

1 SHAWN HAGERTY, Bar No. 182435  
shawn.hagerty@bbklaw.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@bbklaw.com  
6 SARAH CHRISTOPHER FOLEY, Bar No. 277223  
sarah.foley@bbklaw.com  
7 PATRICK D. SKAHAN, Bar No. 286140  
patrick.skahan@bbklaw.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

Exempt From Filing Fees Pursuant to  
Cal. Gov't Code § 6103

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

15 SANTA BARBARA CHANNELKEEPER,  
16 a California non-profit corporation,

17 Petitioner,

18 v.

19 STATE WATER RESOURCES  
20 CONTROL BOARD, etc., et al.,

21 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant

24 v.

25 DUNCAN ABBOTT, an individual, et al.

26 Cross-Defendants.  
27  
28

Case No. 19STCP01176

Judge: Honorable William F. Highberger

CITY OF SAN BUENAVENTURA'S EX  
PARTE APPLICATION FOR ISSUANCE OF  
A PROTECTIVE ORDER RE: SURFACE  
WATER FLOW MODEL; MEMORANDUM  
OF POINTS AND AUTHORITIES;  
DECLARATION OF CHRISTOPHER M.  
PISANO IN SUPPORT THEREOF

Filed concurrently with:

- 1. [Proposed] Order
- 2. Stipulation and Protective Order

Hearing Date: December 23, 2021  
Time: 10:00 a.m.

Action Filed: Sept. 19, 2014  
Trial Date: Feb. 14, 2022

1 **TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS**  
2 **OF RECORD:**

3 PLEASE TAKE NOTICE that on December 23, 2022, at 10:00 a.m., in Department SS10  
4 of the above-entitled Court, Respondent and Cross-Complainant, City of San Buenaventura  
5 (“Ventura”) will and hereby does apply *ex parte* for an order approving the concurrently lodged  
6 Stipulation and Protective Order for the exchange of information regarding a surface water flow  
7 model developed in this action by the City’s designated expert, Dr. Claire Archer of Cardno. This  
8 application is made on the following grounds:

9 Four parties to this case, Ventura, the City of Ojai (“Ojai”), Casitas Municipal Water  
10 District (“Casitas”) and the group of Cross-Defendants known as the East Ojai Group (“EOG”)  
11 have executed a Stipulation and Protective Order to facilitate the exchange of the Regional  
12 Groundwater – Surface Water Flow Model developed by Ventura’s designated expert, Dr. Claire  
13 Archer (the “Model”). The Stipulation and Protective Order is modeled off of the standard form  
14 on the County of Los Angeles Superior Court website.

15 Pursuant to the Stipulation and Protective Order, the Model shall be used by the persons  
16 or entities receiving it only for the purposes of preparing for, conducting, participating in the  
17 conduct of, and/or prosecuting and/or defending this action, and not for any business or other  
18 purposes whatsoever. Ojai, Casitas, and EOG, have each designated a hydrogeologist expert, and  
19 have each requested a copy of the Model so that their respective experts may analyze it. The  
20 Stipulation and Protective Order that these parties have agreed to will allow the respective experts  
21 to access and copy the Model, which in essence is a computer program, via a secure internet site,  
22 and these parties’ experts will then have the ability to analyze, test and even manipulate the  
23 Model. Important to Ventura though, the Model will only be used for purposes of the litigation.  
24 Also, at the conclusion of this action, Ojai, Casitas and EOG will certify that the copy of the  
25 Model their experts received will be deleted/destroyed.

26 This *ex parte* application is made pursuant to Rules of Court rule 3.1300(b), and Code of  
27 Civil Procedure section 128, 1005, 2025.420, subdivision (b), on the grounds that this Court has  
28 the authority to order shortening time for the filing and service of papers, and inherent authority

1 to provide for the orderly conduct of hearings and to control hearings in the furtherance of justice.  
2 Pursuant to those provisions, the Court may also, for good cause shown, make any order that  
3 justice requires to protect any party, deponent, or other natural person or organization from  
4 unwarranted annoyance, embarrassment, or oppression, or undue burden and expense, including  
5 establishing conditions on the disclosure of a trade secret or other confidential research,  
6 development, or commercial information. Dr. Archer's deposition is currently scheduled for  
7 January 6, 2022, and counsel for Ojai, Casitas and EOG have expressed a desire to have their  
8 experts review the Model in advance of the deposition. Thus there is good cause in getting this  
9 Stipulation and Protective Order approved on an *ex parte* basis.

10 Ventura's Application is based on this Application, the attached Memorandum of Points  
11 and Authorities, the Declaration of Christopher M. Pisano, and the complete files and records in  
12 this action.

13 Pursuant to California Rules of Court, rules 3.1203 and 3.1204, Ventura provided notice  
14 of this *ex parte* application as required by law and as set forth in the Declaration of Christopher  
15 M. Pisano to all attorneys or self-represented parties known to Ventura. (See Declaration of  
16 Christopher M. Pisano, ¶ 5.)

17 Pursuant to California Rules of Court, rule 3.1202, subdivision (a), the names, addresses,  
18 e-mail addresses, and telephone numbers of the parties, to the extent known to Ventura are  
19 identified on the concurrently filed proof of service.

20 Pursuant to California Rules of Court, rule 3.1202, subdivision (b), this is to disclose that  
21 no *ex parte* application has been previously brought by Ventura that is of the same character and  
22 has sought the same relief. As of the filing of this application, Ventura is unaware of whether any  
23 party intends to appear and/or oppose this application.

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

Dated: December 22, 2021

BEST BEST & KRIEGER LLP

By: *Christopher Pisano*

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Respondent and Cross-Complainant, City of San Buenaventura (“Ventura”) seeks entry of  
4 a Stipulation and Protective Order for good cause under Rules of Court rule 3.1300(b). Ventura  
5 on the one hand, and City of Ojai (“Ojai”), Casitas Municipal Water District (“Casitas”) and East  
6 Ojai Group (“EOG”) have executed a Stipulation to facilitate the exchange of information which  
7 may be subject to confidentiality limitations on disclosure due to federal and state laws and  
8 privacy rights relating to the Regional Groundwater – Surface Water Flow Model developed by  
9 the City’s designated expert, Dr. Claire Archer (the “Model”). A copy of the Stipulation and  
10 Protective Order is concurrently filed and/or lodged herewith. (See Declaration of Christopher  
11 M. Pisano (“Pisano Decl.”), ¶ 3.) The Stipulation and Protective Order is modeled off of the  
12 standard form on the County of Los Angeles Superior Court website. (*Id.* at ¶ 3.)

13 The Stipulation and Protective Order is necessary to provide conditions on disclosure and  
14 use of the Model. It provides that the Model shall be used by the persons or entities receiving it  
15 only for the purposes of preparing for, conducting, participating in the conduct of, and/or  
16 prosecuting and/or defending this action, and not for any business or other purposes whatsoever.  
17 The Court has the authority, for good cause shown, to make any order that justice requires  
18 including directing that a “trade secret or other confidential research, development, or commercial  
19 information not be disclosed or be disclosed only to specified persons or only in a specified way.”  
20 (Code Civ. Proc., § 2025.420(b)(13).) Ventura respectfully requests that this Court enter the  
21 concurrently filed/lodged Stipulation and Protective Order concerning the Model.

22 There is good cause in granting this application on an *ex parte* basis given the expert  
23 discovery schedule in this action and the pending need for the stipulating parties to receive the  
24 Model in advance of Dr. Archer’s deposition, which is currently scheduled for January 6, 2022.  
25 The stipulating parties have met and conferred and have agreed to the terms in the Stipulation.  
26 The Court should grant this *ex parte* application for good cause shown in order to facilitate  
27 disclosure of the Model prior to Dr. Archer’s deposition and to allow the parties to proceed with  
28 the expert discovery schedule.

1 **II. ADOPTION OF THE PROTECTIVE ORDER IS APPROPRIATE AND WITHIN**  
2 **THE COURT’S DISCRETION**

3 Before, during, or after a deposition, the Court has the authority, for good cause shown, to  
4 make any order that justice requires to protect any party, deponent, or other natural person or  
5 organization from “unwarranted annoyance, embarrassment, or oppression, or undue burden and  
6 expense.” (Code Civ. Proc., § 2025.420(b).) The protective order may include directions that a  
7 “trade secret or other confidential research, development, or commercial information not be  
8 disclosed or be disclosed only to specified persons or only in a specified way.” (*Id.* at subd.  
9 (b)(13).) Code of Civil Procedure section 2025.420, subdivision (b) provides a “*nonexclusive* list  
10 of permissible directions that may be included in a protective order.” (*Nativi v. Deutsche Bank*  
11 *Nat’l Trust Co.* (2014) 223 Cal.App.4th 261, 316, emphasis in original.) The issuance and  
12 formulation of protective orders are to a large extent discretionary, and ruling on motions for  
13 protective orders will not be disturbed absent an abuse of discretion. (*Ibid.*)

14 The Model was developed in this action by Ventura’s designated expert, Dr. Claire Archer  
15 of Cardno. (Pisano Decl., ¶ 3.) The Stipulation and Protective Order establishes reasonable  
16 limits on the access to and/or disclosure of the Model. Pursuant to the Stipulation and Protective  
17 Order, a copy of the Model will be provided to Ojai’s designated expert, Jordan Kear<sup>1</sup>, EOG’s  
18 designated expert, Anthony Brown of Aquilogic, and Casitas’ designated expert Dr. Jim McCord.  
19 The Stipulation and Protective Order provides that the Model shall be used by the persons or  
20 entities receiving it only for the purposes of preparing for, conducting, participating in the  
21 conduct of, and/or prosecuting and/or defending this action, and not for any business or other  
22 purposes whatsoever. As such, it sets forth reasonable conditions on the use and disclosure of the  
23 Model consistent with Code of Civil Procedure section 2025.420, subdivision (b)(13), and the

24 \_\_\_\_\_  
25 <sup>1</sup> Ventura notes here that while it was negotiating the Stipulation and Protective Order with these  
26 parties, a group of landowners in the Upper Ojai Basin submitted an expert report from Mr. Kear  
27 pursuant to the Court’s Order granting Loa Bliss’ motion for leave to submit an expert report.  
28 Mr. Kear will have access to the Model and can use it for any litigation purpose pursuant to the  
Stipulation and Protective Order, and thus he will be able to use the Model in his capacity as a  
designated expert for the Upper Ojai Group as well for the City of Ojai.

1 Court should grant this *ex parte* application for good cause shown.

2 **III. CONCLUSION**

3 Based on the foregoing, and for good cause shown, Ventura respectfully requests that the  
4 Court enter the Stipulation and Protective Order filed/lodged herewith in order to facilitate  
5 disclosure of the Model.

6  
7 Dated: December 21, 2021

BEST BEST & KRIEGER LLP

8

By: Christopher P. Pisan

9

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **DECLARATION OF CHRISTOPHER M. PISANO**

2 I, Christopher M. Pisano, declare and state:

3 1. I am an attorney at law, licensed to practice in California. I am a partner with Best  
4 Best & Krieger LLP, counsel of record for Defendant and Cross-Complainant the City of San  
5 Buenaventura (“Ventura”) in the above-entitled action. I make this declaration of my own  
6 knowledge, and if called as a witness, I could testify competently to all facts set forth herein.

7 2. I make this declaration in support of Ventura’s *ex parte* application for a protective  
8 order. This application is made on the following grounds.

9 3. Ventura and City of Ojai (“Ojai”), Casitas Municipal Water District (“Casitas”)  
10 and East Ojai Group (“EOG”) have executed a Stipulation and Protective Order to facilitate the  
11 exchange of information which may be subject to confidentiality limitations on disclosure due to  
12 federal and state laws and privacy rights. The Stipulation and Protective Order concerns the  
13 disclosure of the Regional Groundwater – Surface Water Flow Model developed by Ventura’s  
14 designated expert, Dr. Claire Archer (the “Model”). There is good cause to enter a protective  
15 order concerning use and disclosure of the Model to facilitate the exchange of information which  
16 may be subject to confidentiality limitations on disclosure due to federal and state laws and  
17 privacy rights. The Stipulation and Protective Order is modeled off of the standard form on the  
18 County of Los Angeles Superior Court website. A copy of the Stipulation and Proposed  
19 Protective Order is concurrently filed and/or lodged herewith.

20 4. The parties have diligently proceeded with scheduling and taking of expert  
21 discovery. Currently, the deposition of Dr. Archer is scheduled for January 6, 2022. This *ex*  
22 *parte* application is necessary in order to provide the Model to Ojai’s, Casitas’ and EOG’s experts  
23 in advance of Dr. Archer’s deposition in order to facilitate the parties’ completion of expert  
24 discovery as scheduled.

25 5. On December 22, 2021, at approximately 7:30 a.m., I gave notice of this *ex parte*  
26 application to all parties to the case by emailing all attorneys and/or self-represented parties  
27 known to the City in this action, as identified on the concurrently filed proof of service list. A  
28 true and correct copy of the email that I sent is attached hereto as Exhibit “A.” Pursuant to

1 California Rules of Court, rule 3.1202, subdivision (a), the names, addresses, e-mail addresses,  
2 and telephone numbers of the parties, to the extent known to Ventura, are identified on the  
3 concurrently filed proof of service. As of the date and time of signing this Declaration, I have not  
4 received any responses indicating any opposition to the application, or that any other party to this  
5 action intends to appear. I have received a handful of response emails from parties indicating that  
6 they do not oppose and do not intend to appear, but there have not been any emails indicating any  
7 opposition or any intent to appear.

8 I declare under the penalty of perjury under the laws of the State of California, that the  
9 foregoing is true and correct. Executed on December 22, 2021, at Los Angeles, California.

10  
11 

12 \_\_\_\_\_  
13 Christopher M. Pisano  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

---

**From:** Christopher Pisano  
**Sent:** Wednesday, December 22, 2021 7:25 AM  
**To:** 'Adam C. Kear'; 'Adam D. Wieder'; 'Alberto Boada'; 'Alessandro Lobba'; 'Amy Elmore'; 'Amy Hueppe'; 'Andrew Brady'; 'Andrew K. Whitman'; 'Andrew P. Byrne'; 'Anthonie M. Voogd'; 'Barry C. Groveman'; 'Angela Small Booth'; 'Brad Brian'; 'Bradley Herrema'; 'Brandon Hansen'; 'Brent L. Vossler'; 'Brian A. Osborne'; 'Brian Moskal'; 'Brigitte Lovell'; 'Byran M. Sullivan'; 'Carlos Mejia'; 'Carol Boyd'; 'Catherine Eileen Ferro'; 'Christine Steiner'; 'Christopher Danch'; 'Christopher Guillen'; 'Christopher Stolz'; 'Claire Brian'; 'Claude R. Baggerly'; 'Cristian Arrieta'; 'Dale Givner'; 'Daniel Cooper'; 'Daniel S. Roberts'; 'David A. Ossentjuk'; 'David Bishop and Sophie Lorie'; 'David L. Osias'; 'David R. Greifinger'; 'David R. Krause-Leemon'; 'Dennis Corte'; 'Dennis Mitchell'; 'Douglas J. Dennington'; 'Ed Casey'; 'Elsa Sham'; 'Eric Katz'; 'Ernest J. Guadiana'; 'George Bressler'; 'Gerrold and Karen Grigsby'; 'Gina Angiolillo'; 'Glenn Bator'; 'Gregg S. Garrison'; 'Gregory Patterson'; 'Harry and Raymond Sims'; 'Harry Anthony Williams'; 'Heather Blair'; 'Henry D. Finkelstein'; 'Holly Jacobson'; 'J. Roger Essick'; 'Jaide Whitman'; 'James A. Vickman'; 'Janice Hillestad'; 'Jason Canger'; 'Jason Goldman'; 'Jeanne Zolezzi'; 'Jeffrey Oderman'; 'Jennifer Carafelli'; 'Jennifer Jordan Day'; 'Jennifer T. Buckman'; 'Jeremy Jungreis'; 'Jesse Hillestad'; 'John E. Peakes, Jr.'; 'Joseph Chrisman'; 'Joshua Beckman'; 'Joyce L. Heath'; 'Joyce Syme'; 'Julia J. Park'; 'Julia Taft-Whitman'; 'Julia Whitman'; 'Julie A. Baker'; 'Justin Fisch'; 'Justin M. Alvarez'; 'Karen A. Feld'; 'Kathleen Janetatos Smith'; 'Kelley M. Rasmussen'; 'Kelsey Klein'; 'Kelton Lee Gibson'; 'Kristi Schoeld and Neil Jorgensen'; 'L. Fraley'; 'Laura Schreiner, a.k.a Laura Rearwin'; 'Lawrence S. Mihalas'; 'Leslie L. Clark'; 'Linda J.G. MacDougall'; 'Lindsay Nielson'; 'Lindy Goetz'; 'Loa E. Bliss'; 'Malinda K. Vaughn and Mitchell B. Vaughn'; 'Marc Melnick'; 'Mark Pachowicz'; 'Martin Hartmann'; 'Matthew Bullock'; 'Melinda Haas'; 'Mellanie Hilgers'; 'Michael Van Zandt'; 'Michael W. Price'; 'Michaela Boehm'; 'Michelle J. Berner'; 'Miles P. Hogan (mhogan@cityofventura.ca.gov)'; 'Nancy J. Johnson'; 'Nathan Metcalf'; 'Neal Maguire'; 'Noah Goldenkrasner'; 'Oriana Marie Fedele'; 'Patrick Loughman'; 'Patrick Skahan'; 'Paul J. Deneen'; 'Paul R. Huff'; 'Peter Duchesneau'; 'Peter Goldenring'; 'Rabindra Singh'; 'Rebecca C. Collins'; 'Rebecca D. Schwermer'; 'Rebecca Tickell'; 'Robert K. Cartin'; 'Robert Kwong'; 'Robert Kyle'; 'Robert L. Smith'; 'Robert Turnage'; 'Robin Schwartzburd'; 'Ronald W. Bowman'; 'Ryan Blatz'; 'Ryan Hiete'; 'Salvatore Scarpato'; 'Sarah Foley'; 'Scott Slater'; 'Sean Herman'; 'Shawn Hagerty'; 'Sigrid Waggener'; 'Sophie A Wenzlau'; 'Stacey Birchfield'; 'Stephanie Gustafson'; 'Susan and Steven White'; 'Susan Capper'; 'Susan M. Glennon'; 'Thomas Adams'; 'Thomas Bunn'; 'Thomas C. Collins, Jr.'; 'Thomas E. Jeffry'; 'Thomas G. Gehring'; 'Thomas M. German'; 'Tiernan Dolan'; 'Tim Carey'; 'Timothy Mahoney'; 'Tom Maloney'; 'Tony Francois'; 'Tucker Wisdom-Stack'; 'William E. Colborn, Jr.'; 'William R. Thatcher'; 'William Short'; 'William Slaughter'; 'William Tarantino'; 'William Tarantino'; 'William W. Carter'

**Cc:** Sarah Foley; Shawn Hagerty; Patrick Skahan; Marnie Prock; Elizabeth Balloue; Irene Islas; Veronica Gamba

**Subject:** Santa Barbara Channelkeeper v SWRCB, Case No. 19STCP01176 - Notice of Ex Parte Application

**Attachments:** 2021-12-21 Stipulation and Protective Order-c1.pdf

All:

I am reaching out to everyone to give notice that the City of Buenaventura (“Ventura”) will be appearing before the Court on Thursday, December 23, 2021, at 10:00 a.m., on an ex parte application for an order approving a Stipulation and Protective Order that has been agreed to by Ventura, City of Ojai (“Ojai”), Casitas Municipal Water District (“Casitas”) and the East Ojai Group. A copy of the Stipulation and Protective Order is attached. The Stipulation and Protective Order will control the process for the production of Ventura’s expert’s regional groundwater-surface water flow model. As the Stipulation and Protective Order provide, the model will be provided to Ojai’s, Casitas’ and East Ojai Group’s respective experts for their use and analysis, and the parties have agreed that the model will be used solely for purposes of this litigation. All terms regarding the production of the model are set forth in the Stipulation and Protective Order, and at the ex parte hearing Ventura will ask the Court to sign the Protective Order.

Pursuant to California Rules of Court 3.1204(a)(2), can all parties please let me know whether they will appear at the hearing and whether they oppose the request for the Court to enter the Protective Order? I will be filing the City’s ex parte papers later this morning, and I will inform the Court in my declaration of any parties that intend to appear and/or oppose. Thank you.

Chris

 **BB&K**  
BEST BEST & KRIEGER  
ATTORNEYS AT LAW

**Christopher Pisano**  
Partner  
christopher.pisano@bbklaw.com  
T: (213) 617-7492 C: (213) 448-0667  
www.BBKlaw.com  

**Holiday Greetings from BB&K!**