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1 CASE NUMBER: 19STCP01176
2 CASE NAME: Santa Barbara Channelkeeper vs.
3 State Water Resources Control
4 Board
5 LOS ANGELES, CALIFORNIA Tuesday, November 23, 2021
6 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 TIME: 10:40 A.M.
9

10 THE COURT: We're on the record in 19STCP01176.
11 Santa Barbara Channelkeeper versus State Water Resources
12 Control Board. I have a list of the designated experts
13 here on the whiteboard, so I'm going to preside from the
14 well. Do I have Ms. Bliss on the line?

15 MS. BLISS: You do.

16 THE COURT: Are the terms proposed by the City,
17 which is Dr. Kear's supplemental report about the Upper
18 Ojai basin being produced by December 15 acceptable to
19 you, ma'am?

20 MS. BLISS: Yes, it is.

21 THE COURT: With the understanding the City gets to
22 supplement by January 18 as to the topics raised by
23 Mr. Kear's new report?

24 MS. BLISS: Yes.

25 THE COURT: Is that acceptable to you, Mr. Hagerty?

26 MR. HAGERTY: Yes, Your Honor.

27 THE COURT: Ms. Bliss's motion with their spouse as
28 co-trustee of the trust is granted on those terms with

1 defendant City of Ventura to give notice. Do I have
2 counsel for Casitas present?

3 MR. JUNGREIS: Yes, Your Honor.

4 THE COURT: Mr. Jungreis?

5 MR. JUNGREIS: That's correct, sir.

6 THE COURT: Are the terms proposed in the Court's
7 tentative acceptable to you, sir?

8 MR. JUNGREIS: Yes, Your Honor. We submit on the
9 tentative.

10 THE COURT: Are they acceptable to the City of
11 Ventura?

12 MR. HAGERTY: Yes, Your Honor. We submit on the
13 tentative with the request of clarifying the difference
14 between supplemental and rebuttal.

15 THE COURT: So I pulled out my Rutter Group and
16 looking at its discussion on how supplemental expert works
17 if we're dealing with ordinary discovery rather than a
18 comprehensive groundwater case.

19 By way of example, where City of Ventura on its
20 first designation day gave us a hydrologist plus a
21 historian plus a fishery expert plus a biologist, if
22 someone else designated -- and I know these weren't
23 concurrent, but for these purposes, we'll assume they were
24 concurrent and only designated hydrologist such as Mr.
25 Kear and Mr. Brown, when the moment for supplemental comes
26 around, it's my understanding the party who got into the
27 game timely with a designation then could supplement to
28 address a topic which that party hired an expert to do but

1 someone else put on the table with their proffer. If City
2 of Ojai or East Ojai or Water Resources Control Board or
3 Department of Fisheries or, at this point with Casitas
4 having gotten walk-on privileges as well as Ms. Bliss, and
5 any one of them wanted to bring forward their idea of a
6 historian, that's what they should do with the
7 supplemental. Does anyone disagree?

8 MR. JUNGREIS: Agree, Your Honor.

9 MR. HAGERTY: I believe we agree. Mr. Pisano is
10 also -- can you hear that, Mr. Pisano?

11 MR. PISANO: Yeah. Your Honor, I agree with what
12 you just said. This is Christopher Pisano on
13 LACourtConnect. That's my understanding of how the
14 supplemental designation and under the Discovery Act as
15 well.

16 THE COURT: This is more subtle. I'm not confident
17 what the proposition I'm going to give is correct. I
18 assume it's possible that if you hire a hydrologist and he
19 or she renders an opinion about disputes and somebody else
20 hires a hydrologist who offers an opinion with opening a
21 report on hydrology subject B, there's really an honest
22 difference between subject A and subject B that a
23 supplemental could address subject B if it comes from the
24 people who offered expert on topic A because that's still
25 supplemental on that specific topic. Do you agree,
26 Mr. Pisano?

27 MR. PISANO: Yes, Your Honor. I believe so. I had
28 a little bit of difficulty following. I think I followed

1 it. I think I'm in line with what you're saying.

2 THE COURT: Say the hydrologist offers a detailed
3 opinion about how the hydrology works in the lower course
4 of the Ventura River only and says nothing about the
5 hydrology characteristics of the Upper Ventura River and
6 says nothing about the hydrology characteristics of the
7 tributary that runs through the city of Ojai, but now that
8 party wants to come forward with a supplemental that does
9 speak to the hydrology involving another stretch of the
10 Ventura River which has not heretofore been analyzed by
11 their expert or this tributary running through the city of
12 Ojai.

13 I think that would be an honest supplemental because
14 it's essentially virgin territory that their expert had
15 not yet covered even though someone else's expert might
16 have covered.

17 MR. PISANO: I would concur with that, Your Honor.
18 Christopher Pisano.

19 THE COURT: Does that seem analytically correct so
20 far?

21 MR. JUNGREIS: We would concur, Your Honor.

22 THE COURT: Does anyone disagree with this general
23 proposition of what defines a bona fide supplemental
24 report? Anybody from state fish and game concur or
25 disagree?

26 MR. GOLDEN-KRASNER: I concur.

27 THE COURT: What about the advocate for State Water
28 Resources Control Board?

1 MR. MELNICK: Mark Melnick. I agree with your
2 proposition.

3 THE COURT: Thank you. So far that would seem to
4 tell us what's supposed to happen on December 3 subject
5 only to the narrow question that as to Mr. Kears who
6 worked for Ms. Bliss having to do with the unique
7 characteristics of the Upper Ojai groundwater basin,
8 that's carved out and has its own timeline.

9 MS. JACOBSON: Your Honor, I would add that
10 supplemental opinions also include new information that
11 was not available before under the statute.

12 THE COURT: I don't quarrel with that conclusion.
13 If others want to strike your supplemental, I'll deal with
14 that in due course. If you think you have a bona fide
15 right to do that as supplemental, I invite you to take
16 advantage of all the privileges under the statute.

17 MS. JACOBSON: Thank you.

18 THE COURT: For these purposes, are you invoking CCP
19 2034 or CCP 830?

20 MS. JACOBSON: I think both address it.

21 THE COURT: Thank you. Anyone wish to be heard to
22 elaborate or clarify the nature of supplemental reports
23 for purposes of this proceeding? Nothing further, which
24 is good. Okay. In my tentative for today, I put out a
25 suggested date for getting rebuttals on topics generally.
26 I don't have the tentative readily in hand. What date did
27 I propose?

28 MR. HAGERTY: January 10.

1 THE COURT: How do people feel about January 10 for
2 rebuttal? You go back to, say, one of the City of
3 Ventura's experts -- say the hydrologist, Dr. Archer --
4 who offered an opinion on subject A hypothetically, I will
5 presuppose it's the characteristics of the lower Ventura
6 River just to give a factual specificity.

7 THE COURT REPORTER: I can't hear what you're saying
8 over here in the corner behind the TV screen.

9 THE COURT: Fair enough. For rebuttal, as I
10 understand it, if Dr. Archer's original report deals with
11 topic A, I will subject as a hypothetical that included a
12 characterization of the hydrology of the lower Ventura
13 River, and now Mr. Kear, Mr. Brown, Dr. Preston, Dr. Sheer
14 have offered some conflicting views of the characteristics
15 of the lower Ventura River and Dr. Archer wants to come
16 back and say, no, I'm more right and they're wrong and
17 here is why, that's what a rebuttal is all about. Right,
18 Mr. Pisano?

19 MR. PISANO: Your Honor, Christopher Pisano. I
20 agree that would be a rebuttal. I think the confusion
21 comes into play in that rebuttal isn't called for in the
22 Discovery Act. I have always treated rebuttal opinions as
23 being part and parcel with the supplemental designation
24 that if you want to designate an expert who is going to
25 offer any opinion beyond your initial designation that you
26 have to do it as part of your supplemental. I would agree
27 with you that under the scenario you just proposed, that
28 would be considered a rebuttal opinion; if the expert

1 said, no, I'm more right than expert A and here is why.

2 THE COURT: Well, insofar as I have the discretion
3 under CCP 830 to innovate a little bit, is there anybody
4 who opposes the idea that I open up a door called rebuttal
5 and on some date after December 3 allow one final workup
6 of additional expert opinions essentially attacking
7 opinions offered by somebody else's expert?

8 MR. JUNGREIS: Your Honor, if I may.

9 THE COURT: Casitas can go first.

10 MR. JUNGREIS: Groundwater adjudications are
11 somewhat unique because they are so expert-intensive. I
12 think the legislature when they passed 843 acknowledged
13 that. I'm involved in other groundwater adjudications
14 where they have rebuttal experts. Rebuttal experts are
15 within the scope of the existing expert opinion that has
16 been given. So if Dr. Archer testifies that her opinion
17 is X, rebuttal expert comes in and says, my opinion is not
18 X, so it's rebutting the other opinion. It's within the
19 scope of the prior testimony, prior opinions that have
20 been given.

21 THE COURT: Under your theory, Ventura might come up
22 with somebody to directly contradict Kear even if it's not
23 Dr. Archer?

24 MR. JUNGREIS: That's right. I think the way the
25 statute is laid out and what I've seen in other
26 groundwater adjudications is that's contemplated. You
27 wouldn't have to designate -- the individuals who would be
28 rebuttal experts are not limited to those folks on the

1 board. Someone else could come in and say, I heard
2 Dr. Hanson's testimony, and my view is Dr. Hanson is --
3 I'm going to impeach his testimony, he didn't consider
4 facts that he should, or he opined on opinion A, and
5 opinion A is incorrect because what is actually correct is
6 opinion B.

7 THE COURT: I ask this out of ignorance, sir. If
8 the topic was correctness of the historian and the party
9 offering it is the City of Ojai or East Ojai Group, why
10 should they wait beyond the supplemental deadline to
11 criticize the historian rather than having to use the
12 supplemental as the date when they come forward with a
13 critique of Dr. Littlefield?

14 MR. JUNGREIS: Might need to critique or rebut the
15 supplemental to the extent it's within the scope of the
16 opinions rendered.

17 THE COURT: I could posit why City of Ventura would
18 want to come back when you come up with unknown historian
19 Q and bring forward that expert on December 3 that at that
20 point having seen that for the first time, the only
21 opportunity Ventura is going to have to say expert Q is
22 wrong, he's either a crackpot or has his facts wrong, and
23 whether they go back to Archer -- excuse me, Littlefield
24 and say, I'm right and here is why, or for whatever reason
25 Ventura wants to hire expert Z instead of expert Q, they
26 could do that, but they would do it via rebuttal.

27 MR. JUNGREIS: Yes, Your Honor.

28 THE COURT: So far I'm inclined to allow rebuttal.

1 Who is going to tell me I can't legally allow a rebuttal?

2 MR. JUNGREIS: The statute specifically says you
3 can.

4 THE COURT: That's less clear. Someone was positing
5 there's no role for rebuttals. I think it's a reasonable
6 thing to do whether or not the statute CCP 2034 is
7 express. Who wants to tell me I can't authorize rebuttal
8 experts on January 10?

9 MR. MELNICK: Mark Melnick. I don't disagree you
10 should set a rebuttal. My concerns are what happens after
11 that date. I don't know if you want to talk about that
12 now or later.

13 THE COURT: Go ahead.

14 MR. MELNICK: The problem is that rebuttal expert
15 reports are to help inform the parties about the experts'
16 opinions so they can ask the appropriate questions at
17 depositions. Right now, we have an expert deposition for
18 January 15.

19 THE COURT: Maybe that's got to slide. Maybe that's
20 got to slide.

21 MR. MELNICK: Either the dates have to be earlier or
22 the dates for expert depositions and maybe the trial need
23 to slide. Something has to give.

24 THE COURT: I understand your point. Who is adamant
25 the trial shouldn't be continued slightly?

26 MR. HAGERTY: Your Honor, our goal is to stay on
27 track. I think Mr. Pisano can articulate this better than
28 I can. We do have a concern about -- the whole goal is to

1 narrow the issues, and the rebuttal, the way it's phrased
2 right now, it potentially gives license to bring in
3 entirely new experts with new information that isn't
4 specifically in the nature of what would traditionally be
5 rebuttal or impeachment, which is more specifically
6 fact-based, such as Dr. Archer assumed X but X is just
7 wrong, or Dr. Archer used this standard but no one in the
8 industry with any credibility uses that standard. The way
9 the courts teed up the rebuttal brings in entirely new
10 experts. I think Mr. Pisano can articulate this better --

11 THE COURT: Is there a clear statutory standard of
12 what is a proper rebuttal, and if so, how have I abused
13 it? I would have no personal desire to deviate from the
14 default statutory standard.

15 MR. HAGERTY: I mean, as Mr. Pisano said, I don't
16 think there is a specific -- in the Discovery Act a
17 specific provision for rebuttal. You don't have to
18 designate those and you can call those at any time if they
19 are specifically for rebuttal.

20 THE COURT: Waiting for sandbagging at trial doesn't
21 help anything. Due process rights, but that doesn't
22 advance the cause of knowledge.

23 MR. HAGERTY: Agreed. We don't object to the
24 rebuttal designation. It's just the question of, what is
25 the scope of that rebuttal and is it actually expert
26 opinion or is it specific, you have your facts wrong,
27 you're using the wrong standard, which we believe is the
28 better more appropriate approach. People should --

1 everyone knows now what the opinions are. Supplemental
2 should be the time when everyone brings. If Casitas has a
3 problem with Dr. Hanson and our report and they feel like
4 they need to designate someone, they should do that in the
5 supplemental. They shouldn't wait until later. If they
6 have a problem with a fact that Dr. Hanson relies upon and
7 they need to rebut that, that seems like appropriate for
8 designating someone to rebut that fact.

9 To open up a whole new round of opinion leads to
10 this issue of continuing the trial, which we're not -- we
11 have been at this since 2014, Your Honor. We do wish to
12 have a day in trial, and we're happy with the date.

13 THE COURT: Let me try another one. Who believes
14 from a practical point of view or a due process point of
15 view you need to have a separate rebuttal date that is
16 later than December 3 in order to prepare the case for
17 trial because for some reason you can't functionally put
18 the rebuttal expert out on December 3? Who's arguing.

19 MR. JUNGREIS: Your Honor, I'm going to scoot over a
20 little bit. I would say, Your Honor, I don't know if it
21 rises to a due process issue, but just logically as far as
22 the generation of information as to be helpful to the
23 Court and also helpful to the parties, having a rebuttal
24 disclosure date that occurs after depositions of the
25 primary and supplemental experts probably makes sense just
26 because that gives the parties an adequate opportunity to
27 know what exactly it is they need to rebut. This is very
28 important because the reason we designate late is we still

1 have a scope of the ultimate trial which has not been
2 nailed down yet. It could very well be we get to the
3 rebuttal deadline and we don't need to designate a
4 rebuttal expert.

5 THE COURT: Under your theory, it's better done if
6 it follows the first session of the deposition.

7 MR. JUNGREIS: Yes, Your Honor. I think 843 would
8 tend to support that interpretation particularly. And not
9 just that it's very limited in scope, it's actually
10 opinions, and 843(b) allows -- unless the Court rules
11 otherwise on, 843(e) allows you to narrow what is required
12 for a rebuttal expert. There's opinions, there's all the
13 normal things that are required for a rebuttal expert.

14 Casitas is not looking to push the trial date. We
15 are amenable to keep the same date. Maybe pushing the
16 discovery cutoff a week, that may be the trick. It's not
17 a lot of time we're looking for, and it creates an
18 opportunity for additional information that could be
19 helpful to the Court.

20 THE COURT: Mr. Pisano or Mr. Hagerty, do you have
21 any sentiment about whether there is a logical benefit in
22 having rebuttal actually follow some of the initial
23 deposition sessions of the experts?

24 MR. PISANO: Yes, Your Honor. Christopher Pisano
25 LACourtConnect. I differ with my colleague, Mr. Jungreis,
26 to the extent you already know the opinions. The water
27 adjudication statute, unlike the Discovery Act, requires
28 the preparation of reports, and those reports have to

1 contain all of the opinions the expert is going to testify
2 to. It's really akin to Federal Rule 26, which is
3 something our Civil Discovery Act in California doesn't
4 provide for. You get the opinions at the deposition under
5 the Discovery Act. But here since we're going under the
6 adjudication statute, all the opinions are in the reports.
7 Every opinion that every one of the City's experts is
8 going to proffer has already been on the table since
9 August 31. So I don't know we necessarily need to trail
10 rebuttal.

11 The way Casitas is proffering, I think you could
12 move it up. You could have it due on 12/3, which would be
13 my preferred course, or shortly thereafter. We don't have
14 a trial date until February 14. With the experts that you
15 put on the board, it's not that many, Your Honor. There's
16 no reason why we can't at a bare minimum just follow the
17 Discovery Act deadlines in terms of getting the expert
18 depositions done so we don't lose the trial date.

19 I think it's important to keep the trial date
20 because if we have to kick the trial date, finding another
21 trial date that is amenable to everybody is going to be a
22 difficult task.

23 MS. JACOBSON: Your Honor, if I may. First, I have
24 a personal request for whomever is typing away to put
25 themselves on mute. It's hard to follow online. Second,
26 as for rebuttal or supplemental, there's a reason they are
27 distinct. They are two different types of reports. I
28 disagree with Mr. Pisano. This is not simple. We thought

1 it was going to be simple. It was supposed to be, from
2 our perspective, two hydrologists or three hydrologists,
3 not six. At the time of preparing what you can think
4 about as an expert, everybody is preparing their expert
5 testimony in the initial disclosure as to what they
6 believe helps put forth their case-in-chief. When after
7 reviewing the expert disclosures from the other side,
8 questions do arise as to whether those opinions need to be
9 rebutted with additional information, especially opinions
10 that were not anticipated. That's rebuttal.

11 We already mentioned that supplemental is differ.
12 Supplemental is for topics not originally covered or
13 information that wasn't previously available. That's
14 where we have a clear distinction. That's why I believe
15 they need to be separate. There's also the issue of
16 whether they have to be disclosed at all or can just occur
17 at trial. I don't think in this cases that's the best
18 option. I think a disclosure would make more sense.

19 I don't believe it's realistic to have that
20 disclosure done in ten days, especially where parties have
21 been operating under the terms of the statute in
22 separating out supplemental expert opinions.

23 THE COURT: Does the statute, to your understanding,
24 Ms. Jacobson, have a contemplated gap in time between
25 supplemental and rebuttal that would be a default
26 assumption?

27 MS. JACOBSON: I think it leaves it up to the Court
28 in terms of how the Court wants to treat it. I believe,

1 Mr. Jungreis, if you could point me to the specific
2 section, I just opened it up, 843.

3 MR. JUNGREIS: D and E. I think Ms. Jacobson is
4 correct. It really is up to the trial court as to the way
5 that the use of rebuttal experts, supplement experts and
6 primary experts can be most useful for both parties.

7 THE COURT: One could hypothetically simply provide
8 a month before trial is when you have to designate
9 rebuttal experts, with or without opportunity for
10 discovery between now and trial. That follows the theory
11 that this is now going to be a critique on the written
12 report and the quality of the deposition testimony, and it
13 may or may not allow a second deposition to sweep back
14 over the issues raised by rebuttal.

15 If the Court decides you don't want it to be a total
16 ambush at trial, and I don't want ambush at trial, then
17 somewhere in advance of trial this comes forward. But
18 maybe January 10 is too soon, although what is the trial
19 date in February.

20 MR. HAGERTY: 14th, Your Honor.

21 THE COURT: That is a month before the trial date.
22 That speaks in favor. I'm inclined to hold to rebuttal
23 date of January 10 with the understanding that depositions
24 have already been taken, first off, the rebuttal can
25 comment on the deposition insofar as there is a desire to
26 do so. Insofar as the rebuttal suggests that there ought
27 to be a chance to resume a deposition of an expert, that
28 might be allowed. Presumably the party who wants that

1 second depo is paying for the expert anyway. That's some
2 self-discipline on just gratuitously bogging down an
3 expert. They're going to want a couple hundred dollars if
4 not a couple thousand dollars an hour or a day for their
5 time. One would hope there would be some prudence in how
6 much second bite of the apple of discovery would be.

7 At the moment, we have supplemental on December 3
8 except as to Upper Ojai basin, and rebuttal on everything
9 except Upper Ojai basin on January 10. I put a rebuttal
10 date down for Upper -- no, I didn't.

11 MR. HAGERTY: Just supplemental, Your Honor. You
12 added the supplemental for the City, not a rebuttal.

13 THE COURT: So for Upper Ojai, I have the rebuttal
14 date to be...

15 MR. MELNICK: Mark Melnick. You did say rebuttal
16 experts for Ojai would be February 1.

17 THE COURT: February 1. I'll hold February 1.

18 MR. JUNGREIS: Do you need to modify the discovery
19 cutoff then?

20 THE COURT: Certainly insofar as this impacts --
21 what's the cutoff previously again?

22 MR. JUNGREIS: January 15.

23 THE COURT: Probably we should modify the discovery
24 cutoff and let it be, say, February 10?

25 MR. JUNGREIS: That's fine.

26 MR. MELNICK: Mark Melnick. I have a significant
27 concern about where this is headed, which is that we're
28 going to be doing some rebuttal reports, a bunch of second

1 expert depositions, a number of those eight or nine
2 experts on the whiteboard, after the term that you set for
3 the pretrial conference.

4 THE COURT: I think the intellectual or the legal
5 question I'm trying to deal with aren't going to be
6 expert-driven. If I'm mistaken in that regard, I'll be
7 shown otherwise. You are preparing your experts to have a
8 good trial. I think if I'm dealing with legal questions,
9 it shouldn't depend on what this or that expert says
10 because they should be pure legal questions.

11 MR. MELNICK: I agree, Your Honor. I don't think --
12 this is going to be a largely expert-driven trial. There
13 is one legal issue that Mr. Gibson thinks we should
14 resolve by a motion, which I think is good. But this is
15 going to be an expert-driven trial on the
16 interconnectedness of the watershed and the (Technical
17 disruption) basin.

18 I understand the City of Ventura desires to keep the
19 trial date, but the way to do this methodically is to get
20 all the reports in, then we know everyone's opinions, then
21 we take their depositions, we ask questions about those,
22 and then we go into pretrial work. We're missing all
23 those things and they are all going to be happening at the
24 same time.

25 THE COURT: I don't quarrel with holding the
26 rebuttal back to later because if I was foolish and like
27 the sporting theory of justice, I would just tell you to
28 bring your experts for rebuttal at trial and we'll see

1 what happens and total surprise. They don't want that,
2 and I'm proposing to do it in advance of trial. I don't
3 know that indicates the legal right to have a rebuttal
4 expert means it's somehow fouling the nest in terms of
5 trial preparation.

6 MS. JACOBSON: Your Honor, I do share Mr. Melnick's
7 concerns about the timing of everything. I do think it's
8 very -- I think it may lead to quite a bit of a difficulty
9 in maybe mixing things up so close to trial. I would
10 suggest that perhaps we can talk about the issues that are
11 raised in our case management statement and that may
12 impact any of these questions the parties have on how to
13 proceed.

14 THE COURT: You do have another question you raised
15 in your report. I haven't gotten to that yet. I was
16 otherwise trying to get this issue settled. Maybe the
17 point is, in addition to having rebuttal on January 10
18 with the carveout for the Upper Ojai basin, leave the
19 discovery cutoff in place and wait and see at a later
20 status conference if there becomes a consensus of what, if
21 any, modification of the discovery cutoff there should be
22 so we don't back-load too much of the trial preparation.
23 The very fact that you're staring at a cutoff date, and if
24 I heard counsel right, January 15 functions as the cutoff?

25 MR. JUNGREIS: That's my understanding, Your Honor.

26 THE COURT: That so far would be my inclination to
27 leave things with the understanding I would have to allow
28 some one-off discovery after January 15 but only after we

1 have a further discussion of it and/or I find good cause
2 either via status conference or via somebody's ex-parte to
3 re-depose an expert, or depose an expert that never had
4 been deposed. If they're first disclosed on January 10,
5 one can hardly quarrel with somebody not having deposed
6 them before.

7 MR. HAGERTY: Your Honor, Ventura would agree with
8 that approach, realizing that things often do change.
9 Sticking to the schedule at this point in time with the
10 adjustments the Court made today gets us at least started,
11 and I think that's a good thing. We'll see how the
12 depositions go. And if the parties need to request some
13 continuance, that's something they can always bring to the
14 Court's attention.

15 THE COURT: Is it obvious to you now, Mr. Hagerty,
16 or Mr. Pisano, as to which of the experts really are at
17 war conceptually with each other as opposed to just sort
18 of slightly different renditions of the same picture?

19 MR. HAGERTY: Your Honor, we -- as we indicated in
20 our papers and I said before, we actually think the
21 material issues are not disputed or disputable and that
22 the expert reports reflect that. And so that's why we're
23 saying stick with the trial date. People have had our
24 expert information since August. If they want to
25 supplement, do it on the 2nd. We'll depose them in time
26 if we need to. And rebuttal should be very limited, in
27 our view, and therefore shouldn't require significant new
28 depositions. The parties should proceed on that course.

1 That's our opinion.

2 THE COURT: Who is trying to speak?

3 MR. PISANO: Christopher Pisano. If I could add one
4 thing to Mr. Hagerty's statement. I agree with everything
5 he said, but I think it's an easy remedy. Any depositions
6 of the rebuttal experts, have them via Zoom. It's not
7 complicated.

8 THE COURT: The depositions of rebuttal experts
9 happen in what fashion, sir?

10 MR. PISANO: If we need to do depositions beyond the
11 discovery cutoff to accommodate getting all the rebuttal
12 experts deposed, do them all via remote means.

13 THE COURT: That's possibly a solution. I'm not
14 adopting it as an order of the Court, but you made a
15 useful suggestion.

16 So the December 3 date will hold for supplemental.
17 City of Ventura to give notice. January 10 holds for
18 everything except Upper Ojai. February 1 for Upper Ojai
19 groundwater basin. The particulars of the grant of the
20 Casitas motion -- well, the Bliss motion is held to the
21 one thing, the Casitas motion is now granted on the same
22 terms with City of Ventura to give notice.

23 Turning to the City of Ventura's report that
24 proposes the issuance of an order to show cause returnable
25 on December 9.

26 MR. MELNICK: Melnick. Could I make one small
27 request in the rebuttal expert date in January? Can we
28 advance that to January 7, Your Honor?

1 THE COURT: What's the magic of Friday or Monday?

2 MR. MELNICK: The magic is that we're -- currently,
3 we have -- a couple my experts are scheduled to have
4 depositions taken on the 10th and the 11th.

5 THE COURT: Anybody object to moving the rebuttal to
6 the 7th?

7 MR. JUNGREIS: Casitas doesn't object.

8 MR. HAGERTY: No objection.

9 THE COURT: Hearing no objection, you can have the
10 7th for all rebuttals instead of the 10th. City of
11 Ventura give notice.

12 Turning to City of Ventura's progress report, you
13 have a proposed order to show cause returnable December 9.

14 MR. HAGERTY: That's correct, Your Honor.

15 THE COURT: You negotiated with most everybody who
16 seems to be interested. If anybody wants to be heard to
17 oppose, the suggestion that I set an order to show cause
18 returnable on December 9 at 2:30 p.m. Hearing no
19 objection, the suggestion is adopted, and the City is
20 directed to give notice consistent with the proposed
21 notice of hearing you attached to your progress report,
22 Mr. Hagerty. Once you've done so, file proof of service
23 of same for the Court's benefit.

24 That means on December 9 at 2:30, we're adding an
25 order to show cause of why the Court shouldn't determine
26 certain watershed and basin boundaries according to the
27 terms of the notice of hearing filed by the City of
28 Ventura in due course.

1 MR. HAGERTY: Thank you, Your Honor.

2 THE COURT: Ms. Jacobson, you proposed that there be
3 motion practice on the question of whether we can
4 adjudicate all four groundwater basins. Do you propose to
5 bring the motion on behalf of your client, Ms. Jacobson?

6 MS. JACOBSON: I believe that will be the case.

7 THE COURT: Fine by me. Is it going to be something
8 in the nature of a demurrer, motion for judgment on the
9 pleadings, some motion under the particulars of Code of
10 Civil Procedure Section 840, et seq.? Is it a summary
11 adjudication, God forbid, on 75 days' notice?

12 MS. JACOBSON: I wouldn't do that to Your Honor.
13 No. We haven't nailed down the particulars yet. I
14 believe a motion (Technical disruption) the pleadings and
15 adjusting these matters of law head on sooner rather than
16 later would be the best way to dispose of the issues. And
17 ideally, there would be additional time in between expert
18 depositions of the hydrologists and the trial to do that.
19 Given how this has proceeded, we have little choice
20 otherwise, it appears.

21 THE COURT: So I'm going to let you file the motion
22 unless wants to be heard to object. Does anyone wish to
23 be heard to object to the proposed motion from City of
24 Ojai?

25 MR. HAGERTY: Your Honor, we don't necessarily
26 object. We --

27 THE COURT: You want to the oppose the motion?

28 MR. HAGERTY: We will obviously oppose the motion.

1 We can work with Ms. Jacobson. I don't have the cite
2 here, but there is a procedure that the parties have had
3 and the Court can proceed with on its own motion within
4 the adjudication statute that allows for a determination
5 of whether this is a comprehensive adjudication or not.
6 It would be seem appropriate that will be a basis for
7 that. We will oppose it. We also don't believe -- we
8 think it should be heard after you hear the evidence, Your
9 Honor.

10 THE COURT: You mean sometime during the course of
11 trial?

12 MR. HAGERTY: I would say after the close of trial,
13 Your Honor. We are very concerned about repeating the
14 problem that we had back in 2015, which was a Motion to
15 Strike our cross-complaint that led to a court of appeal
16 decision that sent us all back down here on a not fully
17 developed record. We think it's very efficient because we
18 believe the Court is going to have to hear phase one
19 anyway to allow the testimony to come in, and Ms. Jacobson
20 can bring her motion at the close of trial and it would be
21 part of the Court's decision. That's our position.

22 With regard to the process, Your Honor -- and I'll
23 work with Ms. Jacobson -- I think the simplest way to do,
24 I believe there's a provision in the statute that she can
25 pursue to keep it clean, Your Honor.

26 THE COURT: Ms. Jacobson, I thought I had intuited
27 from what you said before or what is said in your recent
28 status report that you had some hope this would be heard

1 and decided before we commenced the phase one trial, am I
2 mistaken?

3 MS. JACOBSON: You are not mistaken, Your Honor.
4 We're dealing with jurisdictional issues. We're dealing
5 with going back to March of 2021 where we raised these
6 concerns as to whether or not it was appropriate for the
7 City of Ventura to state causes of action against
8 (Technical disruption) in separate basins. The idea
9 originally was to have an evidentiary hearing quickly on
10 the simple issues under the statute. We thought it was
11 the best way to do that. But here we are, and we're
12 trying to advance the issue sooner rather than later on
13 matters of law, pure law. The sooner we can get that
14 answered, the better for all parties.

15 THE COURT: So you don't intend to call it a summary
16 adjudication motion, you intend to call it something else,
17 Ms. Jacobson?

18 MS. JACOBSON: Correct.

19 THE COURT: Is that something like a Motion For
20 Judgment on the Pleadings, or do you have some other
21 concept of what you're going to call it?

22 MS. JACOBSON: A Motion for Judgment on the
23 Pleadings is definitely one of the avenues that would
24 likely be pursued.

25 THE COURT: Are we in a position to talk about a
26 hearing date, even though I understand Mr. Hagerty is
27 going to say to rule on the motion in advance of the
28 completion of the development of the facts is wrong, but

1 he can say that in his opposition brief. You want a
2 hearing date some time in advance of February 14?

3 MS. JACOBSON: Yes, Your Honor.

4 THE COURT: Do you have a suggestion as to what you
5 consider to be a reasonable hearing date that would allow
6 briefing, even though you're aware that the position of
7 Ventura City is to rule in advance of the trial is
8 premature?

9 MS. JACOBSON: Yes, I had hoped we can decide the
10 issues of experts first. That really -- we're coming up
11 on December quickly. We have no less than eight expert
12 depositions scheduled and the holidays. So realistically,
13 I believe it would have to be the end of January.

14 THE COURT: I'm dark January 24th through the 31st.
15 I am here January 17th through the 19th. The 17th,
16 however, is a public holiday. I am available February 1
17 through 4. Between February 1 and January 18, do you have
18 a sentiment as to which is too soon or too late,
19 Ms. Jacobson?

20 MS. JACOBSON: For a noticed motion, we need at
21 least 16 court days' notice, correct?

22 THE COURT: Yeah. You're not out of time on that.
23 From that point of view, assuming you can do this in two
24 weeks, you should be fine.

25 MS. JACOBSON: My preference would be to have the
26 hearing date January 18th or 19th, so I would like to
27 shoot for one of those days if that is what works for your
28 calendar.

1 THE COURT: I would suggest that the 18th is better
2 than the 19th, morning or afternoon. Would you available,
3 Mr. Hagerty, that day, morning or afternoon?

4 MR. HAGERTY: We can make the day work.

5 THE COURT: I'll set you folks for 1:30 p.m. on
6 Tuesday, January 18 for City of Ojai Motion for Judgment
7 on the Pleadings or whatever exactly you style it.
8 Tentatively, we're call it a Motion for Judgment on the
9 Pleadings.

10 MS. JACOBSON: Thank you, Your Honor.

11 THE COURT: What else would you like to take up with
12 the Court, Ms. Jacobson?

13 MS. JACOBSON: The expert matter is disposed of and
14 this procedural issue. For now, I think that's all we
15 have for you.

16 THE COURT: You had one other concern. That is
17 setting a deadline to object for request for judicial
18 notice and the written objections to any such request for
19 judicial notice be filed no later than December 8. Do you
20 wish to renew that suggestion?

21 MS. JACOBSON: Yes, I do, Your Honor. That's in
22 advance of the December 9 conference.

23 THE COURT: Any reason, Mr. Hagerty, we shouldn't
24 try to get cards on the table in advance of the December 9
25 hearing by having such objections stated in advance of the
26 December 9 hearing?

27 MR. HAGERTY: We have no objection to that, Your
28 Honor. We do have a similar request in terms of a

1 simple -- I wouldn't call it a reply. There are two
2 issues that Ojai has raised that we would like to provide
3 essentially a one-page citation to authority for. It's
4 relevant to the discussion on the 9th. And to be
5 specific, if there's assertion that the cases that we
6 cited related to previous adjudication that have involved
7 multiple basins are only sub-basins and not basins.

8 THE COURT: That's in regard to the Antelope Valley
9 case?

10 MR. HAGERTY: And Mojave. We would like to point
11 out why we think that's an inaccurate statement. There is
12 one case citation that is relevant to an issue that Ojai
13 raised regarding the -- what's called the OBGMA, the
14 groundwater authority for the Ojai basin, and the relative
15 jurisdiction between the court and that entity as to the
16 physical solution. There is one case we just need to put
17 before the Court.

18 THE COURT: Can you file this by next Monday?

19 MR. HAGERTY: Yeah, we can do that.

20 THE COURT: Anybody object to the City of Ventura
21 submitting a short supplemental brief for the purposes
22 indicated just now by Mr. Hagerty?

23 MS. JACOBSON: Is this a supplemental brief?

24 THE COURT: It is separate from the objection to the
25 request for judicial notice. It is, as Mr. Hagerty
26 explained, apparently his effort to demonstrate that the
27 Mojave, Antelope Valley case did involve multiple separate
28 groundwater basins.

1 MR. HAGERTY: One case citation to another issue
2 Ojai raised.

3 THE COURT: So apparently is swatting back at one of
4 your cases. I'll let you respond to what he responds if
5 that pleases you.

6 MS. JACOBSON: Yes. I have no objection to that. I
7 just wanted some clarity.

8 THE COURT: Okay. City of Ventura can file what it
9 wants to file on next Monday.

10 MR. HAGERTY: Could we have until Tuesday? I'm
11 sorry. Can we have until Tuesday?

12 THE COURT: There is a holiday. Tuesday, November
13 30. City of Ojai wants to say something in response, feel
14 free to do that. No later than December 7 with City of
15 Ventura to give notice. The deadline for submitting
16 objections to request for judicial notice would be
17 December 8 and City of Ojai to give notice. Anything else
18 you would like to take up today, Ms. Jacobson?

19 MS. JACOBSON: Well, yeah. Actually, my only other
20 request is that we discuss the expectations for the
21 December 9 hearing.

22 THE COURT: Elaborate.

23 MS. JACOBSON: Are we going to have a substantive
24 conversation about the legal briefings that was previously
25 submitted?

26 THE COURT: That's my hope and expectation, ma'am.

27 MS. JACOBSON: Is there a certain process that you
28 would like us to follow for that discussion?

1 THE COURT: That's less clear. I haven't spent time
2 with the briefs. I intend to do a lot of homework. After
3 I've done the homework, I'll have a better sense of it.
4 What I would do is say that on the 6th I'll try to post
5 suggestions for how to structure the argument for the 9th.
6 Would that help?

7 MS. JACOBSON: That would be very helpful. Thank
8 you.

9 THE COURT: Anything else you want to take up with
10 the Court, Ms. Jacobson?

11 MS. JACOBSON: No, Your Honor.

12 THE COURT: Okay. Mr. Hagerty, anything you want to
13 take up today?

14 MR. HAGERTY: No. Thank you for your time.

15 THE COURT: Mr. Melnick, is there anything else you
16 think we need to take up today?

17 MR. MELNICK: No, Your Honor.

18 THE COURT: Mr. Golden-Krasner, anything else you
19 want to take up today?

20 MR. GOLDEN-KRASNER: No, Your Honor.

21 THE COURT: Mr. Jungreis?

22 MR. JUNGREIS: Yes, Your Honor. One very minor
23 thing. There was nothing in the tentative as to when we
24 were going to re-serve Mr. Kear's -- do we need to do it
25 today or tomorrow?

26 THE COURT: This is the previously submitted report?

27 MR. JUNGREIS: Correct.

28 THE COURT: I don't see the point of re-serving on

1 it. You just want to put your fingerprints on it or
2 something?

3 MR. JUNGREIS: I want to make sure there is no
4 requirement to.

5 MR. HAGERTY: We have the report. If that's all
6 that is going to be put forward, we have no need.

7 THE COURT: It's clear from your motion you are
8 adopting what you already said with the right to buy more
9 opinions in the future.

10 MR. JUNGREIS: That was just the clarification I was
11 seeking.

12 THE COURT: There's no need for Casitas Municipal
13 Water District to regurgitate the report that has already
14 been served.

15 MR. JUNGREIS: Thank you, Your Honor.

16 THE COURT: Anything else anyone wants to take up as
17 to this case? Give your name and tell me what the issue
18 is. Okay. Hearing nothing, City of Ventura give notice.
19 Court is in recess. I'm going to turn to the matters on
20 calendar for 11:00 a.m.

21 MR. HAGERTY: Thank you, Your Honor.

22 MR. PISANO: Thank you, Your Honor.

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24 (The proceedings concluded.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 10 HON. WILLIAM F. HIGHBERGER, JUDGE

SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT)
CORPORATION,)
PETITIONER,)

V.

) NO. 19STCP01176

STATE WATER RESOURCES CONTROL)
BOARD, A CALIFORNIA STATE)
AGENCY, ET AL.,)

) Reporter's
) Certificate

RESPONDENTS.)

AND RELATED CROSS-ACTION.)

I, Tracy Dyrness, Official Reporter Pro Tempore of the Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 Through 36, comprise a full, true, and correct transcript of the proceedings held in the above-entitled matter on Tuesday, November 23, 2021.

Dated this 2nd day of December, 2021.

Tracy Dyrness

, CSR NO. 12323
OFFICIAL REPORTER PRO TEMPORE

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