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Attorneys for Respondent and Cross-Complainant
CITY OF SAN BUENAVENTURA

Exempt From Filing Fees Pursuant to Cal. Gov't Code § 6103

FILED
Superior Court of California
County of Los Angeles

MAY 05 2021

Sherri R. Carter, Executive Officer/Clerk
By Amanda Flores Deputy
Amanda Flores

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.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

NOTICE OF HEARING ON ORDER TO SHOW CAUSE REGARDING CITY OF BUENAVENTURA'S REQUEST AND APPLICATION FOR SERVICE BY PUBLICATION OF SUMMONS ON GATED/FENCED PROPERTIES

Date: May 10, 2021
Time: 1:30 p.m.
Dept: S10

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

RECEIVED
MAY 05 2021
Filing Window

TO ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO THE 51 UNSERVED CROSS-DEFENDANTS RESIDING AT GATED/FENCED PROPERTIES:

PLEASE TAKE NOTICE THAT at the April 19, 2021 Case Management Conference, the Court, in response to the City of San Buenaventura's ("City") application for an order for service by publication, set an Order to Show Cause ("OSC") hearing regarding service by publication of the summons on 51 unserved cross-defendants in the Ventura County Star. The OSC hearing will take place on May 10, 2021, at 1:30 p.m. in Department S10 of the Los Angeles County Superior Court, which is located at 312 North Spring Street, Los Angeles, CA 90012. A true and correct copy of the Court's Tentative Ruling for the April 19th Case Management Conference, which discusses setting an OSC hearing, among other issues, is attached hereto as Exhibit A. The Court Ordered the City to send Notice of the OSC hearing along with Notices and Acknowledgments of receipt to the 51 unserved cross-defendants identified in the application for service by publication via overnight mail by April 28, 2021. The Court further Ordered the City to submit additional documentation regarding the request for publication of the summons on or before May 5, 2021.

PLEASE TAKE FURTHER NOTICE that for the 51 unserved cross-defendants, to the extent you do not sign and return the Notice of Acknowledgement and Receipt that is served on you, or you do not otherwise file an answer to the Third Amended Cross-Complaint, prior to May 10, 2021, you are Ordered to appear at the May 10, 2021 hearing and show cause why service by publication should not be ordered by the Court.

PLEASE TAKE FURTHER NOTICE that all parties wishing to attend the hearing on the OSC regarding service by publication MAY appear remotely via the Court's remote appearance program, LA Court Connect. Parties may sign up for a remote appearance by going to https://my.lacourt.org/laccwelcome, or call (213) 830-0400.

///

06/05/2021

Dated: April 27, 2021

BEST BEST & KRIEGER LLP

By: Christopher Pisano

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0066/0055/240241

EXHIBIT A

EXHIBIT A

E-SERVICE
66524441
Apr 18 2021
07:13PM
File & ServeXpress

19STCP01176 ***Santa Barbara Channelkeeper v. SWRCB***

April 19, 2020 Tentatives re Further Status Conference

Status of Certain Recent Filings:

1. The Court's public website shows that City of Ventura's two ex parte applications to extend deadlines for service of the Cross-Complaint were each signed by me and filed on April 5, 2021.
2. The Court does not find any trace of the submission of plaintiff Santa Barbara Channelkeeper's Request for Dismissal as to defendant City of Ventura. It was supposedly lodged at Mosk on March 16, 2021, but that is no evidence of it having been served on FSX at about that time (as is ALWAYS required for any paper which is going to be filed or lodged with the Court) so my ability to help you with tracing it from my end is limited by your failure to properly serve it. The original would presumably get a Received stamp by Court staff at Mosk to match the date they understood it was left in the drop box, but it would not actually get Filed until a clerical employee (probably at Spring Street Courthouse) had passed on its technical correctness (the same process used in processing Default requests). I will check with my courtroom staff tomorrow to see if they have any idea where the original might be at this time.

Proposed Hearing Date For Motion To Bifurcate And Lift Discovery Stay:
Your proposed hearing date of June 21, 2021 at 1:30 p.m. is acceptable to the Court. Note: our records (both official on eCourt and unofficial on my Outlook calendar) do NOT show any future dates for this case beyond April 19, 2021. I certainly agree we should meet often, but please be sure we have a clear mutual understanding tomorrow as to each and all of our future dates so they get on our calendars.

Comments On Physical Solution Briefing:
I've scratched the surface but not completed a full review of this material. I can raise a few questions:

1. Assuming I agree to grant bifurcation of the First Phase as: (a) determination of boundaries of Basins and Watershed and (b) interconnectedness (if any) of surface water and groundwater basins, when in the process do I address various parties' concerns that (i) misnamed parties should get a quick exit from this case, and (ii) the 1-versus-4 basins question is addressed, e.g. whether the polling requirements for C.C.P. § 850(b) are done on a unified, multi-basin approach or whether four separate polls have to be satisfied? Put differently, when and how do I decide whether four separate adjudications are required as suggested by several parties (though not the Proponents of the draft Physical Solution)? My initial impression is that such decisions should be made long in advance of the start of the First Phase trial and as soon after bifurcation is determined as possible. (Asking this question and the next question is NOT intended as an indication that I will grant the anticipated motion to bifurcate.)
2. What happens if I decide this has to proceed as four separate adjudications for purposes of § 850(b) and otherwise AND the Proponents cannot satisfy the polling test for each of the four groundwater basins? What burden of proof and persuasion then applies? Do the

06/05/2021

Proponents then have to satisfy this burden to obtain judicial approval of the Physical Solution over objection?

3. How soon in the process should I decide the question raised by the Whitman parties and others: Whether City of Ventura enjoys any Pueblo water rights protected by the Treaty of Guadalupe Hidalgo? Is this a pure question of law or a question of fact or some of each?

Video Tour Versus In-Person Tour:
As beautiful as parts of Ventura County can be, the Court fully understands the benefits of doing this via a pre-recorded tour taken by drone for presentation to the Court later in a public court session after the tour footage is edited.

Trial Scheduling:
The jury trial that competed for your attention on March 15 was resolved shortly thereafter, in large part because the parties and their attorneys understood I was serious about commencing their trial as scheduled, in person and with prospective jurors, on March 29. I will be equally serious about moving your case forward on the scheduled day for trial, but I understand this will be a court trial with no jurors needed. You don't presently give me a duration estimate for either trial, and it is perhaps too early to do so. I am NOT a fan of long trials droning on while I take notes on the bench. From many years' experience, I have to acknowledge that lawyers conducting a jury trial are much more respectful of the importance of brevity as compared to lawyers more comfortable in court trials and depositions. I have excellent availability presently for a trial of suitable length, conducted with appropriate dispatch and efficiency, in November 2021 and early 2022. I will review with you on the record tomorrow all the competing trial dates which are set during this period. You WILL be able to get a prompt trial in my courtroom.

Service By Publication:
Given that you represent that the Ventura Sheriff believes he can make no efforts to overcome locked gates at personal residences to effectuate service of the Summons and Cross-Complaint, I will be open to setting an OSC why these cross-defendants should not be served by publication with notice of such OSC served by some mode of confirmed delivery by U.S. Postal, FedEx, UPS or otherwise on the occupants/Cross-Defendants living behind the locked gates. If no persuasive opposition to such OSC is provided by the interested parties, I anticipate approving this necessary fallback mode of service by publication.

Confirmation Of Postal Delivery During Pandemic In Absence Of Signature:
The burden of this ambiguity falls in the first instance on Cross-Complainant City of Ventura since you need proper service to support the enforceability of the ultimate Judgment you hope to obtain. If you think I can or should make some confirming order, make a suggestion as to how you propose to proceed.

Case List Prepared By Outside Vendor:
Please clarify if you expect to treat this database as a reliable, disinterested resource for all parties, their counsel, the Court and (possibly) the public to use or if you expect this database to be treated as the official record of the Court. This will make a big difference as to whether or not I can approve this or if our court administrators should consent to its use.

Possible Use Of Hydrology Master:
Should I appoint a hydrology master given my lack of education in this field? If so, who pays and how do I pick a suitable list of candidates for party objection and ranking?

Other?
What else should we discuss?

06/05/2021

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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, a California State Agency, et al.,

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DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger

PROOF OF SERVICE

Action Filed: September 19, 2014
Trial Date: Not Set

08/08/2021

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, Ste 390, Walnut Creek, CA 94596. On April 27, 2021, I served the following document(s):

NOTICE OF HEARING ON ORDER TO SHOW CAUSE REGARDING CITY OF BUENAVENTURA'S REQUEST AND APPLICATION FOR SERVICE OF PUBLICATION OF SUMMONS ON GATED/FENCED PROPERTIES

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

☐ I caused such envelope to be delivered via overnight delivery. Such envelope was deposited for delivery by United Parcel Service following the firm's ordinary business practices.

☒ by transmission via **E-Service to File & ServeXpress** to the person(s) set forth below. Local Rules of Court 2.10 (P).

☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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06/05/2021

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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 April 27, 2021 at Walnut Creek, California

Irene Islas

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