

1 XAVIER BECERRA
Attorney General of California

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

15 ERIC M. KATZ
16 Supervising Deputy Attorney General
17 NOAH GOLDEN-KRASNER (SBN 217556)
18 Deputy Attorney General
19 300 South Spring Street, Suite 1702
20 Los Angeles, CA 90013
21 Telephone: (213) 269-6343
22 Fax: (213) 897-2802
23 E-mail: Noah.GoldenKrasner@doj.ca.gov
24 *Attorneys for Intervenor California Department of*
25 *Fish and Wildlife*

26 SUPERIOR COURT OF THE STATE OF CALIFORNIA
27 COUNTY OF LOS ANGELES

28 **SANTA BARBARA CHANNELKEEPER,**

Petitioner,

v.

**STATE WATER RESOURCES CONTROL
BOARD, a California State Agency; CITY
OF BUENAVENTURA, a California
municipal corporation,**

Respondents.

Case No. 19STCP01176

**SWRCB AND CDFW'S CASE
MANAGEMENT CONFERENCE
STATEMENT AND OBJECTION TO
CITY OF SAN BUENAVENTURA'S
SCIENCE DAY PRESENTATION**

Date: January 30, 2020
Time: 8:30 a.m.
Dept.: 10
Judge: Honorable W. Highberger
Trial Date: None Set
Action Filed: September 19, 2014

**CITY OF SAN BUENAVENTURA, a
California municipal corporation,**

I.

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Cross-Complainant,

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

Cross-Defendants.

Respondent and intervenor State Water Resources Control Board (the “SWRCB”) and intervenor California Department of Fish and Wildlife (“CDFW”) respectfully request that the Court postpone the currently scheduled “science day” and require cross-complainant City of San Buenaventura (the “City”) to maintain its commitment to develop a science day presentation that is neutral, noncontroversial, agreed upon by all parties, and ultimately of assistance to the Court.

As the Court will remember, at the November 21, 2019 case management conference, the Court required the parties to meet and confer after the SWRCB had expressed concerns about the science day being adversarial and an attempt by the City to prejudge the Court’s evaluation of the merits of this case. The parties did meet and confer, which led to two postings on File & ServeXpress (on December 3 and 4, 2019, and attached) by the City’s counsel that described the parties’ agreement as to the science day. Critically, the parties agreed that “the presentation should be technical and neutral” and that “Settling Consumptive Users, State and Channelkeeper will agree upon the materials [provided to the Court] prior to the presentation.” (See also Notice of Ruling Regarding Status Conference, filed Dec. 9, 2019 [filed by the City].) Further, CDFW informed the City that it may need to present to the Court as well on the science day, but that it would wait until it could review the City’s proposed presentation before deciding whether or not an additional presentation was necessary. The parties stated their agreement on the record at the December 5, 2019 case management conference, which led the Court to set the current date for the science day. At the December case management conference, the parties also discussed whether the Court preferred the science day presenters to be attorneys only, or whether the Court

1 was open to hearing directly from consultants and experts; the Court said it was open to hearing
2 from anyone the parties wanted to present, and specifically said that CDFW was welcome to have
3 its own experts make a presentation.

4 The parties' agreement required the City to provide the consumptive users' presentation by
5 January 9, 2020. (See Notice of Ruling Regarding Status Conference.) Not knowing whether or
6 how the other parties would need to supplement the City's presentation, no deadline was set for
7 them to circulate comments or responsive presentation materials. (*Id.*) Consistent with that
8 agreement, the City provided its two draft power point presentations and thirteen documents
9 (totaling thousands of pages) to the parties on January 9, 2020. The City did not ask for
10 comments by a particular date, but the parties knew the presentations were due to the Court on
11 January 27, 2020. On January 16, 2020, the SWRCB suggested a slide be added to one of the
12 presentations and informed the City that more comments would be coming. On January 21, 2020,
13 the day after the long holiday weekend, counsel for the City agreed to add that slide, and told
14 others that counsel "would appreciate any [additional] comments by the end of Wednesday so I
15 can get feedback from the other consumptive users on Thursday, and discuss them with you on
16 Friday in case we have any issues." The next day, on January 22, 2020, the SWRCB provided its
17 additional comments, some of which requested additional slides but many of which made minor
18 suggestions as to wording to ensure accuracy and completeness. CDFW also informed the parties
19 that rather than providing comments it would make a presentation of its own, as it had raised as a
20 possibility as early as November 2019; the City requested CDFW's draft materials be provided by
21 the close of business the next day (January 23, 2020), which CDFW had already said it would do.

22 Then, abruptly, mid-afternoon on Wednesday, January 22, 2020, the City changed course
23 and informed the parties that it would be submitting its presentations "as is" to the Court. The
24 City said, "We do not have to time to work through the additional comments and DFW
25 PowerPoint with our four experts, talk with the other consumptive users, and then work with you
26 on the resolution of any differences in the short time remaining." CDFW, the SWRCB, and
27 petitioner Santa Barbara Channelkeeper suggested that, if the City is pressed for time, the better
28 course of action would be to postpone the science day so that the parties could work through the

1 issues without pressure and in a spirit of cooperation. The City has so far refused.

2 The science day the Court requested is supposed to be technical, neutral, and agreed upon
3 by the parties. It is not supposed to be adversarial or pit experts against each other. Yet the
4 City's draft presentations contain ambiguities, omissions, and inaccuracies that the SWRCB
5 identified in its comments to the City. The SWRCB and CDFW are optimistic that the parties can
6 work through the issues they have raised and develop a science day that everyone can agree to.
7 We understood that the Court's intent was not to wade through factual controversies at this stage
8 of this case.

9 There is no immediate rush to hold this science day. The case is currently stayed. The City
10 has just mailed out its notices to the thousands of landowners, and those cross-defendants need to
11 file form answers and provide initial disclosures. That is why the Court set the next case
12 management conference in June 2020.

13 The SWRCB and CDFW respectfully request that the Court reset this science day for
14 March or April 2020, and reiterate its order that the parties agree on the science day presentations
15 before they are provided to the Court. If the Court is in a position to rule on this request
16 sufficiently in advance of the case management conference scheduled for January 30, 2020, the
17 City may be prevented from prematurely providing its draft presentations to the Court. If the City
18 files its presentations anyway, the Court could strike that filing and require refiling once all

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1 parties have agreed on the presentations' content.

2 Dated: January 23, 2020

Respectfully Submitted,

3 XAVIER BECERRA
4 Attorney General of California

5 MYUNG J. PARK
6 Supervising Deputy Attorney General

7 

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

12 ERIC M. KATZ
13 Supervising Deputy Attorney General

14 

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

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20 obj to science day.docx

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Marc Melnick

From: FileAndServeXpress <MessageBoardNotification@secure-mail.fileandservexpress.com>
Sent: Tuesday, December 3, 2019 1:51 PM
To: Marc Melnick
Subject: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

To: Melnick, Marc, Attorney General Office CA-Oakland
Subject: New Message Board Posting

Message Board Name: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Subject: Status Conference Update

Message Text: Counsel for City of San Buenaventura ("City"), Meiners Oaks Water District, Ventura River Water District, State Water Resources Control Board, California Department of Fish and Wildlife, and Santa Barbara Channelkeeper ("Channelkeeper") met and conferred by telephone and e-mail several times. Counsel for City has not had the opportunity to communicate with each of the Settling Consumptive Users so some parties may have different views. Here is the Settling Consumptive Users proposal to address the differences:

1. Settling Consumptive Users agree that the presentation should be technical and neutral.
2. Settling Consumptive Users will provide (i) background materials, (ii) the PowerPoint presentations and outlines of any scripts, and (iii) names of the experts to all parties and the Court three weeks in advance of the Court date.
3. Settling Consumptive Users, State and Channelkeeper will agree upon the materials in (3) above prior to the presentation.
4. All parties will agree on the record that statements and questions of experts or attorneys shall not be used as evidence or impeachment in any proceeding in this case.
5. Settling Consumptive Users request that presentation take place in late January.

The parties request the Court's guidance on any remaining areas of disagreement.

A new message has been posted to a message board to which you are a member of. To view this message, click on the following link:

https://urldefense.proofpoint.com/v2/url?u=https-3A__secure.fileandservexpress.com_MessageBoard_ShowPost.aspx-3FPostID-3D29293&d=DwlGaQ&c=uASjV29gZuJt5_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm_A9ukaX70&m=rx4PDJxYmp57MU2dCbDb827R5Ins_OzcJNAJNUHNvcQ&s=uuPsBTwAxgoLvaVVaYoWPvGuprAF5SJy1WiV36Rr_ml&e=

NOTE: This message has been automatically generated. Replies to this message will not be monitored. Questions? For prompt, courteous assistance please contact File & ServeXpress Client Support by phone at 1-888-529-7587 (24/7).

Marc Melnick

From: FileAndServeXpress <MessageBoardNotification@secure-mail.fileandserveexpress.com>
Sent: Wednesday, December 4, 2019 2:32 PM
To: Marc Melnick
Subject: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

To: Melnick, Marc, Attorney General Office CA-Oakland
Subject: New Message Board Posting

Message Board Name: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Subject: RE: RE: Status Conference Update

Message Text: Judge Highberger,

We should be able to conclude the presentation in 1/2 day. January 30 in the morning or January 31 in the morning or afternoon are convenient.

Also, based on my e-mails with Marc Melnick for the Water Board, two corrections to my posting yesterday are indicated below:

2. Settling Consumptive Users will provide (i) background materials, (ii) the PowerPoint presentations and outlines of any scripts, and (iii) names of the experts to all parties [DELETED: and the Court] three weeks in advance of the Court date [ADDED: and file it with the Court three days in advance of the Court date.]
3. Settling Consumptive Users, State and Channelkeeper will agree upon the materials in (changed 3 to 2) above prior to the presentation.

Thank you,

Gene Tanaka

A new message has been posted to a message board to which you are a member of. To view this message, click on the following link:

https://urldefense.proofpoint.com/v2/url?u=https-3A__secure.fileandserveexpress.com_MessageBoard_ShowPost.aspx-3FPostID-3D29306&d=DwlGaQ&c=uASjV29gZuJt5_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm_A9ukaX70&m=JnnGNyNgQoL81mx8MGVsCuycQgsx2EGE2GvhHSffNCY&s=9YUkG5IM7-6IJ-Ylt5_LNkt-1b8nh1MVyFqNJVmdROw&e=

NOTE: This message has been automatically generated. Replies to this message will not be monitored. Questions? For prompt, courteous assistance please contact File & ServeXpress Client Support by phone at 1-888-529-7587 (24/7).

CERTIFICATE OF SERVICE

Case Name: **Santa Barbara Channelkeeper** No. **19STCP01176**
v. State Water Board

I hereby certify that on January 23, 2020, I electronically filed the following documents with the Clerk of the Court by using the File & ServeXpress system:

**SWRCB AND CDFW'S CASE MANAGEMENT CONFERENCE STATEMENT AND
OBJECTION TO CITY OF SAN BUENAVENTURA'S SCIENCE DAY
PRESENTATION**

I certify that **all** participants in the case are registered File & ServeXpress users and that service will be accomplished by the File & ServeXpress system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 23, 2020, at Oakland, California.

Kelinda Crenshaw

Declarant

/s/ Kelinda Crenshaw

Signature

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91209468.docx

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Santa Barbara Channelkeeper v. State Water Board**

Case No.: **19STCP01176**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550.

On January 23, 2020, I served the attached

**SWRCB AND CDFW'S CASE MANAGEMENT CONFERENCE STATEMENT AND
OBJECTION TO CITY OF SAN BUENAVENTURA'S SCIENCE DAY
PRESENTATION**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Oakland, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 23, 2020, at Oakland, California.

Kelinda Crenshaw

Declarant

/s/ Kelinda Crenshaw

Signature

Santa Barbara Channelkeeper v. State Water Resources Control Board
San Francisco Superior Court No. CPF -14-513875
Service List for Non-appearing Cross-Defendants
As of March 8, 2019

Duncan Abbott
P.O. Box 1322
Carpinteria, CA 93014-1322

DeWayne Boccali
3277 Ojai Avenue
Ojai, CA 93023

Dwayne Bower
970 Boardman Road
Ojai, CA 93023

James Burgess
356 Carne Road
Ojai, CA 93023

Kevin Clark & Lisa Clark
715 El Toro Road
Ojai, CA 93023

Michael Cromer
3310 Maricopa Highway
Ojai, CA 93023

Essick Farm Management Company, LLC
2955 Hermitage Road
Ojai, CA 93023

James Finch
900 Orange Road
Ojai, CA 93023

Wayne Francis
160 Oak Glen Avenue
Ojai, CA 93023

John Galaska
909 Drown Avenue
Ojai, CA 93023

Gridley Road Water Group
487 Gridley Road
Ojai, CA 93023

Asquith Family Ltd.
910 Mercer Avenue
Ojai, CA 93023

Casitas Mutual Water Company
c/o Margaret Aldrich,
Agent for Service of Process
8239 Edison Drive
Ventura, CA 93001

Lou Tomesetta
2865 Ladera Road
Ojai, CA 93023

Rebecca Collins & Thomas Collins
241 Longhorn Road
Ojai, CA 93023

Robert C. Davis, Jr.
1380 Gridley Road
Ojai, CA 93023

Etchart Ranch
3310 Maricopa Highway
Ojai, CA 93023

Flying H. Ranch, Inc
c/o Joseph Yung, Agent for Service of Process
10221 Slater Avenue, Suite 101
Fountain Valley, CA 92708

J & G Trust
1060 Shokat Drive
Ojai, CA 93023

Jurgen Gramckow
12401 Ranch Road
Ojai, CA 93023

Stephanie Gustafson
811 Saddle Lane
Ojai, CA 93023

Santa Barbara Channelkeeper v. State Water Resources Control Board
San Francisco Superior Court No. CPF -14-513875
Service List for Non-appearing Cross-Defendants
As of March 8, 2019

Hermitage Mutual Water Company
2955 Hermitage Road
Ojai, CA 93023

Stephen Huyler
10 Sea Street
Camden, ME 04843

Brett Kantrowitz & Denise Kantrowitz
2133 McNell Road
Ojai, CA 93023

Tim Krout
230 Saddle Lane
Ojai, CA 93023

Lutheran Church of the Holy Cross of Ojai
c/o Wayne Francis,
Agent for Service of Process
160 Oak Glen Avenue
Ojai, CA 93023

Jeffrey Luttrull
283 Carne Road
Ojai, CA 93023

Stephen Mitchell
140 Longhorn Lane
Ojai, CA 93023

Ojai Water Conservation District
417 Bryant Circle, Suite 112
Ojai, CA 93023

Rancho de Cielo Mutual Water Company
763 Haverford Avenue
Pacific Palisade, CA 90272

Rincon Water and Road Works
6500 Casitas Pass Road
Ventura, CA 93001

Dorothy Homes
16350 Maricopa Highway
Ojai, CA 93023

Cheryl Jensen
901 Shaddle Lane
Ojai, CA 93023

Jerry Kenton
1113 Serenidad Place
Oakview, CA 93022

Betina La Plante
P.O. Box 67
Ojai, CA 93023-0067

Scott Luttenberg
1138 Mariano Drive
Ojai, CA 93023

Frederick Menninger & Margaret Menninger
1710 Ladera Road
Ojai, CA 93023

Bill Moses
1352 Foothill Road
Ojai, CA 93023

Old Creek Road Mutual Water Company
9940 Old Creek Road
Ventura, CA 93001

William Rusin
229 McNell Road
Ojai, CA 93023

Mark Saleh
10586 W. Pico Boulevard #111
Los Angeles, CA 90064

**Santa Barbara Channelkeeper v. State Water Resources Control Board
San Francisco Superior Court No. CPF -14-513875
Service List for Non-appearing Cross-Defendants
As of March 8, 2019**

Sisar Mutual Water Company
c/o Rodney Edward Thompson,
Agent for Service
12264 Topa Lane
Santa Paula, CA 93060

Andrew Stasse
4510 Grand Avenue
Ojai, CA 93023

Victor Timar
13877 Polk Street
Sylmar, CA 91342

Ernesto Vega
400 Gorham Road
Ojai, CA 93023