This section requires the maintenance of
18 historical flow at three specific locations—Foster Park, San Antonio Creek, and North Fork
19 Matilija Creek. At Foster Park, the City will implement the specific flow protocols set forth on
20 pages 53-56 of the PPS. With regard to San Antonio Creek and North Fork Matilija Creek, the
21 PPS requires that the Management Plan identify historical flow conditions and measures to
22 prevent the degradation of such flow at these two locations. (PPS at 56.) As described on page
23 57 of the PPS, the Management Plan will also provide for voluntary water management measures
24 as well as future measures, subject to Watershed conditions, to maintain and, if feasible, enhance
25 base flows to improve habitat conditions for fishery.

26 Relatedly, Baggerly claims that the PPS lacks adaptive management policies. PPS
27 Section 7.3 mandates adaptive management as a required element under the Management Plan to
28 be prepared under the PPS. Adaptive management will also mandate that the Management Plan

1 be frequently updated. (PPS § 7.7.3.3) Additionally, the Court will retain continuing jurisdiction
2 to admit new evidence and adjust the final physical solution over time to address a change in
3 circumstances in the form of adaptive management. (PPS § 9.2.) Rather than lacking adaptive
4 management policies, adaptive management is a fundamental part and key mandate of the PPS.
5 Moreover, in point of fact, adaptive management is the point of this Court maintaining continuing
6 jurisdiction over the subject matter. For nearly 100 years, courts have capably managed
7 adjudicated areas and physical solutions to address new facts and circumstances as they arise.

8 D. Habitat Improvement, Good Condition, and Management Plan

9 The State Agencies comment that the habitat management projects to improve the
10 Watershed do not have sufficient detail; that obtaining “good condition” of the fishery does not
11 have a sufficient timeline or measurement objectives; and that the Management Plan needs to be
12 drafted now rather than after the Court enters a physical solution.

13 The PPS provides specific details and timelines; provides quantitative and qualitative
14 metrics for measuring and achieving good condition of the fishery; and will maximize the
15 effectiveness of the Management Plan, which will be developed by the Court-authorized
16 Management Committee and approved by the Court, rather than prematurely developed by a
17 limited number of parties.

18 The PPS must be implemented to move the conditions in the Watershed from the baseline
19 conditions toward good condition, and implementation will occur in three phases with defined
20 timelines. (PPS § 7.4.) The first phase is 18 months, during which time the Management
21 Committee will be established and funded, and the Management Plan will be developed and
22 presented to the Court for approval. (PPS § 7.4.1.) It also provides flow management measures,
23 specific habitat improvement requirements, and monitoring during this period. The second phase
24 is 10 years and provides fishery management actions, additional habitat improvements, and
25 continued monitoring and reporting requirements, as well as Management Plan revision as
26 necessary. (PPS § 7.4.2.) The final phase consists of ten year periods of adaptive management,
27 including Management Plan update and re-adoption as necessary, ultimately resulting in good
28 condition of the fishery. (PPS § 7.4.3.)

1 The PPS requires the Management Plan to provide detailed criteria to be used to define
2 and measure what constitutes a healthy fishery and good condition in the Watershed at the
3 individual, population, and community levels or tiers, including qualitative assessment based on
4 the weight of the evidence (evidence which includes both qualitative and quantitative metrics) to
5 make a final assessment of the condition of the fishery. (PPS § 7.3.3.)

6 With respect to the Management Plan, the Proposing Parties maintain that all parties, with
7 the structure of the PPS in place, will have an opportunity to work on the Management Plan with
8 the Management Committee, and that it is more appropriate to have more parties weigh in on its
9 development.

10 E. Uncontrollable Conditions

11 The East Ojai Group complains that PPS Section 7.6 does not directly address agricultural
12 uses. Section 7.6 provides that “an amount of reasonable and beneficial consumptive use of water
13 from the Watershed is necessary to sustain existing human populations and uses and to implement
14 the human right to water.” Uncontrollable Conditions include “the need to provide an amount of
15 reasonable and beneficial consumptive use of water from the Watershed,” which would include
16 agricultural uses. The Proposing Parties are willing to revise this section to explicitly clarify what
17 is implicitly stated.

18 F. Overdraft

19 Whitman alleges that a threshold finding of overdraft must be made before a physical
20 solution can be entered (Whitman Br. at 4:9-18). This is not the law. The physical solution
21 doctrine precedes “overdraft” and adjudication of groundwater rights. It is a product of
22 accommodating conflicts among junior and senior right holders to manage their actions to enable
23 the optimization of beneficial use. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383; *Rancho*
24 *Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 560.) All water right holders may be required to
25 modify their actions to accommodate other beneficial users where their rights are not materially
26 impaired. (*Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d
27 489.)
28

1 Even in groundwater adjudications, Courts have expressly held that physical solutions can
2 be entered without a showing of overdraft. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th
3 266 [“Santa Maria Adjudication”].) In the Santa Maria Adjudication, after initial phases of the
4 case determined the basin boundaries and determined that the basin was not then in overdraft, the
5 majority of the parties reached a stipulated judgment and physical solution. Following the
6 guidance of the Supreme Court in the Mojave adjudication, cited *infra*, one of the remaining
7 phases of the trial considered and determined the water rights of two landowner groups that did
8 not agree to the physical solution. In 2008, the trial court entered the judgment and physical
9 solution, which was ultimately upheld on appeal. (*Id.* at 288-289.) This was all done in the
10 absence of a condition of overdraft.

11 G. Fire

12 The Proposing Parties appreciate the Garrisons’ comments that the uses of water for fire
13 prevention and fire suppression are reasonable and beneficial uses of water. The Proposing
14 Parties are willing to discuss specific language with the Garrisons that could be incorporated into
15 the PPS.

16 H. Proponents of the PPS

17 The Whitman brief contains minimal discussion about the actual substance of the PPS and
18 instead makes unrelated and unfounded allegations against the City. The main objection to the
19 PPS appears to be an objection to the City as the proponent of the PPS. This is not accurate. The
20 PPS is being proposed by five parties, Cross-Complainant City, as well as Cross-Defendants the
21 Ventura River Water District, Meiners Oaks Water District, the Wood-Claeyssens Foundation,
22 and the Rancho Matilija Mutual Water Company. These parties are diverse public and private
23 entities, have different reasonable and beneficial uses and interests (including municipal/domestic
24 and agricultural), and are located in different parts of the Watershed (spanning from the lower
25 Watershed at the City of Ventura, up through Meiners Oaks, and toward Matilija Dam), all of
26 which is reflective of the fact that the Watershed is a shared resource that can and should be
27 cooperatively managed. Numerous other parties have also stipulated to the PPS, and it is the
28 hope of the Proposing Parties, particularly after the Phase 1 trial when the extent of the Watershed

1 and the adjudication is confirmed, that many more parties will view the PPS as a reasonable and
2 cost-effective means to avoid further litigation and improve the Watershed for the benefit of the
3 region as a whole.

4 I. Scope of Action, Reservation of Rights, and Continuing Jurisdiction

5 To make its argument above about cost allocations, Casitas mischaracterizes this
6 adjudication as “primarily a groundwater adjudication action.” (Casitas Br. at 2:7.) This is
7 incorrect as demonstrated in the City’s Third Amended Cross-Complaint and the PPS. Both the
8 operative cross-complaint and the PPS make clear that this is an adjudication of the Ventura River
9 Watershed, which includes the surface water of the Ventura River and its tributaries and
10 contributing underflow (legally surface water) as well as the four interconnected groundwater
11 basins (legally distinct percolating groundwater). (See PPS at 2 and Third Amended Cross-
12 Complaint at ¶ 1.) Similarly, Garrisons object to the scope of a Watershed-wide adjudication and
13 claim there is no precedent for such an adjudication. This is incorrect. Several California water
14 adjudications have involved stream systems and their interconnected groundwater basins such as
15 the Mojave adjudication (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224) and
16 the San Fernando adjudication (*Los Angeles v. San Fernando* (1975) 14 Cal.3d 199). Indeed, it
17 makes sense from a judicial economy perspective for hydrologically interconnected water
18 resources subject to dispute to be adjudicated in a single action. Before imposing the PPS, the
19 Court will have to make certain findings, including under Code of Civil Procedure Section
20 850(a), a draft of which is included in the PPS and is currently redacted per request of the parties
21 and by order of the Court.

22 Casitas, Whitman, Villa Nero, and Baggerly take issue with the reservation of unresolved
23 water rights claims in the PPS, and Baggerly takes issues with the Court retaining continuing
24 jurisdiction. These two issues are related. The reservation of claims objection appears rooted in
25 the concept that the reservation of water rights is solely a benefit to the City. However, the PPS
26 preserves *all parties’* water rights in that none is adjudicated, restricted, or curtailed. (See PPS at
27 2:16-17 and Section 3.2.) The PPS would protect the exercise of not just any water rights claims
28 by the City but all riparian and appropriative claims to the River, as well as all overlying and

1 appropriate claims in the groundwater basins, claims that often involve difficult issues
2 concerning seniority and priority. Everyone's rights are preserved because no rights are being
3 defined or adjudicated. No one is giving up his/her/its rights nor are those rights imperiled. The
4 PPS protects all users and uses in the Watershed while improving the Watershed for the benefit of
5 the fishery and the public trust.

6 As noted above, trial courts generally *must* maintain continuing jurisdiction to determine
7 the physical solution's effectiveness and to order any necessary adjustments. (See *Peabody v.*
8 *City of Vallejo* (1935) 2 Cal.2d 351, 380; Code Civ. Proc., § 852.) "The trial court should by its
9 judgment preserve its continuing jurisdiction to change or modify its orders and decree as
10 occasion may require." (*City of Lodi v. East Bay Municipal Utility Dist.* (1936) 7 Cal.2d 316,
11 344.) Retaining jurisdiction allows a trial court to consider how the physical solution is working,
12 permits the future exercise of the court's equity powers, and helps in "carrying out the policy
13 inherent in the water law of this state to utilize all water available." (*Allen v. Cal. Water and*
14 *Telephone Co.* (1946) 29 Cal.2d 466, 488.) Continuing jurisdiction also alleviates the need to
15 address all issues at one time and allows issues to be deferred for future decision when they are
16 ripe and necessary for resolution. (*City of Santa Maria v. Adam* (2019) 43 Cal.App.5th 152,163-
17 165.) This confirms that water rights issues need not be tried at this time, and that they can and
18 should be reserved under the Court's continuing jurisdiction. The City has undergone significant
19 time and expense to bring all interested parties into this case to ensure a comprehensive solution
20 is achieved. The Proposing Parties assert that the PPS provides this solution, and would largely
21 resolve the litigation, without the need to define water rights.


22 III. CONCLUSION

23 The Proposing Parties appreciate the opportunity to have lodged with the Court their PPS,
24 which could potentially spare the Court, the parties, and the public of the need and expense of
25 completing a comprehensive adjudication of water rights. The Proposing Parties also appreciate
26 the comments submitted in response thereto and welcome further meet and confer efforts to refine
27 and improve the PPS before ultimately seeking the Court's approval thereof.

1 Dated: July 19, 2021

BEST BEST & KRIEGER LLP

2
3 By:


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PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main Street, Suite 390, Walnut Creek, CA 94596. On July 19, 2021, I served the following document(s):

**PROPOSING PARTIES' REPLY TO OBJECTIONS TO DRAFT PROPOSED
PHYSICAL SOLUTION**

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

Executed on July 19, 2021 at Walnut Creek, California


Irene Islas