



1 ROB BONTA
 Attorney General of California
 2 MYUNG J. PARK
 Supervising Deputy Attorney General
 3 MATTHEW G. BULLOCK (SBN 243377)
 MARC N. MELNICK (SBN 168187)
 4 Deputy Attorneys General
 1515 Clay Street, 20th Floor
 5 P.O. Box 70550
 Oakland, CA 94612-0550
 6 Telephone: (510) 879-0750
 Fax: (510) 622-2270
 7 E-mail: Marc.Melnick@doj.ca.gov
Attorneys for Respondent and Intervenor State
 8 *Water Resources Control Board*

9 ERIC M. KATZ
 Supervising Deputy Attorney General
 10 NOAH GOLDEN-KRASNER (SBN 217556)
 Deputy Attorney General
 11 300 South Spring Street, Suite 1702
 Los Angeles, CA 90013
 12 Telephone: (213) 269-6343
 Fax: (213) 897-2802
 13 E-mail: Noah.GoldenKrasner@doj.ca.gov
Attorneys for Intervenor California Department of
 14 *Fish and Wildlife*

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 COUNTY OF LOS ANGELES

19 **SANTA BARBARA CHANNELKEEPER,**
 20
 Petitioner,
 21
 v.
 22
STATE WATER RESOURCES CONTROL
 23 **BOARD, a California State Agency; CITY**
OF BUENAVENTURA, a California
 24 **municipal corporation,**
 25
 Respondents.

Case No. 19STCP01176

**SWRCB'S AND CDFW'S RESPONSE
 BRIEF RE EXPERT DISCLOSURE
 DATES IN PHASE ONE**

Date: July 19, 2021
 Time: 1:30 p.m.
 Dept.: 10
 Judge: Honorable W. Highberger
 Trial Date: None Set
 Action Filed: September 19, 2014

26
 27 **CITY OF SAN BUENAVENTURA,**
California municipal corporation,
 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cross-Complainant,

v.
DUNCAN ABBOTT, an individual; et al.,

Cross-Defendants.

Respondent and intervenor State Water Resources Control Board (the “State Water Board”) and intervenor California Department of Fish and Wildlife (the “Department”) respectfully submit this joint brief on the issue of expert disclosure dates during the phase one trial in this case. The Court, at the July 6, 2021 status conference, identified two issues it wished the parties to address: (1) whether the Court has authority to require cross-complainant City of San Buenaventura (the “City”) to disclose its experts in advance of other parties; and (2) when the expert disclosures should occur. As identified in the filings before the June 21, 2021, status conference, the Court will also need to set the other pre-trial dates for the phase one trial.

I. THE COURT CAN ORDER THE CITY TO DISCLOSE IN ADVANCE OF OTHER PARTIES

As to the first issue, the City points to the language in Code of Civil Procedure section 2034.210, subdivision (a) which requires a “mutual and simultaneous exchange” of expert disclosures. The City also cites to a similar holding in *Fairfax v. Lords* (2006) 138 Cal.App.4th 1019. There is no dispute that the general civil discovery statutes contemplate simultaneous exchange of expert disclosures.

However, this case, as pled by the City, is a comprehensive groundwater adjudication. As such, Code of Civil Procedure section 843 applies to the disclosure of experts. That section is a thorough and complete statutory provision on that issue. And that section uses specific language that is different from the general discovery statute: it says “a party shall make the disclosures of any expert witness it intends to present at trial, except for an expert witness presented solely for purposes of impeachment or rebuttal, at the times and *in the sequence* ordered by the court.” (Code Civ. Proc., § 843, subd. (d), (emphasis added).) The provision goes on to set simultaneous disclosure timelines “[i]f there is no stipulation or court order.” (*Ibid.*)

1 That “in the sequence” authority of the Court is different than the general civil discovery
2 statute relied on by *Fairfax*. There is nothing comparable in section 2034.210 of the Code of
3 Civil Procedure, the general civil discovery expert disclosure statute. And there is no mention in
4 section 843 of the Code of Civil Procedure of expert reports needing to be be “simultaneous” in a
5 comprehensive adjudication. The City’s brief simply glosses over this important language in the
6 statute. This comprehensive adjudication provision simply overrides any inconsistent general
7 discovery statutory provision. (See Code Civ. Proc., § 830, subd. (c) [“The other provisions of
8 this code apply to procedures in a comprehensive adjudication to the extent they do not conflict
9 with the provisions of this chapter.”]; see also *Woods v. Young* (1991) 53 Cal.3d 315, 325 [“a
10 later, more specific statute controls over an earlier, general statute”].) This means that the Court
11 has the authority to order the City to go first, and in advance of the other parties.

12 The City also argues that this case is much more than a groundwater adjudication. But, as
13 long as this case involves a claim to comprehensively adjudicate groundwater pursuant to Code of
14 Civil Procedure sections 830 to 852, including section 843, then those sections apply to this case.
15 (See Code Civ. Proc., §§ 832, subd. (c) [“‘Comprehensive adjudication’ means an action filed in
16 superior court to comprehensively determine rights to extract groundwater in a basin.”], 833,
17 subd. (a) [“this chapter applies to actions that would comprehensively determine rights to extract
18 groundwater in a basin”].) Moreover, the phase one trial is about the interconnectivity of the
19 groundwater basins and the surface water, and whether it is appropriate to adjudicate those
20 together. The only way the City has been able to bring all these parties together to adjudicate this
21 case is through the *in rem* streamlined service requirements that it has used in this case, under the
22 streamlined comprehensive groundwater adjudication statutes. These statutes therefore apply to
23 this case, and the Court has the power to set expert disclosure dates as it sees fit.

24 **II. THE TIMING OF EXPERT DISCLOSURES**

25 It appears that the City is prepared to make its expert disclosures by late August 2021, or
26 perhaps even earlier.

27 The State Water Board and the Department will not be prepared to do expert disclosures
28 before September. Long ago, the State Water Board and the Department suggested September

1 24, 2021, as an expert disclosure date (see State Agencies' Response to City's Motion to
2 Bifurcate and Claude and Patricia Baggerly's Motion for a Court-Appointed Scientific Expert,
3 filed June 1, 2021, p. 6), taking into account the time necessary to prepare expert disclosures, and
4 they are prepared to meet that deadline. That timing will allow the State Water Board's experts to
5 continue to complete their work on the groundwater and surface water model, so that it can be
6 released to the general public in August 2021. Counsel for the State Water Board does not want
7 to divert too many resources from that important task, but the experts can turn to the court-related
8 expert disclosure tasks once the model has been released to the general public by the end of
9 August 2021.

10 As to other parties, the State Water Board and the Department have no quarrel with them
11 doing expert disclosures later, as late as November 12, 2021, as suggested by the City, as long as
12 there is some time for the parties to digest those other parties' expert reports and conduct
13 depositions of those experts before the expert discovery deadline.

14 ** ** **

15 Accordingly, the Court has authority under Code of Civil Procedure section 843 to require
16 cross-complainant City of San Buenaventura to disclose its experts in advance of other parties.
17 Furthermore, the State Water Board and the Department have no issue with a schedule which
18 would allow the City to disclose its experts by August 2021 (or earlier), the State Water Board to
19 disclose its experts by September 24, 2021, and the other parties to disclose their experts by
20 November 12, 2021, so long as sufficient time is allowed to digest expert reports and conduct

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 depositions before the end of the expert discovery deadline.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: July 14, 2021

Respectfully Submitted,
ROB BONTA
Attorney General of California
MYUNG J. PARK
Supervising Deputy Attorney General



MARC N. MELNICK
Deputy Attorney General
*Attorneys for Respondent and Intervenor
State Water Resources Control Board*

ERIC M. KATZ
Supervising Deputy Attorney General



NOAH GOLDEN-KRASNER
Deputy Attorney General
*Attorneys for Intervenor California
Department of Fish and Wildlife*

SF2014902766
SB ChKeeper response re expert disclosure dates v 2.docx