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

11 SANTA BARBARA CHANNELKEEPER,
 12 a California non-profit corporation,
 13
 14 Petitioner,

Case No. 19STCP01176
 Assigned to Judge William F. Highberger
 Dept.: 10

Complaint filed: September 19, 2014

15 v.

16 STATE WATER RESOURCES CONTROL
 17 BOARD, A CALIFORNIA STATE AGENCY;
 18 CITY OF SAN BUENAVENTURA, a
 19 California municipal corporation, incorrectly
 20 named as CITY OF BUENAVENTURA,

**CROSS DEFENDANTS ANDREW K.
 WHITMAN, HEIDI A. WHITMAN,
 NANCY L. WHITMAN AND JOHN R.
 AND NANCY L. WHITMAN FAMILY
 TRUST’S OBJECTION TO PROPOSED
 PHYSICAL SOLUTION**

21 Respondents.

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Cross-Complainant,

v.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

I am personally a cross-defendant and owner of land in Ojai and an owner of groundwater rights. My clients are in the same category except that Nancy Whitman, and the property owned

1 by her Trust, are not within the groundwater basin encompassed by this litigation. At this point
2 there is no mechanism for a maliciously or mistakenly joined party to extract from the litigation.
3 My clients and I first appeared in the action January 28, 2021. It isn't entirely clear at this point
4 abundantly what deprivation of rights a landowner with groundwater rights such as myself or my
5 clients may suffer if the City of Ventura is allowed to push through a physical solution/settlement
6 of claims. Preliminarily, my clients and I do not wish to concede anything to the City of Ventura,
7 wish to have the City of Ventura's use of Ventura River water controlled (reduced) and wish to
8 have our current or future use of our own water rights preserved.

9 **The physical solution is premature** – literally thousands of Ojai Valley landowners have
10 just recently answered the City of Ventura's Cross-Complaint. This Court's prior orders have
11 acknowledged that there are many more Ojai landowners who have yet to appear in this action.
12 Each of the landowner cross-defendants should be allowed ample time to understand the issues
13 and ramifications of the proposed physical solution as well as the original Complaint by SB
14 Channel Keepers and the other causes of action. There is a legion of cross-defendants who are
15 simply landowners, with associated water rights that have never been invoked (the landowners
16 aren't currently using their water rights). This category of cross-defendant needs time to
17 determine if they require legal representation. They need time to potentially identify other
18 landowners with common interests and potentially pool their resources and enter into joint
19 defense and joint representation agreements. Co-ordinated defenses and consolidated
20 representation would save the Court extensive time and judicial efficiency. Furthermore, the
21 impact of the proposed physical solution cannot be understood without expert advice and time is
22 needed to retain experts on behalf of the landowner cross-defendants. The proposed physical
23 solution is a complicated issue and made even more so by the interaction of the original complaint
24 by SB Channelkeeper and the other causes of action. The Court itself has expressed its own
25 concern regarding the interplay of the various causes of action and how due process rights of all
26 participants may be impacted. The City's rush to a "solution" feels like an effort to obtain
27 permanent benefits before the cross-defendants even know what hit them. Substantial time is

1 required – 180 days is suggested but not less than 90 days – before the landowner cross-defendants
2 should be expected or required to respond/comment on the physical solution.

3 **Before Any Physical Solution Can Be Agreeable to Impacted Cross Defendant**
4 **Landowners, The Solution Must Incorporate Control of the Volume of Water**
5 **Used by The City of Ventura.**

6 This litigation arose out of excessive use of Ventura River water by the City of Ventura.
7 A public interest group (SB Channelkeeper) sued the City of Ventura because the City’s excessive
8 use of Ventura River water was damaging the environment, including, but not limited to, steel
9 head trout. The detrimental impacts to the Ventura River should have been addressed in
10 environmental impact reports as the City of Ventura has unleashed unmitigated growth and
11 increased water demands against the entire water system and region over the last decade and more.
12 I am not a land use attorney and perhaps the regional impacts of water use are not encompassed
13 by the issuance of building permits. However, the City of Ventura has filed suit to bring about a
14 regional solution to water usage and that should provide a vehicle to impose regionwide controls
15 on current and future water usage and on applications and permits for development.

16 Despite the SB Channelkeeper lawsuit, the City of Ventura has not taken measures to
17 control its water use. The City continuously and aggressively issues new development permits
18 within the City of Ventura. This inevitably results in increased demand on water in the Ventura
19 River and on the entire region. The water supply is not unlimited and current usage apparently
20 outstrips the supply (look at the level of Lake Casitas - the principal water storage facility in the
21 region). Yet development permits continue to be issued by the City of Ventura and the demands
22 on the regional water supply are increased thereby. If the current causes of action before this
23 Court do not incorporate the legal ability for a solution to control or enjoin the City of Ventura
24 use of Ventura River water (and regional water) then a new cause of action and/or cross-complaint
25 needs to be included within the present proceedings so that the issue can be litigated. This is
26 another reason that additional time is necessary. No physical solution can be considered without
27 a mechanism to control if and when the City of Ventura places additional demands on the Ventura
28 River and regional water resources.

1 At this early stage of my involvement in this litigation (a little more than 30 days), I cannot
2 say what legal doctrine allows implementation of controls/limitations on City of Ventura
3 development. However, it seems likely that equitable law demands that a solution includes such
4 controls. Perhaps the unclean hands doctrine is the correct legal vehicle, since any physical
5 solution would necessarily require use of this Court's equitable powers. If unclean hands is not
6 the correct vehicle, then there must be another appropriate legal doctrine that applies. In general,
7 in equity every wrong must have a remedy. As part of any regional inspection of the Ventura
8 River and regional basin by this Court, this Court should survey the City of Ventura and the
9 extensive development that has been recently completed or is still in process. The Court should
10 also mandate reports from the City concerning current and future development and how it will
11 impact water supply and demand in the entire basin. Without knowing the demands the City of
12 Ventura is currently placing on regional water the Court cannot consider the propriety of a
13 solution.

14 In contrast to Ventura water usage, the entire Ojai Valley basin has been in a virtual
15 moratorium prohibiting development. This is primarily because of air quality and traffic
16 congestion issues. Ask any cross-defendant and they will tell you that their ability to subdivide
17 their land has been precluded by County of Ventura or City of Ojai planning departments.
18 Ironically, the City of Ventura is suing its neighbors to control their water usage when it is the
19 City's own greedy use of water and poor planning that led to the necessity of a solution. The
20 alleged need for a "solution" to Ventura River water and the associated Ojai groundwater basin
21 is primarily caused by the lack of responsible management of development and future water use
22 by the City of Ventura. This would seem to provide the Court with equitable authority to deny
23 the City any equitable relief (in the form of the proposed solution).

24 When Greta Thunberg addressed the UN in 2019 her comments were directed at Nations,
25 but her comments were just as applicable, if not more, to local governments who behave like the
26 City of Ventura.

27 "You have stolen my dreams and my childhood with your empty words and yet I'm one
28 of the lucky ones," Thunberg told the United Nations Climate Action Summit.

1
2 “People are suffering. People are dying. Entire ecosystems are collapsing. We are in the
3 beginning of a mass extinction and all you can talk about is money and fairytales of eternal
4 economic growth. How dare you.”

5 The City of Ventura obviously views the fairytale of continuous development as the
6 engine for economic security for its citizens. However, as Ms. Thunberg stated so precisely,
7 economic prosperity is not sustainable and there is a severe cost. The cost is to our future and
8 everyone and everything that shares the planet. With respect to subject matter of this litigation,
9 the excessive draft that the City of Ventura takes against the Ventura River and the water basin
10 in general is a toll that must be accounted for, curbed, and controlled. It implicates both economic
11 justice and environmental justice. While the City of Ventura and its citizens profit from the use
12 of Ventura River water and regional water resources, the outliers (everybody not in the City
13 limits) are constrained in the opportunity for profitable use. The City of Ventura is a parasite on
14 the region and its plans for the Ventura River and the water basin appear to include subservience
15 by the Ojai landowners. Any such solution is unjust and cannot be allowed.

16 **All City Of Ventura Landowners Should Be Joined As Defendants In Any**
17 **Solution/Adjudication.**

18 Ojai landowners with groundwater rights were dragged into this litigation kicking and
19 screaming (and at great expense). It is only fair and equitable that every City of Ventura
20 landowner with water rights should also be part of any solution/settlement. As framed by the
21 City, they expect only the Ojai basin landowners to submit to the solution. However, because the
22 reason for this litigation is to secure water usage and water rights for the City of Ventura, every
23 landowner within the City’s jurisdiction should also be a party and a part of the solution. Their
24 rights to groundwater and riparian water should be incorporated into a regional solution under the
25 same rationale that mandated the participation of Ojai landowners. Furthermore, Ventura residents
26 benefit financially and disproportionately under the City’s unbridled and unabashed use of
27 regional water. Any equitable solution would require that any additional development in the City
28 of Ventura would come from the water currently allocated to use by Ventura users. It is more

1 equitable that Ventura residents be asked to ration their water use than it is to adjudicate the rights
2 of Ojai landowners who are not enjoying profit from development. Alternatively, an appropriate
3 solution to Ventura's future water use may include acquisition of water through desalination or
4 purchase of water from sources outside the region. The cost of such acquisition should be borne
5 by Ventura landowners and citizens.

6 **A Solution Must Exclude the City of Ventura as a Decision Maker or Monitor**

7 Although it is not entirely clear at this early stage of my involvement, it seems that the
8 City of Ventura wants to place itself at the head of the table in terms of water management
9 decisions for the region moving forward. This places the proverbial fox in the position of
10 guarding the henhouse. The City is the primary bad actor with respect to the water debacle that
11 led to the SB Channelkeeper lawsuit. The bad actor, the actor with unclean hands, should not
12 have a seat at the table. The City's cross-complaint puts in issue the fact that water usage is a
13 regional concern. Any body governing future regional use and the allocation of water usage in
14 this region should be composed of persons/entities with regional interests at heart. The City of
15 Ventura has a conflict of interest when it comes to managing regional water resources. The
16 various water districts also should not be at the table of regional decision making (except in a
17 minor advisory role). The water district that supplies my water has made it abundantly clear that
18 my interests as a landowner with water rights are not of their concern. The local water districts
19 also have a conflict of interest, do not represent the interests of landowner/rights holders and
20 should be disqualified from participation and decision making concerning regional water
21 management.

22 **An Independent Water Expert Should Be Involved in Any Solution.**

23 This Court should have the benefit of an expert concerning regional riparian and
24 groundwater supply and demand. The Court should not rely upon any expert tendered by the City
25 (fox guarding the hen house) or any other litigant. The Court should devise a method for selecting
26 a water expert to assist the Court with understanding complicated science based issues. The
27 selection of the expert should be based upon scientific qualifications, knowledge and experience
28 concerning water resources and water use in the region (including historical resources and usage).

1 The selected expert should have a reputation for fairness and broad concern for all competing
2 interests in the region. The expense of the expert should be paid entirely by the City (the City's
3 cross-complaint has created the need for the Court to have the benefit of independent technical
4 and scientific advice).

5 Of course, the City and any other litigant or interested party can present the testimony of
6 a retained expert whenever the need arises. The circumstances are akin to medical malpractice
7 litigation where the standard of care is not something a judge or jury is expected to know. The
8 Court is being asked to assess and formulate equitable rulings concerning a complex regional
9 water basin, and fair and impartial expert assistance to the Court is warranted by what the City
10 has placed in issue. The situation is different than the typical adversarial litigated case with the
11 experts being supplied by the litigants. The Court must take into consideration broader regional
12 interests not just the interests of the parties to the litigation.

13 **The Court Should Develop A Special Procedure For Extracting Landowners**
14 **Erroneously Joined As Cross Defendants.**

15 One of my clients owns property that is not within the Ojai/Ventura River water basin.
16 The client has riparian and groundwater rights, but it is undisputable that the riparian and hence
17 the ground water eventually flows, through Santa Paula and to the Santa Clara River. There
18 should be a mechanism to summarily extract my client from the litigation. Perhaps a
19 questionnaire? Perhaps the Court's independent expert (prior paragraph) can assess landowners
20 who contest that they have any association with the Ventura River or greater Ojai Groundwater
21 basin.

22 **Every Landowner Cross-Defendant Must be Afforded The Right to Discovery**
23 **and a Right to Trial before the Court Endorses a Solution.**

24 The proposed solution purposefully places the cart before the horse. It seeks adjudication
25 of matters that will or may have long term impacts for the region and the landowner cross-
26 defendants.

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Respectfully Submitted,

/s/ Andrew K. Whitman

ANDREW K. WHITMAN, in pro per, and
attorney for HEIDI A. WHITMAN, NANCY L.
WHITMAN, JOHN R. AND NANCY L.
WHITMAN TRUST