

SHAWN D. HAGERTY, Bar No. 182435
shawn.hagerty@bbkllaw.com
BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
San Diego, California 92101
Telephone: (619) 525-1300
Facsimile: (619) 233-6118

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CHRISTOPHER MARK PISANO, Bar No. 192831
christopher.pisano@bbkllaw.com
SARAH CHRISTOPHER FOLEY, Bar No. 277223
sarah.foley@bbkllaw.com
PATRICK D. SKAHAN, Bar No. 286140
patrick.skahan@bbkllaw.com
BEST BEST & KRIEGER LLP
300 South Grand Avenue, 25th Floor
Los Angeles, California 90071
Telephone: (213) 617-8100
Facsimile: (619) 617-7480

Attorneys for Respondent and Cross-Complainant
CITY OF SAN BUENAVENTURA

FILED
Superior Court of California
County of Los Angeles

JUN 21 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By _____ Deputy

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: Hon. William F. Highberger

STIPULATION FOR DISMISSAL AND
[PROPOSED] ORDER

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

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STIPULATION FOR DISMISSAL AND [PROPOSED] ORDER

Defendant and Cross-Complainant City of San Buenaventura ("City") and Plaintiff Santa Barbara Channelkeeper ("Channelkeeper") (collectively, the "Parties"), by and through their respective counsel, hereby enter into the following Stipulation related to dismissal with prejudice of all claims and causes of action against the City in Channelkeeper's First Amended Complaint in *Santa Barbara Channelkeeper v. State Water Resources Control Board, et al.* (County of Los Angeles Superior Court Case No. 19STCP01176) (the "Action") , and request that the Court issue it as an order.

RECITALS

The City and Channelkeeper recite as follows:

1. WHEREAS, on September 19, 2014, Channelkeeper filed a Complaint for Declaratory Relief and Verified Petition for Writ of Mandate ("Complaint") against the City and the State Water Resources Control Board ("State Board"). The Complaint named the City as a defendant in the First Cause of Action, which sought a declaration that the City's use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine, and a Writ ordering the State Board to conduct an analysis of the City's use of Ventura River water;
2. WHEREAS, the City filed a Cross-Complaint on May 14, 2015, and a First Amended Cross-Complaint on June 11, 2015, against other users of water from the Ventura River and interconnected groundwater basins;
3. WHEREAS, on September 7, 2018, Channelkeeper filed a First Amended Complaint for Declaratory Relief and Petition for Writ of Mandate ("First Amended Complaint") against the City and the State Board. In its First Amended Complaint and Verified Petition for Writ of Mandate, Channelkeeper alleged that the City's use of the Ventura River water harms the steelhead trout and its critical habitat and exceeds water quality standards. Channelkeeper also alleged that even if every junior appropriator stopped all pumping and diversion of Ventura River water, instream uses in Reach 4 of the Ventura River, and specifically endangered steelhead,

would see no benefit because of the ongoing unreasonable use by the City;

4. WHEREAS, on September 24, 2018, the City filed a Second Amended Cross-Complaint that requested, among other things, an adjudication of water rights on the Ventura River Watershed, and a physical solution;

5. WHEREAS, on September 30, 2019, the City and Channelkeeper entered into a settlement agreement to settle their past disputes while preserving certain claims and defenses for future alleged violations (the "Settlement Agreement") as set forth below. A true and correct copy of the Settlement Agreement is attached as Exhibit A;

6. WHEREAS, pursuant to the Settlement Agreement, the City agreed to implement a Pilot Project of flow restrictions at Foster Park and agreed to take other actions, including non-flow measures, and agreed to pay Channelkeeper an agreed amount for fees and costs incurred because of the Action;

7. WHEREAS, pursuant to the Settlement Agreement, Channelkeeper released and waived its claims against the City, other than two reserved issues, as set forth in Paragraph 14:

"Claims Not Released. The Parties do not release:

A. Future Pumping and Diversion. Channelkeeper's claim after the Pilot Project is completed but before entry of a stipulated judgment in the adjudication that future pumping and diversion of water in Reach 4 of the Ventura River is an unreasonable use in violation of the California Constitution Article X, Section 2, and the public trust doctrine.

B. Unpaid Attorney's Fees and Costs. Channelkeeper's claims for attorney's fees and costs in the amount of \$191,075.29.

C. Enforcement of Agreement. Any action to enforce the Agreement."

8. WHEREAS, on January 3, 2020, the City filed its operative Third Amended Cross-Complaint;

9. WHEREAS, at the June 24, 2020 Status Conference, after the time for the Pilot Project had ended, Channelkeeper informed the Court of its plan to bring a motion for interim flow measures at Foster Park. The City and Channelkeeper met and conferred over this issue, and

1 in August 2020, the City and Channelkeeper amended the settlement agreement to address the
2 issue (the "Amendment to Settlement Agreement"). A true and correct copy of the Parties'
3 Amendment to Settlement Agreement is attached as Exhibit B;

4 10. WHEREAS, the Amendment to Settlement Agreement extended and revised the
5 flow protocols for Foster Park, providing in Section 1.4 that:

6 "The City shall monitor the impact of pumping on instream flows for the life of this
7 agreement. The City shall specifically evaluate the impact of continued pumping at the
8 subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to Sections 1.1 to 1.3
9 above. If monitoring at station VR-2 downstream demonstrates a sustained impact on
10 instream flows after the shutdown of wells Nye 7 and 8, or after the shutdown of the
11 subsurface intake, the parties shall meet and confer on or before 30 June of the following
12 year to discuss whether continuing to pump groundwater when instream flows fall below
13 4.0 CFS may occur or whether all production should stop at 4.0 CFS. If the parties are
14 unable to agree, either party may pursue any available legal remedy they have related to
15 this issue by seeking resolution of the issue via the Court."

16 11. WHEREAS, the Amendment to Settlement Agreement, provides in Section 1.5
17 that:

18 "Other than as provided in Section 1.4, Channelkeeper agrees not to seek other interim
19 relief regarding flow. This settlement relating to interim flows in no way impacts
20 Channelkeeper's ability to comment on, support, or challenge the physical solution
21 proposed by any party in the Action."

22 12. WHEREAS; the Amendment to Settlement Agreement therefore leaves the
23 following specific issues and asserted claims remaining as between the City and Channelkeeper:

- 24 a) Channelkeeper's right to comment on, support, or challenge the physical solution
25 proposed by any party as expressly provided in the Amendment to Settlement
26 Agreement. Channelkeeper asserts that its right to challenge the physical solution
27 includes the claim that pumping and diversion of water in Reach 4 of the Ventura
28 River is an unreasonable use in violation of the California Constitution Article X,

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- 1 Section 2, and the public trust doctrine;
- 2 b) Unpaid pre-adjudication attorney's fees and costs (\$191,075.29);
- 3 c) Channelkeeper's assertion that it may also claim attorney's fees and costs for
- 4 participation in the issues related to the physical solution;
- 5 d) Enforcement of the settlement agreements.

6 IT IS THEREFORE STIPULATED by and among the City and Channelkeeper, through
7 their counsel, that:

- 8 1. Channelkeeper's First Amended Complaint as against the City, should be
9 dismissed with prejudice on all claims and causes of action alleged against the City up to and
10 including September 30, 2019.
- 11 2. Channelkeeper agrees that other than as provided in Section 1.4 of the Amendment
12 to Settlement Agreement, it will not seek other interim relief regarding flow.
- 13 3. Channelkeeper retains the ability to comment on, support, or challenge the
14 physical solution proposed by any party in the Action pursuant to Section 1.5 of the Amendment
15 to Settlement Agreement.
- 16 4. Following entry of judgment, Channelkeeper may file and serve a motion seeking
17 its unresolved claim for attorney's fees and costs in the amount of \$191,075.29.
- 18 5. Channelkeeper asserts a right to claim any additional fees and costs incurred in this
19 Action, and the City denies that Channelkeeper has reserved that right. The Court will resolve
20 this dispute in connection with any motion filed by Channelkeeper in accordance with paragraph
21 4 above.

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1 6. This Stipulation may be executed in counterpart originals and by facsimile or
2 electronic signature, each of which shall be deemed to be an original, and all of which shall
3 constitute one and the same document.

4
5 Dated: June 21, 2021

BEST BEST & KRIEGER LLP

6
7 By: 

SHAWN D. HAGERTY
CHRISTOPHER MARK PISANO
SARAH CHRISTOPHER FOLEY
Attorneys for Respondent and Cross-
Complainant
CITY OF SAN BUENAVENTURA

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11 Dated: June 21, 2021

SYCAMORE LAW

12
13 By: 

DANIEL COOPER
Attorneys for Plaintiff and Petitioner
SANTA BARBARA CHANNELKEEPER

~~PROPOSED~~ ORDER

Good cause appearing, and upon the stipulation of the parties, IT IS HEREBY
ORDERED:

1. Channelkeeper's First Amended Complaint as against the City, is dismissed with
prejudice on all claims and causes of action alleged against the City up to and including
September 30, 2019;

2. Channelkeeper agrees not to seek interim relief regarding flow other than pursuant
to Section 1.4 of the Amendment to Settlement Agreement;

3. Channelkeeper retains the ability to comment on, support, or challenge the
physical solution proposed by any party in the Action pursuant to Section 1.5 of the Amendment
to Settlement Agreement;

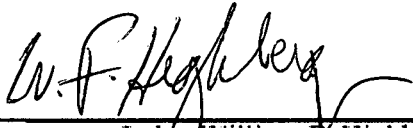
4. Following entry of judgment, Channelkeeper may file and serve a motion seeking
its unresolved claim for attorney's fees and costs in the amount of \$191,075.29;

5. Channelkeeper asserts a right to claim any additional fees and costs incurred in this
Action, and the City denies that Channelkeeper has reserved that right. The Court will resolve
this dispute in connection with any motion filed by Channelkeeper in accordance with paragraph
4 above;

6. The Parties' Stipulation may be executed in counterpart originals and by facsimile
or electronic signature, each of which shall be deemed to be an original, and all of which shall
constitute one and the same document.

IT IS SO ORDERED.

Dated: 6/21, 2021



Judge William F. Highberger
Judge of the Superior Court

06/25/2021

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between Santa Barbara Channelkeeper ("Channelkeeper") and the City of San Buenaventura ("City") regarding the action entitled Santa Barbara Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura, Los Angeles County Superior Court, Case No. 19STCP01176 ("Action"). Channelkeeper and the City may be collectively referred to as "Parties" and individually as "Party". The Agreement is entered into and effective on the date defined in Section 23 below ("Effective Date").

RECITALS

Channelkeeper and the City recite as follows:

1. On September 19, 2014, Channelkeeper filed a Complaint for Declaratory Relief and Petition for Writ of Mandate ("Complaint") against the City and the State Water Resources Control Board ("State Board"). The Complaint alleged that the City's use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine.
2. The City filed a Cross-Complaint on May 14, 2015, and a First Amended Cross-Complaint on June 11, 2015, against other users of water from the River and interconnected groundwater basins. On September 18, 2015, the trial court granted Channelkeeper's motion to strike the First Amended Cross-Complaint.
3. The City appealed the order striking its First Amended Cross-Complaint, and the Court of Appeal reversed the trial court's order. Santa Barbara Channelkeeper v. City of San Buenaventura, 19 Cal.App.5th 1176 (2018).

4. Following the appeal, on September 7, 2018, Channelkeeper filed a First Amended Complaint for Declaratory Relief and Petition for Writ of Mandate ("1st Am. Complaint") against the City and the State Board. The 1st Am. Complaint alleges that the City's use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine, and requests a declaratory judgment that the City's use of the River water is unreasonable. The 1st Am. Complaint further seeks to compel and enjoin the State Board to perform its alleged mandatory duties to prevent the City's alleged unreasonable use of the River and impacts on public trust resources.

5. On September 24, 2018, the City filed a Second Amended Cross-Complaint that requests, among other things, an adjudication of water rights for the Ventura River Watershed, which includes the Upper Ventura River Groundwater Basin, Ojai Groundwater Basin, Lower Ventura River Groundwater Basin, and Upper Ojai Groundwater Basin. The 2nd Am. Cross-Complaint also requests a physical solution.

6. In consideration for the commitments made in this Agreement, Channelkeeper and the City intend to settle their past disputes while preserving claims and defenses for future alleged violations.

TERMS

7. Recitals. The above recitals are incorporated in and made a part of the terms of this Agreement.

8. Pilot Project. Within five business days after the Effective Date, the City will start the Foster Park Pilot Project ("Pilot Project").

A. Pilot Flow Operational Regime. During the Pilot Project, the City will operate its Foster Park facilities using the following flow regime:

(1) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 4.0 cubic feet per second ("CFS"), the City will shut down its Nye well 8;

(2) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 3.0 CFS, the City will shut down its Nye well 7; and

(3) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 2.0 CFS, the City will not extract water using its Foster Park facilities.

B. Flow Measurement Location and Shutoff/Restart Protocols. As part of the Pilot Project, the City will install new streamflow gauges directly above and directly below its Foster Park facilities.

(1) Once the new streamflow gauges are operational, the pilot flow operational regime described in Section 8(A) above will be measured using the protocol described in this Section 8(B) at the new streamflow gauge immediately above the Foster Park facilities.

(2) Until the new streamflow gauges are operational, the pilot flow operational regime described in Section 8(A) above will be measured at the USGS streamflow gauge at the Casitas Bridge (Gauge 11118500).

(3) The CFS triggers and corresponding operational changes shall be made when the relevant streamflow gauge registers below the flow threshold at any point within a calendar day for three consecutive calendar days. If the final reading below the threshold occurs after business hours, then the operational change will take place by 8 a.m. the following

business day. The operational changes may be returned to normal when the relevant streamflow gauge registers above the flow threshold for at least 72 consecutive hours.

C. Term of Pilot Project. The term of this Pilot Project will be for a period of 164 days following the Effective Date . This Pilot Project may be modified or terminated under emergency conditions.

D. Future Flow Regimes. All parties understand and agree that the Pilot Project is not an agreement by the City to maintain any specific flow regime after completion of the Pilot Project. The information provided through the Pilot Project may be used to help inform the establishment of target instream flows that will be included in the stipulated judgment and physical solution in the adjudication. However, the flow regime in the Pilot Project is not binding on the development of those target instream flows, which the parties agree and acknowledge may be less than, greater than or entirely different than the flow regime in the Pilot Project.

9. Non-Flow Measures. The City will also implement the following non-flow measures:

A. Foster Park Fish Barriers. The City will address the following two potential low-flow fish passage barriers at Foster Park:

(1) A 36 inch raw water line that runs southeasterly across the Ventura River from the City's intake facility. The line is covered in a concrete apron that due to scour is exposed above the water surface under certain flow conditions. The City will take action to address this potential barrier.

(2) Due to scour, the crest of the subsurface dam at Foster Park is

exposed above the water surface under certain flow conditions on its eastern terminus. The City shall take action to notch or otherwise address the subsurface dam at this location to remove a potential passage barrier.

B. Flow Gauging at Casitas Vista Road Bridge (USGS Gauge No. 11118500). If the United State Geological Survey ("USGS") believes the Casitas Vista Road Bridge gauge equipment is not functioning as originally intended, the City shall work with the USGS, and other responsible parties, to repair the gauge or cause the installation of a new gauge.

C. Regulatory and Environmental Review. Completion of these non-flow measures is subject to all regulatory requirements and environmental review. The City may process the Foster Park Fish Barriers measures as one joint project that may also include operational upgrades to the City's intake facility at Foster Park to enhance operational flexibility and better manage flow at this location.

D. Construction Milestones. The City's estimated construction milestones for planning, permitting and construction of these non-flow measures are set forth below. The City shall use good faith efforts to accelerate the construction of these non-flow measures, jointly or individually, as feasible, including, but not limited to, by considering the use of statutory or categorical CEQA exemptions as provided in Section 9(C) above.

- (1) The City will complete preliminary design by April 1, 2020.
- (2) The City will circulate draft CEQA documents for public review by June 1, 2020.
- (3) The City will submit permit applications by July 1, 2020.
- (4) The City will complete CEQA review by October 1, 2020.
- (5) The City will complete construction within 1 year of receiving all

permits (time for advertise/bid/award/transition process/submittal review), subject to timing constraints in mitigation measures and permits on construction activity.

10. Channelkeeper's Attorney's Fees and Costs. Within thirty (30) days of the Effective Date, the City shall provide Channelkeeper's attorney, Daniel Cooper of Cooper & Lewand-Martin, Inc., a certified check in the amount of \$850,000.00 payable to "Santa Barbara Channelkeeper." The City's payment is for Channelkeeper's attorney's fees and costs incurred because of the Action, but is not intended to pay Channelkeeper's attorney's fees and costs for the trial court and appellate court proceedings challenging the City's Cross-Complaint and 1st Am. Cross-Complaint. Channelkeeper alleges that it has incurred \$1,041,075.29, and the Parties will defer resolving payment of the \$191,075.29 difference.

11. Force Majeure. The City shall not be considered to be in default in the performance of any of their respective obligations under this Agreement when performance becomes impossible due to a Force Majeure event. A Force Majeure event is any circumstance beyond the City's control, including without limitation, any act of God, war, fire, earthquake, flood, windstorm, or natural catastrophe; criminal acts; civil disturbance, vandalism, sabotage, or terrorism; restraint by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency. A Force Majeure event shall not include normal inclement weather, economic hardship, inability to pay, or employee negligence. If the City seeks to rely upon this Section to excuse or postpone performance, it shall have the burden of establishing that it could not reasonably have been expected to avoid the Force Majeure event and that its exercise of due diligence did not overcome the failure of performance. The City shall exercise due diligence to resolve and remove any Force Majeure event. Any delays due to the City's failure to make timely and bona fide applications and to exercise diligent efforts to comply with the terms in this Agreement will not, in any event, be considered to be circumstances beyond the City's control.

12. Release of Claims. Except as provided in the Agreement, the Parties discharge, release and waive as to each other, and their respective agents, employees, Boards, Councils, members, representatives, officers, directors, insurers, attorneys, affiliates, assigns, predecessors, and successors, from any and all claims, causes of action, losses, damages, costs and attorneys' fees, whether based on case law, the California or Federal Endangered Species Acts or other statutes, constitution, contract, tort, equity, indemnity, or any other theory of recovery, which the Parties have or may have, whether known or unknown, suspected or unsuspected, which were raised or might have been raised, or arise out of, or are connected with the Action, that occurred up to the date of the execution of this Agreement.

13. Waiver of Section 1542. Except as provided in the Agreement, the Parties acknowledge that they have been informed of and are familiar with the provisions of Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

The Parties waive and relinquish all rights and benefits they have under Civil Code section 1542 to the full extent that they may lawfully waive all such rights and benefits pertaining to the Released Claims.

14. Claims Not Released. The Parties do not release:

A. Future Pumping and Diversion. Channelkeeper's claim after the Pilot Project is completed but before entry of a stipulated judgment in the adjudication that future pumping and diversion of water in Reach 4 of the Ventura River is an unreasonable use in violation of the California Constitution Article X, Section 2, and the public trust doctrine.

B. Unpaid Attorney's Fees and Costs. Channelkeeper's claims for attorney's fees and costs in the amount of \$191,075.29.

C. Enforcement of Agreement. Any action to enforce the Agreement.

15. Request for Dismissal. Within five business days of the Effective Date, Channelkeeper shall file a request for dismissal in the form attached as Exhibit A.

16. Joint Press Release. Within five business days of the Effective Date, the Parties shall issue a joint press release in the form attached as Exhibit B.

17. Representations and Warranties. Each of the Parties represents and warrants to the other Party that:

A. As of the date of their execution of this Agreement, they are unaware of any facts, conditions or matters relating to, arising out of or connected with the events and/or transactions which would give rise to any claims for damages or equitable relief not being released by each party pursuant to the terms of this Agreement.

B. Each of the Parties has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

C. No portion of any claim, demand, cause of action that they may have or might have, which are being released herein, has been assigned or transferred to any other person, entity, or company.

D. In executing this Agreement, the Parties have relied solely upon their

own judgment, belief and knowledge and on the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims. Further, that they have not been influenced by any representations or statements concerning any matters made by any other parties or by any person or attorney representing any other parties in connection with the negotiation and/or entering into of this Agreement.

18. No Admission of Liability. The Parties agree that by the execution of this Agreement, and the consummation of the settlement and release of claims as set forth herein, none of the Parties admit responsibility or liability as to any matter whatsoever, nor shall this release, or the settlement and release it effectuates, be admissible in evidence in any proceeding of any nature whatsoever except as described above.

19. Enforcement of Agreement. If legal proceedings are commenced by any of the Parties to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover all of such party's attorneys' fees and costs and expenses of litigation including any and all appeals or petitions as well as fees and costs incurred in enforcing any resulting judgment or award.

20. Entire Agreement. All agreements, covenants, representations and warranties, expressed and implied, oral and written, by each Party to this Agreement concerning its subject matter are contained herein. No other agreements, covenants, representations or warranties, expressed or implied, oral or written, have been made by any Party to any other Party concerning the subject matter of this Agreement. All prior and contemporaneous conversations, covenants and warranties concerning the subject matter of this Agreement are merged herein. This is a fully integrated Agreement.

21. Drafted by All Parties. This Agreement shall be deemed drafted by all Parties

with the advice of counsel for the purposes of its interpretation, sufficiency and enforcement, and shall not be construed against either under the doctrine of *contra preferentem*.

22. All Remedies Available for Breach of the Agreement. All remedies, including without limitation specific performance, shall be available for a breach of this Agreement.

23. Effective Date. This Agreement shall become effective immediately upon the execution of this Settlement Agreement by all Parties. This Agreement may be executed in counterparts. When all Parties and their respective attorneys have signed and delivered at least one such counterpart to the other Parties, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all Parties. No original signatures shall be required to establish the validity or authenticity of this Agreement.

24. Governing Law. This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State of California.

25. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force as though such invalid or unenforceable provisions or portions had not been a part of this Agreement. However, if the provisions requiring dismissal of all actions and cross-actions with prejudice, or if the provisions for releases of claims as provided herein, are found to be invalid, then this Agreement shall be considered invalid in its entirety.

26. Perform All Acts. Each Party agrees to perform all acts and execute and deliver all documents necessary to carry out the purpose and intent of this Agreement.

Dated: September 25, 2019

SANTA BARBARA CHANNELKEEPER

By: K. Prud

Dated: September 30, 2019

CITY OF SAN BUENAVENTURA

By: [Signature]
City Manager

APPROVED AS TO FORM:

Dated: September 25, 2019

COOPER & LEWAND-MARTIN, INC.

By: [Signature]
DANIEL COOPER
Attorneys for Petitioner SANTA
BARBARA CHANNELKEEPER

Dated: September 30, 2019

BEST BEST & KRIEGER LLP

By: Gene Tanaka
GENE TANAKA
SHAWN HAGERTY
SARAH CHRISTOPHER FOLEY
DAKOTAH BENJAMIN
Attorneys for Respondent and Cross-
Complainant CITY OF SAN
BUENAVENTURA

06/25/2021

EXHIBIT B

AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment to Settlement Agreement ("Amendment") is entered into between Santa Barbara Channelkeeper ("Channelkeeper") and the City of San Buenaventura ("City") regarding the action entitled Santa Barbra Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura, Los Angeles County Superior Court, Case No. 19STCP01176 ("Action"). Channelkeeper and the City may be collectively referred to as "Parties" and individually as "Party". This Amendment is entered into and effective on the date defined in Section 2 below ("Effective Date"). This Amendment is made in light of the following recited facts (each a "Recital").

RECITALS

A. On September 30, 2019, the Parties executed a Settlement Agreement in the Action which settled past disputes while preserving certain claims and defenses for future alleged violations.

B. On June 24, 2020, at a Status Conference in the Action, Channelkeeper expressed an intent to file a motion for interim relief against the City regarding flow in the Ventura River at Foster Park, and the Court ordered Channelkeeper and the City to meet and confer regarding the motion.

C. The Parties met and conferred on multiple occasions, and now desire to settle claims for interim relief regarding flow at Foster Park through this Amendment.

TERMS

Now, therefore, in consideration of the commitments made in this Amendment, Channelkeeper and the City amend the Settlement Agreement as follows:

1. The Parties amend and modify the Settlement Agreement by adding the follows terms, which supersede, modify or amend the terms of the Settlement Agreement:

1.1 When daily average flows as measured at the VR-1 gage fall below 4.0 CFS for 3 consecutive days, the City will shut down wells Nye 7 and 8 before noon on the following business day.

1.2 If daily average flows as measured at the VR-1 gage fall below 3.0 CFS on any day of the time period in Section 1.1 above, the City would also shut down the subsurface intake at the same time as the shutdown in Section 1.1 above.

1.3 If the daily average flows as measured by the VR-1 gage fall below 4.0 CFS for 3 consecutive days, but stay above 3.0 CFS during that period, the City would shut down wells Nye 7 and 8 but would be permitted to continue to operate the subsurface intake until the daily average flows fall below 3.0 CFS for three consecutive days.

1.4 The City shall monitor the impact of pumping on instream flows for the life of this agreement. The City shall specifically evaluate the impact of continued pumping at the subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to Sections 1.1 to 1.3 above. If monitoring at station VR-2 downstream demonstrates a sustained impact on instream flows after the shutdown of wells Nye 7 and 8, or after the shutdown of the subsurface intake, the parties shall meet and confer on or before 30 June of the following year to discuss whether continuing to pump groundwater when instream flows fall below 4.0 CFS may occur or whether all production should stop at 4.0 CFS. If the parties are unable to agree, either party may pursue any available legal remedy they have related to this issue by seeking resolution of the issue via the Court.

1.5 Other than as provided in Section 1.4, Channelkeeper agrees not to seek other interim relief regarding flow. This settlement relating to interim flows in no way impacts Channelkeeper's ability to comment on, support, or challenge the physical solution proposed by any party in the Action.

1.6 The City shall continue to implement this revised flow regime at least until entry of the stipulated judgment and physical solution.

1.7 The revised flow regime may be temporarily modified or suspended under emergency conditions. Emergency conditions include Act of God, unforeseen pipe failure, and the inability of the City to obtain sufficient usable replacement water from Casitas Municipal Water District or other sources to serve its customers. The City shall promptly notify Channelkeeper in writing whenever such an emergency condition exists. The notification shall include the justification for the modification, and supporting documentation. If necessary, the parties shall meet and confer about the modification or suspension to limit its impact on Southern California steelhead and other impacted species.

1.8 If the City seeks to modify the flow regime pursuant to Section 1.7 above because it is unable to obtain replacement water from Casitas Municipal Water District, the City shall provide Channelkeeper with 30 days written notice, if such notice is feasible in light of water management plans or testing trends, or as much advance notice as is feasible when the inability results from an unexpected event. If the modification is based on the inability to obtain replacement water from Casitas, the City shall implement the following specific water conservation measures in the impacted service area during the emergency period of modification or suspension:

1.8.1 City Actions.

- a. Encourage maximum conservation by all customers and users in the impacted area.
- b. No outdoor irrigation using potable water will be allowed.
- c. All water use not required for health and safety is prohibited.

- d. Suspend the issuance of any new development approvals and new water connections in the impacted area other than those required to be processed by state law. Building permits which do not create new demand for water or which are for emergencies, public safety and water conservation may be exempted by the City Manager.

1.8.2 Water Customer Actions.

- a. Comply with mandatory water conservation regulations.
- b. Prohibition of all outside water use unless necessary for the preservation of health and safety and the public welfare.
- c. Watering with hand-held five gallon maximum bucket, filled at exterior hose bib or interior faucet (not by hose) shall be allowed at any time. This will assist in preserving vegetable gardens or fruit trees.
- d. The filling of swimming and wading pools is prohibited.

1.9 Channelkeeper acknowledges that the City currently plans to construct the Foster Park notching project this fall in accordance with the Settlement Agreement. In the unlikely event that the implementation of the notching project impacts the City's ability to implement the revised flow regime, or in the possible event that the notching project temporarily impacts the City's ability to use VR-2 to monitor downstream impacts of the pumping regime, the Parties shall meet and confer to discuss any modifications or suspensions of the flow regime or the monitoring process as necessary to complete the notching project.

1.10 The City and Channelkeeper will work in good faith to prepare a joint press release regarding this amendment to the Settlement Agreement. In addition, the City and Channelkeeper will meet and confer on whether they can work collaboratively on other public relations efforts to raise awareness of the need to protect the Ventura River Watershed and its habitat, including protections for the Southern California steelhead.

2. This Amendment shall become effective immediately upon execution by the Parties. This Amendment may be executed in counterparts. When the Parties and their respective attorneys have signed and delivered at least one such counterpart of the other Party, each counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to the Parties. No original signatures shall be required to establish the validity or authenticity of this Amendment.

3. Except as superseded, modified or amended by this Amendment, the Settlement Agreement remains in full force and effect. In the event of conflict between the terms of the Settlement Agreement and the terms of this Amendment, the terms of this Amendment shall govern.

4. All agreements, covenants, representations and warranties, expressed or implied, oral or written, by each Party to this Amendment are contained in this Amendment. No other

agreement, covenants, representations or warranties, expressed or implied, oral or written, have been made by the Parties concerning this Amendment. All prior and contemporaneous conversations, covenants and warranties concerning this Amendment are merged in this Amendment. This is a fully integrated document.

5. This Amendment shall be deemed drafted by all Parties with the advice of counsel for the purposes of interpretation, sufficiency and enforcement, and shall not be construed against either under the doctrine of *contra preferentem*.

(Signatures on following page)

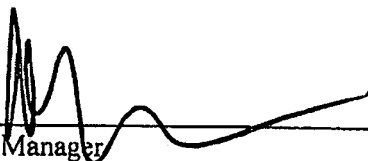
Dated: 8/19/2020

SANTA BARBARA CHANNELKEEPER

By: 

Dated: 8/20/2020

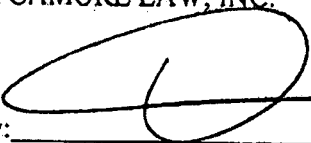
CITY OF SAN BUENAVENTURA

By: 
City Manager

APPROVED AS FOR FORM:

Dated: 20 August 2020

SYCAMORE LAW, INC.

By: 

DANIEL COOPER
Attorneys for Petitioner SANTA
BARBARA CHANNELKEEPER

Dated: August 20, 2020

BEST BEST & KRIEGER LLP

By: 

SHAWN HAGERTY
CHRISTOPHER PISANO
SARAH CHRISTOPHER FOLEY
Attorneys for Respondent and Cross-
Complainant CITY OF
SAN BUENAVENTURA

170753790

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

1 SHAWN HAGERTY, Bar No. 182435
shawn.hagerty@bbkllaw.com
2 BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
3 San Diego, California 92101
Telephone: (619) 525-1300
4 Facsimile: (619) 233-6118

5 CHRISTOPHER M. PISANO, Bar No. 192831
christopher.pisano@bbkllaw.com
6 SARAH CHRISTOPHER FOLEY, Bar No. 277223
sarah.foley@bbkllaw.com
7 PATRICK D. SKAHAN, Bar No. 286140
patrick.skahan@bbkllaw.com
8 Best Best & Krieger LLP
300 South Grand Avenue, 25th Floor
9 Los Angeles, California 90071
Telephone: (213) 617-8100
10 Facsimile: (213) 617-7480

11 Attorneys for Respondent and Cross-Complainant
12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

16 SANTA BARBARA CHANNELKEEPER, a
California non-profit corporation,
17
18 Petitioner,
19 v.
20 STATE WATER RESOURCES CONTROL
BOARD, a California State Agency, et al.,
21 Respondents.

22 CITY OF SAN BUENAVENTURA, a
23 California municipal corporation,
24 Cross-Complainant
25 v.
26 DUNCAN ABBOTT, an individual, et al.
27 Cross-Defendants.
28

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

Case No. 19STCP01176
Judge: Hon. William F. Highberger
PROOF OF SERVICE
Action Filed: September 19, 2014
Trial Date: Not Set

1 PROOF OF SERVICE

2 I am a resident of the State of California and over the age of eighteen years, and not
3 a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main Street,
4 Suite 390, Walnut Creek, CA 94596. On June 21, 2021, I served the following document(s):

5 **Stipulation for Dismissal and [Proposed] Order**

- 6 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully
7 prepaid, in the United States mail at Walnut Creek, California addressed as set forth below.
8 I am readily familiar with the firm's practice of collection and processing correspondence
9 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that
10 same day with postage thereon fully prepaid in the ordinary course of business.
- 11 ☐ I caused such envelope to be delivered via overnight delivery. Such envelope was
12 deposited for delivery by United Parcel Service following the firm's ordinary business
13 practices.
- 14 ☒ by transmission via **E-Service to File & ServeXpress** to the person(s) set forth below.
15 Local Rules of Court 2.10 (P).
- 16 ☒ **By e-mail or electronic transmission.** I caused the documents to be sent to the persons
17 at the e-mail addresses listed below. I did not receive, within a reasonable time after the
18 transmission, any electronic message or other indication that the transmission was
19 unsuccessful.

20 Daniel Cooper
21 Sycamore Law
22 1004 O'Reilly Ave.
23 San Francisco CA 94129
24 Tel: (415) 360-2962
25 daniel@sycamore.law

Matthew Bullock
Deputy Attorney General
California Department of Justice
Natural Resources Law Section
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
Tel: (415) 510-3376
matthew.bullock@doj.ca.gov

26 Attorneys for Petitioner and Plaintiff
27 Santa Barbara Channelkeeper

Attorneys for Respondent and Defendant State
Water Resources Control Board

28 Marc N. Melnick
Deputy Attorney General
Attorney General's Office
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Tel: 510-879-0750
Marc.melnick@doj.ca.gov

Eric M. Katz
Supervising Deputy Attorney General
Noah Golden - Krasner
Deputy Attorney General
Carol Boyd
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel. (213) 269-6343
Fax (213) 897-2802
Eric.Katz@doj.ca.gov
Noah.goldenrasner@doj.ca.gov
Carol.boyd@doj.ca.gov

Attorneys for Respondent and Defendant State
Water Resources Control Board

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

Edward J. Casey
Gina Angiolillo
Alston & Bird LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071
Tel: 213.576.1000
ed.casey@alston.com
gina.angiolillo@alston.com

Attorneys for Cross-Defendants AGR
Breeding, Inc.; Bentley Family Limited
Partnership; and Southern California Edison
Company

Attorneys for Proposed Intervenor California
Department of Fish & Wildlife

Ryan Blatz
Blatz Law Firm
206 N. Signal St. Suite G
Ojai, CA 93023
Tel: (805) 646-3110
blatzlawfirm@gmail.com
ryan@ryanblatzlaw.com

Attorneys for Cross-Defendants Troy Becker
and Jeri Becker; Janet Boulton; Michael
Boulton; Michael Caldwell; Joseph Peter
Clark, successor in interest to the Joseph
Clark and Linda Epstein Family Trust; Linda
Louise Epstein, successor in interest to the
Joseph Clark and Linda Epstein Family Trust;
Michael I. Cromer and Jody D. Cromer;
Michel A. Etchart, Trustee of the Michel A.
Etchart Separate Property Trust, and Mark W.
Etchart, Trustee of the Mark W. Etchart
Sepertate Property Trust; Lawrence
Hartmann; Ole Konig; Krotana Institute of
Theosophy; Stephen Michtell and Kathleen
Reid Mitchell, Trustees of the Stephen
Mitchell and Byron Katie Trust; North Fork
Springs Mutual Water Company; Stephen
Robert Smith, Trustee of the Charles R. Rudd
and Lola L. Rudd Trust, dated May 20, 2976;
Shlomo Raz; Sylvia Raz; Senior Canyon
Mutual Water Company; Siete Robles Mutual
Water Company; Soule Park Golf Course,
Ltd.; Telos, LLC; Victor C. Timar, Jr. Trustee
of the Timar Family Trust; John Town; Trudie
Town; Asquith Family Limited Partnership,
Ltd.; Burgess Ranch; Cary Cheldin; Cynthia
Daniels; Wayne Francis; David Friend; The
Larry & Pat Hartmann Family Trust; The John
N. Hartmann Trust; Gary Hirschkron; Cheryl
Jensen; Lutheran Church of the Holy Cross of
Ojai, California; Janice Sattler (Mineo); Eitan
Sloustcher; Rogers-Cooper Memorial
Foundation; Robert Norris (not yet appeared);
Patricia Norris; Old Creek Road Mutual
Water Company (not yet appeared); Margaret
Vanderfin; Telos Ojai, LLC (not yet
appeared); Jennifer Ware; The Walker Jr.
Living Trust; David Altman, Trustee of the
1190 El Toro Trust ; Babtiste Foundation;
Sean A. Bennett and Leslie Bennett, Trustees
of the Bennett Family Trust; Dwayne A.
Bower and Marilyn E. Bower Trustees of the
Bower Family Trust; Mark Terry Cline and

170753790

BEST BEST & KRIEGER LLP

ATTORNEYS AT LAW

665 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
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Bonnie Burreson Cline, Trustees of the Mark Terry Cline and Connie Burreson Cline Revocable Trust; Robert R. Daddi and Darlene J. Daddi; Lucille A. Elrod, Trustee of the John and Lucille Elrod Family Trust; Friend's Stable & Orchard Inc. Daniel Hultgen, Trustee of the Hultgen Living Trust; Ojai Golf, LLC; Three Oaks, LLC, Erica J. Abrams, Trustee of the Erica J. Abrams Trust; Raul E. Alvarado and Hildegard M. Alvarado, Trustees of the Alvarado Family Trust; William Armstrong and April Nardini; Joseph Lynn Barthelemy and Elvira Lilly Barthelemy, Trustees of the Joseph Lynn Barthelemy and Elvira Lilly Barthelemy 2002 Family Trust; James S. Bennett and Carolyn D. Bennett, Trustees of the Bennett Family Trust; Sumcet Bhatia and Michael McDonald; John Joseph Broesamle and Katharine Sue Broesamle, Trustees of the Broesamle Family Trust; Richard Aaron Carlson, Trustee of the Richard Aaron Carlson Trust and Michelle Larson, Trustee of the Michelle Larson Family Trust; Thomas D. Carver and Cynthia L. Carver; Dana Cenicerros, Trustee of the Dana and Dawn Cenicerros Revocable Living Trust; Deborah Lys Martin Crawford; Frank Clay Creasey Jr.; Debra Joy Reed, Trustee of The Debra Joy Reed Revocable Trust Dated November 3, 1994; Frederic Devault; Diana Syvertson, Trustee of the Diana Syvertson Living Trust; Dive Deep L.L.C.; Douglas Roy Parent and Ann Marie Parent; William Erickson; Gelb Enterprises, L.P.; Jan Stephen Granade and Priscilla K. Granade, Trustees of the Granade Family Revocable Living Trust; Margot J. Griswold; Brian C. Haase and Marie Haase, Trustees of the B&M Haase Trust Dated October 8, 2019; Thomas Lann Harper and Jadona Collier-Harper; Ojai-Jackman L.L.C.; Kevin Rainwater and Marianne Ratcliff; Keith M. Nightingale and Victoria V. Nightingale, Trustees of The Nightingale Family Trust; Heide C. Kurtz, Trustee of The Kurtz Family Trust Dated January 19, 2019; Randall Leavitt, Trustee of The Randall B. Leavitt 2010 Trust; Edward C. Leicht and Jacqueline M. Leicht, Trustees of The Leicht Family 2013 Revocable Trust Dated March 1, 2013; Paul Lepiane and Bengtson Bo; Robert Levin and Lisa Solinas, Trustees of The Levin Family Living Trust; Francis Longstaff and Shauna Longstaff, Trustees of The Longstaff Trust Dated October 11, 2018; Mandy Macaluso, Trustee

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of The Living Trust of Mandy Macaluso; Marilyn Wallace, Trustee of The Marilyn Wallace Separate Property Trust; Daniel J. McSweeney and Yoko McSweeney; Wendel M. Mortensen and Laura L. Mortensen, Trustees of The Mortensen Family Revocable Trust; Timothy Jerome Murch and Jody Caren Murch, Trustees of The Jodim Family 2007 Trust Dated July 31, 2007; Chris E. Platt and Hanh H. Platt; Robert Erickson, Trustee and Ronald Wilson; Michael D. Robertson and Kimberly A. Robertson, Trustees of The Robertson Family Trust; James P. Robie, Trustee of the Robie Family Trust; Petter Romming and Kimi Romming, Trustees; Marc Saleh, Trustee of The Saleh Family Trust; Konrad Stefan Sonnenfeld, Trustee of The Konrad Stefan Sonnenfeld Living Trust; Mark Sutherland, Trustee of The Sutherland Marital Trust; John H. Thacher and Caroline H. Thacher, Trustees of The Thacher Family Trust Dated January 2004; Gilbert G. Vondriska and Carolyn J. Vondriska, Trustees of The Vondriska Living Trust; William D. Rusin, Sr., Trustee of the William D. Rusin Sr. Revocable Trust; Oscar D. Acosta, Trustee of the Acosta Trust; Chris E. Platt and Hanh H. Plat; Deborah Lys Martin Crawford; Diane Syvertson, Trustee of the Diana Syvertson Living Trust; Erica J. Abrams, Trustee of the Erica J. Abrams Trust; Frank Clay Creasey Jr.; Frederic DeVault; Gilbert G. Vondriska and Carolyn J. Vondriska, Trustees of the Vondriska Living Trust; James P. Robie, Trustee of the Robie Family Trust; John H. Thacher and Caroline H. Thacher, Trustees of the Thacher Family Trust dated January 2004; Mandy Macaluso, Trustee of the Living Trust of Mandy Macaluso; Margot J. Griswold; Mark Sutherland, Trustee of the Sutherland Marital Trust; Randall Leavitt, Trustee of the Randall B. Leavitt 2010 Trust; Raul E. Alvarado and Hildegard M. Alvarado, trustees of the Alvarado Family Trust; Sumeet Bhatia and Michael McDonald; Timothy Jerome Murch and Jody Caren Murch, Trustees of the Jodim Family 2007 Trust dated July 31, 2007; Wendell M. Mortensen and Laura L. Mortensen, Trustees of the Mortensen Family Revocable Trust; Petter Romming and Kimi Romming, Trustees; William Armstrong and April Nardini; William Erickson; Rancho Sueño, LLC

BEST BEST & KRUEGER LLP
ATTORNEYS AT LAW
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

06/25/2021 17:07:52:90

1 William G. Short, Esq.
2 Law Offices of William G. Short
3 Post Office Box 1313
4 Ojai, California 93024-1313
5 Tel: (805) 490-6399
6 Fax: (805) 640-1940
7 billshortesq@me.com

8 Attorney for Cross-Defendant Robin Bernhoft

9 Robert N. Kwong
10 Dennis O. La Rochelle
11 Arnold Larochelle Mathews Vanconas &
12 Zirbel, LLP
13 300 Esplanade Dr Ste 2100
14 Oxnard, CA 93036
15 Tel: (805) 988-9886
16 rk Wong@atozlaw.com

17 Attorneys for Cross-Defendant Casitas
18 Municipal Water District

19 Gregory J. Patterson
20 Musick, Peeler & Garrett LLP
21 2801 Townsgate Road, Suite 200
22 Westlake Village, CA 91361
23 Tel: (805) 418-3103
24 Fax: (805) 418-3101
25 g.patterson@musickpeeler.com

26 Attorneys for Cross-Defendants Robert C.
27 Davis, Jr.; James Finch; Topa Topa Ranch
28 Company, LLC; The Thacher School;
Thacher Creek Citrus, LLC; Ojai Oil
Company; Ojai Valley School; Sharon
Hamm-Booth and David Robert Hamm, Co-
Trustees of The Hamm 2004 Family Trust
Dated April 29, 2004; Reeves Orchard, LLC;
and Ojai Valley Inn

Anthony Lee Francois
Jeremy Talcott
David Deerson
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814-1802
Tel: (916) 419-7111
Fax: (916) 419-7111
alf@pacificlegal.org
TFrancois@pacificlegal.org
jtalcott@pacificlegal.org
ddeerson@pacificlegal.org

Attorney for Cross-Defendant Robin Bernhoft
Patrick Loughman
Cristian Arrieta
Lowthorp, Richards, McMillan, Miller &
Templeman
300 Esplanade Drive, Suite 850
Oxnard, CA 93036
Tel: 805.804.3848
Ploughman@lrmmt.com
Carrieta@lrmmt.com

Attorneys for Cross-Defendants Ernest Ford,
Tico Mutual Water Company, and Betty
Withers and Betty Bow Withers Trust

Lindsay F. Nielson
Law Office of Lindsay F. Nielson
845 E Santa Clara Street
Ventura, CA 93001
Tel: 805-658-0977
nielsonlaw@aol.com

Attorneys for Cross-Defendant Meiners Oaks
Water District, Ventura River Water District,
and Jean Marie Webster, Trustee of The
Roger E. and Jean Marie Webster Trust

06/25/2024

BEST BEST & KRUEGER LLP

ATTORNEYS AT LAW

655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101

Jeanne Zolezzi
Herum Crabtree Suntag
5757 Pacific Avenue, Suite 222
Stockton, CA 95207
Tel: (209) 472-7700
Fax: (209) 472.7986
jzolezzi@herumcrabtree.com

Attorneys for Cross-Defendants Meiners Oaks
Water District and Ventura River Water
District

Thomas S. Bunn III
Elsa Sham
Lagerlof Senecal Gosney & Kruse LLP
301 N. Lake Avenue, 10th Floor
Pasadena, CA 91101-5123
Tel.: (626) 793-9400
Fax: (626) 793-5900
tombunn@lagerlof.com
esham@lagerlof.com

Attorneys for Cross-Defendant St. Joseph's
Associates of Ojai, California, Inc. and St.
Joseph's Health and Retirement Center, Janis
Long Nicholas, John Jay Nicholas, Jess Earl
Long (aka Jess E. Long), Johana Rae Long,
and Mary Margaret Long, Janis Long
Nicholas and Jess E. Long as Trustees of the
Long Family Trust

Jeffrey E. Barnes
Chief Assistant County Counsel
Jason Canger
Assistant County Counsel
Office of Ventura County Counsel
800 South Victoria Avenue, L/C #1830
Ventura, CA 93009
Tel.: (805) 654-2879
Fax: (805) 654-2185
jason.canger@ventura.org

Attorneys for Cross-Defendants
Ventura County Watershed Protection District
and County of Ventura

Neal P. Maguire
Ferguson Case Orr Patterson LLP
1050 South Kimball Road
Ventura, CA 93004
Tel: (805) 659-6800
nmaguire@fcoplaw.com

Attorneys for Cross-Defendants Rancho
Matilija Mutual Water Company; Bettina
Chandler, Trustee of the Bettina Chandler
Trust; Martin Gramckow and Linda
Gramckow individually; Martin Gramckow,
Trustee of the Monika G. Huss Irrevocable
Trust, Trustee of the Karin W. Gramckow
Irrevocable Trust, and Trustee of the Kurt J.
Gramckow Irrevocable Trust

Michael J. Van Zandt
Nathan A. Metcalf
Sean G. Herman
Hanson Bridgett LLP
425 Market Street, 26 Floor
San Francisco, CA 94105
Tel: 415-777-3200
Fax: 415-541-9366
mvanzandt@hansonbridgett.com
nmetcalf@hansonbridgett.com
sherman@hansonbridgett.com

Attorneys for Cross-Defendant Ventura
County Watershed Protection District and
County of Ventura

Scott Slater
Bradley Herrema
Christopher Guillen
Brownstein Hyatt Farber Schreck LLP
1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101
Tel: (805) 963-7000
Fax: (805) 965-4333
sslater@bhfs.com
bherrema@bhfs.com
cguillen@bhfs.com

Attorneys for Cross-Defendant The Wood-
Clayssens Foundation

Joseph C. Chrisman
Hathaway, Perrett, Webster, Powers,
Chrisman & Gutierrez
5450 Telegraph Road
Ventura, CA 93003
(805) 644-7111
jchrisman@hathawaylawfirm.com

Attorneys for Cross-Defendant Wood-
Claeysens Foundation

Thomas E. Jeffry
Debra J. Albin-Riley
Arent Fox LLP
555 West Fifth Avenue, 48th Floor
Los Angeles, CA 90013-1065
(213) 629-7400
(213) 629-7401
Thomas.jeffry@arentfox.com

Attorneys for Cross-Defendant Community
Memorial Health System

Jennifer T. Buckman
Andrew J. Ramos
Holly Jacobson
Bartkiewicz Kronick & Shanahan, PC
1011 Twenty-Second Street
Sacramento, CA 95816-4907
Tel. (916) 446-4254
Fax (916) 446-4018
jtb@bkslawfirm.com
hjj@bkslawfirm.com

Attorneys for Cross-Defendant City of Ojai

Eric J. Schindler
Michelle J. Berner
Kroesche Schindler LLP
2603 Main Street, Suite 200
Irvine, CA 92614
Tel. (949) 387-0495
Fax (888) 588-0034 Fax
eschindler@kslaw.legal
mberner@kslaw.legal

Attorneys for Cross-Defendant Oak Haven,
LLC

David B. Cosgrove
Jeffrey M. Oderman
Douglas J. Dennington
Jeremy N. Jungreis
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1931
Tel: 714-641-5100
Fax: 714-546-9035
dcosgrove@rutan.com
joderman@rutan.com
ddennington@rutan.com
jjungreis@rutan.com

Attorneys for Cross-Defendant Casitas
Municipal Water District

Andrew Brady
DLA Piper LLP (US)
550 South Hope Street, Suite 2400
Los Angeles, CA 90071-2618
Tel. (213) 330-7700
Fax: (213) 330-7701
andrew.brady@us.dlapiper.com

Attorneys for Cross-Defendant Integritas Ojai,
LLC

David R. Krause-Leemon
BEAUDOIN & KRAUSE-LEEMON LLP
15165 Ventura Blvd., Suite 400
Sherman Oaks, CA 91403
Tel. (818) 205-2809
Fax (818) 788-8104
david@bk-llaw.com

Attorneys for Cross-Defendant RDK Land,
LLC

Brian A. Osborne
Osborne Law Firm
674 County Square Drive, Suite 308
Ventura, CA 93003
Tel. (805) 642-9283
Fax (805) 642-7054
osbornelawyer@gmail.com

Attorney for Cross-Defendants Brian A.
Osborne; Ronald W. Rood and Susan B.
Rood, Trustees of the Rood Family Trust

Adam D. Wieder
Barry C. Groveman
Ryan Hiete
Groveman Hiete LLP
35 East Union Street, Suite B
Pasadena, CA 91103
Tel (626) 747-9383
Fax (626) 747-9370
awieder@grovemanhiete.com
bgroveman@grovemanhiete.com
rhiete@grovemanhiete.com

Attorneys for Cross-Defendant Michael
Bradbury; Heidi Bradbury; and The Heidi
Gramkow Trust

Ernest J. Guadiana
Elkins Kalt Weintraub Reuben Gartside LLP
10345 W. Olympic Boulevard
Los Angeles, CA 90064
Tel. (310) 746-4425
eguadiana@elkinskalt.com

Attorneys for Michael Lombardo and Charles
L. Ward III, as Co-Trustees of the Ward-
Lombardo Living Trust

Patrick L. Rendon
Lamb and Kawakami LLP
333 South Grand Avenue, Suite 4200
Los Angeles, CA 90071
Tel. (213) 630-5500
Fax: (213) 630-5555
prendon@lkfirm.com

Attorneys for Real Party in Interest Emily V.
Brown

David A. Ossentjuk
Ossentjuk & Botti
2815 Townsgate Road, Suite 320
Westlake Village, CA 91361
Tel: (805) 557-8081
Fax: (805) 456-7884
DOssentjuk@oandblawyers.com

Attorney for Cross-Defendant Robert Martin

Peter A. Goldenring
Mark R. Pachowicz
Pachowicz | Goldenring A Professional Law
Corporation
6050 Seahawk Street
Ventura, CA 93003-6622
Tel. (805) 642-6702
Fax (805) 642-3145
attorneys@gopro-law.com
peter@gopro-law.com
mark@pglaw.law

Attorneys for Cross-Defendant The Manfred
Krankl and Elaine V. Krankl Living Trust

Karen A. Feld
Daniel S. Roberts
Cole Huber LLP
3401 Centrelake Drive, Suite 670
Ontario, CA 91761
Tel: (909) 230-4209
Fax: (909) 937-2034
kfeld@colehuber.com
droberts@colehuber.com

Attorneys for Cross-Defendant Ventura
Unified School District

Hermitage Mutual Water Company, and Santa
Ana Ranch, Inc.

Attn: J. Roger Essick
2955 Hermitage Road
Ojai, CA 93023
Tel. (805) 320-1406
rogeressick@gmail.com

1 Julie A. Baker
2 2193 Maricopa Hwy
3 Ojai, CA 93023
4 (805) 646-8700
5 Jandjbaker2@gmail.com

The Joseph Fedele 1995 Living Trust,
Oriana Marie Fedele, Trustee
Attn. Oriana Fedele
P.O. Box 298
Lahaina, HI 96767
Tel. (818) 601-3161
orianafedele@gmail.com

6 T&D Nevada Trust
7 Dennis and Antoinette Mitchell
8 Mitchell Homes Inc.
9 P.O. Box 360
10 Ojai, CA 93024
11 (805) 340-2890
12 amitc74383@aol.com

Michaela Boehm
12293 topa Lane
Santa Paula, CA 93060
Tel. (323) 493-3737
micboehm@me.com

13 Anthonic M. Voogd
14 918 Palomar Road
15 Ojai, CA 93023
16 Tel. (805) 646-1512
17 avoogd@stanfordalumni.org

Lawrence S. Mihalas
Trustees of the Mihalas Family Trust
419 21st Place
Santa Monica, CA 90402
Tel. (310) 739-0700
lmihalas@gmail.com
lmihalas@ucla.edu

18 Heather Blair
19 556 So. Fair Oaks Ave., Ste 101
20 Box 356
21 Pasadena, CA 91105
22 Tel. (626) 755-6566
23 Hblair1946@gmail.com

Martin Hartmann
Whitney Hartmann
430 S. Carrillo Road
Ojai, CA 93023
Tel. (805) 798-2253
earthbuilding@gmail.com

24 Robert K. Cartin
25 Cartin Family LLC
26 505 Estremoz Ct.
27 Oceanside, CA 92057
28 Tel. (760) 429-4738
bob.cartin@dvm.com

Loa E. Bliss
Loa E. Bliss 2006 Revocable Trust
9030 Ojai Santa Paula Road
Ojai, CA 93023
Tel: (617) 750-8500
loabliss@hotmail.com

21 Del Cielo LLC
22 Attn. Tim Carey, Managing Member
23 22410 Hawthorne Boulevard, Suite 5
24 Torrance, CA 90505
25 Tel. (310) 787-6569
26 tim@calvoterguide.com

Joyce Syme, and
The Joyce A. Syme Living Trust
1760 Ocean Avenue
Santa Monica, CA 90401
Tel. (310) 403-1760
seaviewmotel@hotmail.com

24 Janice and Jesse Hillestad
25 9611 N. Ventura Ave.
26 Ventura, CA 93001
27 Tel. (310) 614-8438
28 janicehillestad@icloud.com
jessehillestad@gmail.com

Dale and Patricia Givner
12617 Koenigstein Rd.
Santa Paula, CA 93060
Tel. (805) 525-9524
dalegivner@gmail.com

1 Carlos A Mejia
2 Sophie A Wenzlau
3 Department of Justice
4 1300 I Street, Suite 125
5 P.O. Box 944255
6 Sacramento, CA 94244-2550
7 Tel. (916) 210-6379
8 Fax: (916) 327-2319
9 sophie.wenzlau@doj.ca.gov
10 carlos.mejia@doj.ca.gov
11

12 Attorneys for California Department of Parks
13 and Recreation

14 Jacob Slujter
15 Rabindra Singh
16 1070 McAndrew Road.
17 Ojai CA 93023; Tel.
18 (805) 646-2726
19 ED@KFA.ORG

20 In Propria Persona for Krishnamurti
21 Foundation of America

22 Kelton Lee Gibson
23 878 Oak Grove Court
24 Ojai, CA 93023
25 Tel. (805) 701-9318
26 kgibson@mwgjlaw.com
27 kgibson878@gmail.com

28 Kelton Lee Gibson, Trustee of the Gibson
Family Trust, dated June 6, 2006

18 Rebecca C. Collins
19 Thomas M. Collins, Jr.
20 241 Longhorn Lane
21 Ojai, CA 93023
22 Tel. 805-312-5894
23 tominojai@gmail.com
24 collinst3@sbcglobal.net

25 Claude R. and Patricia E. Baggerly
26 119 S. Poli Avenue
27 Ojai, CA 93023-2144
28 Tel. (805) 646-0767
Tel. (805) 766-7317
russ.baggerly65@gmail.com

Dennis and Nadine Corte
12812 MacDonald Drive
Ojai, CA 93023
Tel. (805) 701-1950
dwcorte@outlook.com

David R. Greifinger
Law Offices of David R. Greifinger
15515 West Sunset Blvd., No. 214
Pacific Palisades, CA 90272
Tel. (424) 330-0193
tracklaw@me.com

Attorney for Cross-Defendants Danny Everett
and Tiarzha Talyor

George and Sigrid Bressler
340 Longhorn Lane
Ojai, CA 93023
Tel. (805) 646-1221
andybsail@gmail.com

Peter Duchesneau
Sigrid R Waggener
Mannat, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Tel (415) 291-7400
Fax (415) 291-7474
pduchesneau@manatt.com
swaggener@manatt.com

Attorneys for Cross-Defendant Aera Energy,
LLC

Judith L. Mercer
c/o of Jason Goldman
Mercer Family Trust Agreement of 1992
1175 Grand Avenue
Ojai, CA 93023
Tel. (310) 625-7795
jgoldman@begroup.com

Matthew Haffner
Haffner Law Group
86 S. Laurel Street
Ventura, CA 93001
Tel. (805) 641-9334
Fax (805) 980-5014
mhaffner@haffnerlawgroup.com

Attorneys for Cross-Defendant Susan Moll

Harry D. Sims and Raymond P. Sims
P.O. Box 1870
Ojai, CA 93024
Tel. (805) 646-0167
1978simsfamilytrust@gmail.com

Andrew K. Whitman
821 N. Signal Street
Ojai, CA 93023
Tel. (805) 444-5671
sfreberg@scr-legaliner.com

In pro per and Atty for Cross-Defendants
Andrew K. Whitman and Heidi A. Whitman;
Nancy L. Whitman; John R. Whitman and
Nancy L. Whitman Family Trust

Paul R. Huff
The Huff Law Firm APC
21 S. California Street, Suite 205
Ventura, CA 93001
Tel. (805) 667-8940
Fax (805) 850-7399
phuff@hufffirm.com

Attorneys for Barnard Properties, LLC

Henry D. Finkelstein
Brian Moskal
Greenberg Glusker Fields Claman &
Machtinger LLP
2049 Century Park East, Suite 2600
Los Angeles, CA 90067
Tel. (310) 553-3610
Fax (310) 553.0687
hfinkelstein@ggfirm.com
bmoskal@greenbergglusker.com

Attorneys for Ginnetti Living Trust, and
Baldwin Ranch, LLC
Tristan F. Mackprang
David J. Farkas
Coleman Frost LLP
201 Nevada Street, Smoky Hollow
El Segundo, CA 90245
Tel. (424) 277-1650
Fax (31) 648-9739
tristan@colemanfrost.com
david@colemanfrost.com

Attorneys for Cross-Defendants Housing
Authority of the City of San Buenaventura,
Triad Properties, Inc., Encanto Del Mar
Apartments, L.P., Villages at Westview I LP,
Vista Del Mar Commons, LP, and Soho
Associates, L.P.

Christopher Danch
16200 Maricopa Highway
Ojai, CA 93023
Tel. (805) 640-8534
chrisdanch@gmail.com

Attorney for Cross-Defendants Angie Marie
Genasci and Christopher Paul Danch, Trustees
of the Genasci-Danch Family Trust; and
Donald and Wendy Givens

Alessandro (Alex) Lobba
Alessandro Lobba and Mary E. Jackson,
individually as Trustees of the Lobba-Jackson
Family Trust
947 Casitas Vista Road
Ventura, CA 93001
Tel. (805) 895-7056
alobba@gmail.com

Christine Steiner
2560 Ladera Road
Ojai, CA 93023
Tel. (31) 600-3220
csteiner@csteinerlaw.com

William Slaughter
Slaughter, Reagan & Cole, LLP
625 East Santa Clara Street, Suite 101
Ventura, CA 93001
Tel. (805) 658-7800
Fax (805) 644-2131
slaughter@srllplaw.com

Attorneys for The Boyd S. Dron and Karin
Dron Joint Living Trust, and Sisar Mutual
Water Company

Julia Taft-Whitman, President CEO
Taft Corporation
111 West Topa Topa Street
Ojai, CA 93023
Tel. (805) 794-2837
juliawhitman@gmail.com

Jaide Whitman, President
Julia Whitman, Director
Conservation Endowment Fund
P.O. Box 6
Oak View, CA 93022
Tel. (805) 649-2333
Tel. (805) 804-7005
jaide.whitman@gmail.com
TaftGardensOffice@gmail.com

Kelley M. Rasmussen, Trustee
2420 Park Road
Lake Oswego, OR 97034
Tel. (805) 798-7125
kelleyras@gmail.com

Angela Small Booth, Attorney
2175 Valley Meadow Drive
Oak View, CA 93022
Tel. (805) 765-5413
angie@angiesmall.org

William E. Colborn, Jr.
13183 Ojai Road
Santa Paula, CA 93060
Tel. (805) 795-1909
jake@colbornandassociates.com

Rebecca Tickell
350 Verano Drive
Ojai, CA 93023
Tel. (323) 559-5700
rebecca@bigpictureranch.com

Joshua Beckman
913 Oso Road
Ojai, CA 93023
Tel. (323) 404-0465
joshbfbp@gmail.com

Gregg S. Garrison and Rosanna Garrison
Garrison Law Corporation
12986 MacDonald Drive
Ojai, CA 93023
Tel. (650) 726-1111 / Fax: (805) 669-3168
gsgarrison@garrisonlawcorp.com

Robert L. Smith
12777 Tree Ranch Road
Ojai, CA 93023
Tel. (805) 558-6322
treeranch@ymail.com

Susan M. Glennon
292 Cruzero Street
Ojai, CA 93023
Tel. (805) 646-4816
theglennonest@aol.com

Robin Schwartzburd
411 Franklin Drive
Ojai, CA 93023
Tel. (805) 272-5877
robin.schwartzburd@gmail.com

Melinda Hass
11947 Koenigstein Road
Santa Paula, CA 93060
Tel. (213) 713-4360
mlynnbooking@gmail.com

1 Malinda K. Vaughn
2 Mitchell B. Vaughn
3 12283 Ojai Santa Paula Road
4 Ojai, CA 93023-9323
5 Tel. (805) 890-6616
6 vauhnmb@aol.com
7
8 Jennifer Jordan Day and Joel Fox
9 909 North Rice Road
10 Ojai, CA 93023
11 Tel. (213) 321-5253
12 jenniferjordanday@gmail.com
13
14 Catherine Ferro &
15 Catherine Eileen Ferro Inter Vivos Trust
16 312 Montana Road
17 Ojai, CA 93023
18 Tel. (805) 326-1686
19 cepharoah@gmail.com
20
21 Susan Capper
22 12870 Tree Ranch Road
23 Ojai, CA 93023
24 Tel. (805) 794-6421
25 chelsue@aol.com
26
27 Joyce L. Heath
28 Joyce Heath, Trustee of the Heath Family
Living Trust,
P.O. Box 1323
Ojai, CA 93024
Tel. (805) 290-6231
mamaheath55@gmail.com

Ronald W. Bowman
Trustee of the Bowman Trust dated April 8,
2011
672 W. Villanova Road
Ojai, CA 93023
Tel. (805) 732-4014
ron@l-binc.com

Amy Hueppe
1025 Moreno Drive
Ojai, CA 93023
Tel. (310) 699-4619
amyhueppe@gmail.com

Rebecca D. Schwermer
P. O. Box 174
Santa Paula, CA 93061
Tel. (805) 551-3494
octoberbabies2@verizon.net

Brigitte Lovell, Trustee of Lovell Living Trust
295 Encino Drive
Oak View, CA 93022
Tel. (915) 227-9412
loveb9@gmail.com

Susan C. White
Steven J. White
2 Shorewood Drive
Bellingham, WA 98225
Tel. (425) 891-9249
curranwhite1@hotmail.com

Lindy & Karen C. Goetz
12338 Linda Flora
Ojai, CA 93023-9721
Tel. (805) 649-2526; (805) 794-2312
lindygoetz@roadrunner.com

Thomas M. German
301 N. Drown Avenue
Ojai, CA 93023
Tel. (805) 646-2130
kittycatgirl214@gmail.com

Andrew P. Byrne, Esq.
1140 Highland Avenue, Ste. 250
Manhattan Beach, CA 90266
Tel. (310) 505.7170
Andy@ByrneLaw-LA.com

Attorney for Cross-Defendant Roman
Catholic Archdiocese of Los Angeles, a sole
corporation

Glenn Bator
338 Montana Road
Ojai, CA 93023
Tel. (805) 798-1802
denibator@aol.com

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

Harry Anthony Williams
915 Daly Road
Ojai, CA 93023
Tel. (661) 609-1253
Tel. (805) 794-6922
awilliam@me.com

Bryan M. Sullivan, Esq.
EARLY SULLIVAN WRIGHT GIZER &
McRAE LLP
6420 Wilshire Boulevard, 17th Floor
Los Angeles, CA 90048
Tel. (323) 301-4660
bsullivan@earlysullivan.com

Attorneys for Cross-Defendant
Jeff Bacon as Trustee of the Villa Nero Trust
Dated January 25, 2000

David L. Osias, Esq.
Allen Matkins Leck Gamble Mallory & Natsis
LLP
One America Plaza
600 West Broadway, 27th Floor
San Diego, CA 92101-0903
Tel. (619) 233-1155
Fax (619) 233-1158
dosias@allenmatkins.com

Laura M. Peakes
John E. Peakes, Jr.
316 Verano Drive
Ojai, CA 93023
Tel. (805) 402-0249
jpeakesjr@aol.com

Attorneys for Cross-Defendant
Jeff Bacon as Trustee of the Villa Nero Trust
Dated January 25, 2000

Kelsey Klein
Paula Kee
1042 Fairview Road
Ojai, CA 93023
Tel. (805) 640-5154
kelseyklein88@gmail.com

Laura R. Schreiner, a.k.a Laura Rearwin
418 Crestview Drive
Ojai, CA 93023
Tel. (805) 479-5400
laura@rearwin.com

Paul J. Deneen
12170 Ojai Santa Paula Road
Ojai, CA 93023-9358
Tel. (805) 218-0211
paul@carbide.com

Jennifer Carafelli
Robin Schwartzburd
211 Village Commons Boulevard, No. 21
Camarillo, CA 93012
Tel. (805) 340-2540
carafelli@gmail.com

Timothy Mahoney
10244 Ojai Santa Paula Road
Ojai, CA 93023
Tel. (323) 252-3309
honedog@mac.com

Thomas Adams
Adams & Associates
21781 Ventura Boulevard, Suite 10005
Woodland Hills, CA 93003
Tel. (805) 229-1529
tom@adamsassoc.com

Attorneys for Cross-Defendant 235 La Luna
Owners, an unincorporated association

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW
665 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CALIFORNIA 92101
1707-5790

Salvatore Scarpato
106 Calhoun Lane
Georgetown, TX 78633
Tel. (805) 797-8767
salscarpato@att.net

William R. Thatcher
12195 Linda Flora Drive
Ojai, CA 93023-9723
thelostplanetairmen@yahoo.com

Chet Hilgers
Mellanie Hilgers
mellaniehilgers@gmail.com

Kristi Schoeld
Neil Jorgensen
Tel. (805) 272-8360
neilkristi@googlemail.com

Linda J.G. MacDougall, Trustee of The Linda
J.G. MacDugall Living Trust
Marsha Kee Strong-Chandler
Richard Holt Robinson
119 E. Channel Islands Blvd.
Port Hueneme, CA 93041
(805) 202-6379
speakerholistic@gmail.com
Via First Class Mail

Warren W. Greene
Bonnie M. Greene
958 E. Main Street
Ventura, CA 93001
Tel. (805) 652-1080
Fax (805) 652-0400

Robert Kyle
The Robert Kyle Living Trust
715 Sunset Place
Ojai, CA 93023
Tel. (626) 260-5509
robertkyle61@gmail.com

David Bishop
Sophie Loire
Tel. (805) 403-5370
frenchiephotos@yahoo.com

Stephanie Gustafson
Tel. (805) 646-1423
sgustafson@ovs.org

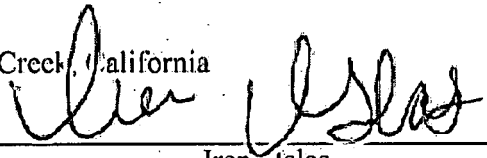
Robert Turnage
9902 Sulphur Mountain Road
Ojai, CA 93023
Tel. (916) 837-3907
Robert.turnage@sbcglobal.net

Authorized Representative for Cross-
Defendant Meher Mount Corporation

Gerrold Grigsby
Karen Grigsby
9799 Ojai Santa Paula Road
Ojai, CA 93023
Tel. (805) 649-1624
grigsbyranch@gmail.com

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

Executed on June 21, 2021 at Walnut Creek, California


Irene Islas