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7 Attorneys for Cross-Defendant
 CASITAS MUNICIPAL WATER DISTRICT a California
 8 special district

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF LOS ANGELES, COMPLEX

11 SANTA BARBARA CHANNELKEEPER, a
 California non-profit corporation,

12 Petitioner,

13 vs.

14 STATE WATER RESOURCES CONTROL
 15 BOARD, a California State Agency;
 CITY OF SAN BUENA VENTURA, a
 16 California municipal corporation, incorrectly
 named as CITY OF BUENA VENTURA,

17 Respondents.

18 CITY OF SAN BUENA VENTURA, a
 19 California municipal corporation,

20 Cross-Complainant,

21 vs.

22 DUNCAN ABBOTT, et al.,

23 Cross-Defendant.

Case No. 19STCP01176

Judge: Hon. William F. Highberger
 Dept: 10

**DECLARATION OF JEREMY N.
 JUNGREIS IN SUPPORT OF CROSS-
 DEFENDANT EAST OJAI GROUP'S EX
 PARTE REQUEST TO CONTINUE TRIAL
 DATE AND ALL RELATED DEADLINES**

Date Action Filed: September 19, 2014
 Phase 1 Trial Date: February 14, 2022

Hearing Date: January 20, 2022
 Time: 1:30 P.M.
 Department: 10

1 **DECLARATION OF JEREMY N. JUNGREIS**

2 I, Jeremy N. Jungreis, declare as follows:

3 1. I am an attorney at the law firm of Rutan & Tucker, LLP, counsel of record for
4 Cross-Defendant Casitas Municipal Water District (“Casitas”). I am a member in good standing
5 of the State Bar of California. I make this Declaration in support of Casitas Municipal Water
6 District’s (“Casitas”) Joinder in Cross-Defendant East Ojai Group’s Ex Parte Application to
7 Continue the Trial Date for Phase I of Trial (“Application”). I have personal knowledge of the
8 facts set forth in this Declaration in support of East Ojai’s Application, and, if called as a witness,
9 could and would testify competently to such facts under oath to the following.

10 2. Casitas submitted two rebuttal expert reports on January 7, 2022 in response to
11 expert reports submitted by Dr. Claire Archer on behalf of the City of Ventura (“Ventura” or
12 “City”) and to reports jointly submitted by Dr. Al Preston and Dr. Gregory Schnaar on behalf of
13 the State Water Resources Control Board (“State”). In the lead-up to the submission of the Casitas
14 rebuttal reports, Casitas’ Rebuttal experts, Dr. Jim McCord, and Mr. Randall Hanson, asked for
15 additional data and technical information underlying the groundwater-surface water models
16 developed by the State and Ventura. In the case of the State, the information requested by Casitas,
17 on or about December 1, 2021 was not provided, though Casitas contends it should have been
18 produced per CCP 843 (b) on or about September 24, 2021 at the time of initial expert disclosures.
19 Casitas also asked the State for the same technical information on October 13, 2021, but most of
20 the requested information requested was never provided by the State. (See email correspondence
21 between Jeremy Jungreis and Counsel for the State, City and other Parties, dated January 5, 2022,
22 a true and correct copy of which is attached hereto as Exhibit 1).

23 3. Meanwhile, on December 17, 2021, the State released an entirely new version of
24 the surface/groundwater model it previously submitted as part of its expert report on September
25 24, 2021, and solicited public comments on that model, raising significant questions for Casitas on
26 how the September 24 version of the model differed from the December 17, 2021 version of the
27 model. (See State Water Resources Control Board, *Notice Soliciting Comments on Draft*
28 *Groundwater-Surface Water Model of the Ventura River Watershed and Model Documentation*

1 *Report*, released December 17, 2021, a true and correct copy of the State’s December 17 Notice is
2 attached hereto as Exhibit 2.) The inability or unwillingness of the State to provide the requested
3 technical data and model components sought by Casitas in writing on at least two separate
4 occasions (*See Exhibits 3¹ and 4²*), compounded by the fact that the State’s model appears to have
5 been superseded by an entirely new version of the model released immediately before the
6 Christmas Holiday. The non-production of data, exhibits and code underlying the State’s model
7 has frustrated the ability of Casitas to fully understand the technical basis for the opinions
8 rendered by the State’s experts on September 24, 2021 and again on January 7, 2022, and made it
9 difficult for Casitas’ experts to prepare for their own depositions as well as the depositions of the
10 State’s “hydrologic connection” experts (Preston and Schnaar).

11 4. Casitas also requested to review the technical basis for Dr. Archer’s opinions,
12 including the model she prepared as part of preparing her expert report, per CCP 843 (b), but
13 Casitas expert, Mr. Randall Hanson, a thirty eight year veteran of the U.S. Geological Survey
14 (USGS) was limited in his ability to do so by the fact that Ventura did not produce the model until
15 December 27, and only then in a manner that only allowed the model to be viewed on one
16 computer—which presented difficulties for Casitas’ three expert team that would be reviewing and
17 seeking to run the model in the week between Christmas and New Year’s Day. Meanwhile, not all
18 required software could be utilized from remote computers by Mr. Hanson during the period
19 between December 27 and the January 7 deadline for rebuttal reports—further frustrating his
20 ability to evaluate the Archer Model and how it was used to support the opinions put forth by Dr.
21 Archer prior to the submission of Mr. Hanson’s expert rebuttal report (*See meet and confer*
22 regarding this topic in Exhibit 1).

23 5. Counsel for Ventura and the State have not been willing to commit to supporting a
24

25 ¹ Exhibit 3 is a true and correct copy of meet and confer correspondence dated December 1 and
26 December 7, 2021 respectively between Counsel for Casitas and Counsel for the State regarding
the missing modeling and technical data necessary or Casitas to complete its evaluation of the
State Model.

27 ² Exhibit 4 is a true and correct copy of Casitas’ request to the State Water Board for missing
28 modeling and technical data necessary or Casitas to complete its evaluation of the State Model,
and the State’s responses to same between October 13, 2021 and December 17, 2021.

1 delay of the deadline for submission of rebuttal experts, *see* Exhibit 1, though in fairness they
2 observed, correctly, that only the Court has the authority to extend the pertinent deadline for
3 submission of rebuttal reports. Thus, Casitas did the best it could in the absence of the missing
4 information, and timely submitted Rebuttal Expert Reports by Dr. McCord and Mr. Hanson, but
5 the missing technical information previously requested by Casitas from the State will be essential
6 to Casitas' ability to depose the State's two hydrogeological experts and to depose the City's
7 hydrogeological expert. Meanwhile, substantial data, previously requested via the meet and
8 confer process remains unproduced by the State.

9 6. There is no compelling reason why the Phase 1 trial must start on February 14
10 where expert discovery is largely incomplete, and with a current schedule that has discovery
11 ending after the applicable deadline for discovery related motions. With less than a month before
12 a February 14 trial start, there are still at least three original disclosures depositions that need to
13 occur (Preston, Schnaar and Archer), at least six supplemental disclosure depositions (Kear,
14 McCord, Preston, Schnaar, Archer, Brown), and at least six rebuttal depositions (Kear, McCord,
15 Hanson, Preston, Schnaar, Archer), and those are just for the major parties. Some of these
16 depositions can likely be combined, but as of yet, they have not been scheduled. Accomplishing
17 all of them prior to February 14, and more importantly before the previously referenced January
18 21, 2022 trial deadlines, would appear to be an impossibility—risking significant prejudice to all
19 parties. The prejudice can be eliminated by a reasonable trial extension per East Ojai's
20 Application.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. Executed this 19th day of January, 2022, at Irvine, California.

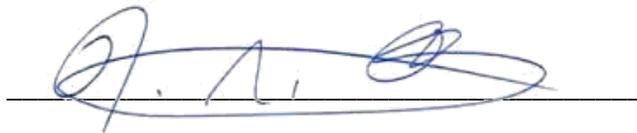
23
24 
25
26
27
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EXHIBIT 1

Jungreis, Jeremy

From: Jungreis, Jeremy
Sent: Wednesday, January 5, 2022 10:51 PM
To: Holly J. Jacobson; Christopher Pisano; Marc Melnick; Patterson, Gregory; Gregg Garrison; Daniel Cooper; Noah GoldenKrasner
Cc: Jennifer Buckman
Subject: Ventura matter and Meet and Confer Over Date of Rebuttal Report Submission
Attachments: Communications Btw Delano and CMWD.pdf; SWRCB Ventura Model Supporting Information Request CMWD 101321.pdf; CMWD Concerns with Omissions of Relevant Data/Files Supporting Expert Reports; RE: CMWD Concerns with Omissions of Relevant Data/Files Supporting Expert Reports

Tracking:

Recipient

Read

Holly J. Jacobson

Christopher Pisano

Marc Melnick

Patterson, Gregory

Gregg Garrison

Daniel Cooper

Noah GoldenKrasner

Jennifer Buckman

Dennington, Doug

Read: 1/6/2022 4:36 AM

{F2816612}.iManageDMS@rutan.imatege.work

Good Evening Folks:

I fully agree with Holly's points below. It is not reasonable to extend all other dates while leaving the deadline for rebuttal experts static. It is particularly troubling where only one "side" has had the benefit of deposing the experts that are the subject of potential rebuttal reports, and the other has not. That's not a level playing field. The following concerns also strongly militate in favor of extending the rebuttal expert report deadline. These issues will potentially need to be the subject of ex parte relief if not promptly addressed.

1. Significant issues accessing and using model provided by Ms. Archer. While I appreciate the effort by City of Ventura to get Ms. Archer's model out between Xmas and New Years (and I'm sincere about my appreciation as Chris clearly busted his hump right before Xmas to make it happen), the limitation to have the model staged on only one computer proved limiting through remote access (for reasons I'm not technically savvy enough to fully articulate) and largely prevented my experts from rerunning the Archer model or otherwise understanding all of its inputs. Also, my understanding is that key documents and data were not disclosed as part of Ms. Archer's link provided on December 27. Deposition would allow a lot of the technical questions CMWD has regarding the assumptions and technical basis for the model to be answered, or at least narrowed.

2. Significant issues with the State Model. It appears that a different version of the State's model was just released for public comment. The newly released model, released on or about December 17, 2021, is apparently a different version of the same model as the State released on September 24. See <https://mailchi.mp/1ba9be9b85c7/p5ux4mr1o4-13462331?e=b5862dc811>. How this new version is different than the September 24 version of the model, which underpins the Preston and Schnaar reports and opinions regarding interconnectivity, is not currently known. What is known is that the State has not provided the data and basis for the opinions for the State's report that was released on September 24

(see attached), despite repeated requests (through the SWRCB program side and through the meet and confer process in the litigation). This failure to disclose, arguably in contravention of CCP 843 (b) (1)-(3), has continued even as the State's model continues to "evolve". Which version of the model will be used at trial in Phase 1 and ultimately Phase 2? The version released on December 17? The version released in the September 24 disclosures? Some future version that will be released after state modelers incorporate the technical comments they solicited on December 17? Or will it be a combination of all three? This moving target, combined with refusal to provide the technical basis for the models and associated assumptions (see attached and below), has made it very difficult for CMWD's experts to understand the basis for the State experts' proffered opinions. The problems identified herein likely cannot be entirely cured via deposition, but deposition would go a long way toward at least answering the most significant questions about how the State experts got to the conclusions they did in their September 24 expert report, and whether the September 24 version of the State Model has been superseded by the December 17 version of the State Model.

Note that Mr. Delano, on behalf of the SWRCB, in his attached response to Ms. Dyer of CMWD on December 17, 2021 asserts that key documents and data "will be provided when we respond to the document requests for our consultants' (Al Preston (Geosyntec) and Greg Schnaar (DBS&A)) depositions in January 2022." This position is inconsistent with the requirements of CCP 843 (b) (1)-(3) (as well as the requirements of the CPRA) as Casitas clearly requested all documents/records reflecting the technical basis for the State's model on October 13 (see attached). Nevertheless, even the optimist, I sought to obtain the withheld information regarding critical elements of the State Model from Mr. Melnick via the meet and confer process. It didn't work. (See attached correspondence of December 7, 2021). Substantial portions of the State's model (whichever version we are currently on), and underlying technical documents, I am told, were not disclosed on September 24 or December 3—substantially frustrating the work of CMWD's experts in developing rebuttal reports, with the scheduled deposition dates now less than a week away, and the rebuttal deadline a few days away. The following information should have been disclosed by the State on September 24. Now, nearly three months later, it still hasn't been disclosed, with no indication if this information will ever be disclosed. CMWD has repeatedly requested, and not received, the following critical information with regard to the State's Model:

- (1) All codes and related source files of codes used to perform the building, running, and analysis of the model components and model results.*
- (2) All GIS shape files, databases, and other supporting input data sets along with scripts used to make the various input files*
- (3) All GIS shape files, databases, and other supporting information and data used in support of building and observations and calibration analysis.*
- (4) Any input and output files as well as all GIS shape files, databases, and other supporting information and data used in support of building and running any parameter estimation software such as PEST or UCODE.*
- (5) Groundwater Vistas (GWV) Map Files (there are six of these) that are shape files that were converted for visualization within GWV that were used to develop the model data sets including the model grid, layering and layer extent, SFR network, and other components of the model input and observations along with the other information specified previously.*

CMWD has been patient, but we're out of time. The rebuttal deadline needs to be adjusted, or we'll be forced to request relief from the Court. This should be simple--as Ms. Jacobson correctly observes. With an extension of the trial date there will presumably be over a month between the rebuttal deadline and any deposition of CMWD's experts (or those of other parties). The State and Ventura will not suffer any prejudice, as they will still have weeks to prepare for deposition. It is not reasonable to refuse a good faith request to extend the expert rebuttal deadline under these circumstances. I respectfully request that the State reconsider its position and promptly: (1) provide the information and data requested above with regard to the State's Model; (2) agree to extend the rebuttal report deadline until at least ten days after such information is disclosed.

Respectfully Submitted,
Jeremy Jungreis
Counsel for Casitas Municipal Water District

Jeremy N. Jungreis

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From: Holly J. Jacobson [mailto:hjj@bkslawfirm.com]

Sent: Wednesday, January 5, 2022 6:06 PM

To: Christopher Pisano <Christopher.Pisano@bbklaw.com>; Marc Melnick <Marc.Melnick@doj.ca.gov>; Patterson, Gregory <G.Patterson@musickpeeler.com>; Jungreis, Jeremy <JJungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Daniel Cooper <daniel@sycamore.law>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>

Cc: Jennifer Buckman <jtb@bkslawfirm.com>

Subject: RE: Ventura matter

Chris,

You and Marc have had the benefit of deposing Jordan and Anthony and therefore are not prejudiced in your ability to provide rebuttal disclosures. If you would like to provide those under the current deadline I won't stop you. However, it is unreasonable to expect the rest of us to meet the current deadline where we haven't had the benefit of deposing your experts, especially Ms. Archer.

As a simple matter of efficiency, why wouldn't we all agree to continue the rebuttal deadline and conduct depositions in a manner that avoids duplication? I would expect this to be a simple issue that we can resolve without raising it with Judge Highberger but please let me know tonight if you and Marc still disagree as I will have to request relief immediately.

From: Christopher Pisano <Christopher.Pisano@bbklaw.com>

Sent: Wednesday, January 5, 2022 5:57 PM

To: Holly J. Jacobson <hjj@bkslawfirm.com>; Marc Melnick <Marc.Melnick@doj.ca.gov>; Patterson, Gregory <G.Patterson@musickpeeler.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Daniel Cooper <daniel@sycamore.law>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>

Cc: Jennifer Buckman <jtb@bkslawfirm.com>

Subject: RE: Ventura matter

Holly and Marc:

We cannot agree to a start date in May. That is far too late. We can agree to March 7th, and that should work for everyone because under the current schedule we would be in trial at that time. As for the question of what is getting

continued, I agree with Marc that what should get continued are the expert discovery cut-off dates, not the expert disclosure dates. I see no reason to delay the disclosure dates at this point.

Chris

From: Holly J. Jacobson <hjj@bkslawfirm.com>

Sent: Wednesday, January 5, 2022 5:53 PM

To: Marc Melnick <Marc.Melnick@doj.ca.gov>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Patterson, Gregory <G.Patterson@musicpeeler.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Daniel Cooper <daniel@sycamore.law>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>

Cc: Jennifer Buckman <jt@bkslawfirm.com>

Subject: RE: Ventura matter

CAUTION - EXTERNAL SENDER.

All,

I'm in trial for at least five days (maybe more) beginning May 9th. Other than that my office will do everything possible to be flexible for trial dates March-May.

As for experts, I disagree. Given the continuance of depositions it simply doesn't make sense to keep the dates relating to rebuttal.

Is there any reason why you think the rebuttal disclosures should not be continued? Is this seriously a point that is not going to be stipulated to?

From: Marc Melnick <Marc.Melnick@doj.ca.gov>

Sent: Wednesday, January 5, 2022 5:32 PM

To: Christopher Pisano <Christopher.Pisano@bbklaw.com>; Holly J. Jacobson <hjj@bkslawfirm.com>; Patterson, Gregory <G.Patterson@musicpeeler.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Daniel Cooper <daniel@sycamore.law>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>

Cc: Jennifer Buckman <jt@bkslawfirm.com>

Subject: RE: Ventura matter

Hi, all. We have a few problems in March. Judge Highberger seemed to be open to doing this in May. What about starting April 25 (or May 2)?

Whatever we do, we should be clear about what dates are moving and what dates are not. My understanding is that the expert disclosure dates are not changing. The expert discovery/deposition cutoff should change, as should the pre-trial conference (and associated deadlines).

Marc

From: Christopher Pisano <Christopher.Pisano@bbklaw.com>

Sent: Wednesday, January 5, 2022 3:26 PM

To: 'Holly J. Jacobson' <hjj@bkslawfirm.com>; Patterson, Gregory <G.Patterson@musicpeeler.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Marc Melnick

<Marc.Melnick@doj.ca.gov>; Daniel Cooper <daniel@sycamore.law>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>

Cc: Jennifer Buckman <jtb@bkslawfirm.com>

Subject: RE: Ventura matter

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Greg, and all: Would March 7th work as a start date. That would work on our end. Mid-March is getting problematic.

From: Holly J. Jacobson <hjj@bkslawfirm.com>

Sent: Wednesday, January 5, 2022 3:21 PM

To: Patterson, Gregory <G.Patterson@musicpeeler.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Marc Melnick

<Marc.melnick@doj.ca.gov>; Daniel Cooper <daniel@sycamore.law>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>

Cc: Jennifer Buckman <jtb@bkslawfirm.com>

Subject: RE: Ventura matter

CAUTION - EXTERNAL SENDER.

All,

I am available for a mid-March trial date.

From: Patterson, Gregory <G.Patterson@musicpeeler.com>

Sent: Wednesday, January 5, 2022 3:02 PM

To: Holly J. Jacobson <hjj@bkslawfirm.com>; Jeremy N. Jungreis Esq. (jjungreis@rutan.com) <jjungreis@rutan.com>; Gregg Garrison <gsgarrison@garrisonlawcorp.com>; Marc Melnick <Marc.melnick@doj.ca.gov>; Daniel Cooper

<daniel@sycamore.law>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>

Subject: Ventura matter

Folks: It looks like April creates a series of problems with some folks. How does mid March work. I will check with the court.

Regards,

Greg

Gregory J. Patterson
Partner

MusickPeeler

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State Water Resources Control Board

Soliciting Comments on Draft Groundwater-Surface Water Model of the Ventura River Watershed and Model Documentation Report

The State Water Resources Control Board (State Water Board) Division of Water Rights and Los Angeles Regional Water Quality Control Board (collectively, the Water Boards) are publishing the ***Draft Groundwater-Surface Water Model of the Ventura River Watershed***¹ (VRW GW-SW Model) and ***Draft Model Documentation Report for the Groundwater-Surface Water Model of the Ventura River Watershed***² (VRW GW-SW Model Documentation Report).

The Draft VRW GW-SW Model is packaged in a zipped electronic folder that includes the model files and simulation results for the calibration and validation (existing conditions) simulation and unimpaired flow scenario, a draft technical user manual, a draft spreadsheet tool for visualizing model outputs, and a GIS shapefile that maps some of the locations referenced in the provided documents and files.

The Draft VRW GW-SW Model Documentation Report is packaged in a separate zipped electronic folder and contains the report and accessory files, such as spreadsheets and appendices.

SOLICITING TECHNICAL COMMENTS

The Water Boards are soliciting technical comments on the Draft VRW GW-SW Model and Draft VRW GW-SW Model Documentation Report. Parties that are interested in meeting to discuss questions and comments are encouraged to contact Water Boards staff. Contact information is in the *Contact Us* section, below.

Please email technical comments to: InstreamFlows@waterboards.ca.gov by Friday April 1, 2022.

¹ Available online at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/cwap_enhancing/docs/ventura_river/vrw_gsflow_draft.zip

² Available online at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/cwap_enhancing/docs/ventura_river/vrw_gsflow_report_draft.zip

TECHNICAL WORKSHOP

The Water Boards are planning a 12-hour technical workshop, spread over two days, on the Draft VRW GW-SW Model. The dates and venue of the workshop are to-be-determined, but expected to occur in February or March 2022.

The first portion of the workshop will consist of a general overview of the VRW GW-SW Model and will be open to all interested persons. The State Water Board will announce this portion of the workshop on its email subscription list, see *Stay Informed* section below for subscription information. The second portion of the workshop is planned as a technical training to teach modeling experts how to use the Draft VRW GW-SW Model. If you, or your organization, would like to have a modeler participate, please contact State Water Board staff.³ Contact information is in the *Contact Us* section below.

ADDITIONAL BACKGROUND

The Water Boards are also developing a Nitrogen Transport Model (Nitrogen Model) of the Ventura River watershed. The VRW Nitrogen Model is still under development, however, and not yet ready to be released for public comment.

Additional information on the development of the VRW GW-SW Model is available on the Water Board's [Ventura River Watershed webpage](#)⁴

STAY INFORMED

If you would like to receive emails regarding the Water Boards' development of the VRW GW-SW Model and Nitrogen Model, as well as related California Water Action Plan efforts, please subscribe to the "California Water Action Plan/Statewide Instream Flows" list under the "Division of Water Rights" on the State Water Board's [Email Subscription List](#) webpage⁵.

CONTACT US

If you have questions related to this notice, please contact Kevin DeLano at kevin.delano@waterboards.ca.gov.



Ann Marie Ore, Program Manager
Division of Water Rights

12/17/2021

Date

³ Each organization and individual who participates in the State Water Board's Technical Advisory Committee will receive an invitation.

⁴ Available online at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/cwap_enhancing/ventura_river.html

⁵ Available online at:

https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

EXHIBIT 3

Jungreis, Jeremy

From: Jungreis, Jeremy
Sent: Wednesday, December 1, 2021 6:44 PM
To: Marc Melnick; Patterson, Gregory; Christopher Pisano; Shawn Hagerty; 'Gregg S. Garrison'; Holly J. Jacobson
Cc: Noah GoldenKrasner; Matthew Bullock
Subject: CMWD Concerns with Omissions of Relevant Data/Files Supporting Expert Reports
Attachments: SWRCB Ventura Model Supporting Information Request CMWD 101321.docx

Good Evening Mark:

Please see attached. I recently learned that CMWD has on multiple occasions requested the information in the attached, regarding the State's model, since at least October 13. The requests were made directly Kevin Delano at the SWRCB, and to date CMWD has not received a response or the requested data/files. The requests in the attached seek data/files that would presumably have to have been available to the SWRCB prior to releasing its model on September 24. Without this information, which arguably should have been released on September 24 concurrently with the State's expert report per CCP 843 (b)(2), (3), it will be difficult for CMWD to depose the State's experts and/or prepare further rebuttal expert reports (should CMWD determine such reports are appropriate). It would be very helpful to obtain the information referenced and requested in the attached ASAP, and certainly well before the rebuttal expert deadline of January 7 (which may need to be revisited depending on when the requested data/files are provided).

On a related issue, CMWD anticipates filing a supplemental/rebuttal report this Friday regarding concerns CMWD has with the adequacy of the State's model to support the expert opinions proffered in the State's September 24 report. I just wanted to give you a heads up so you and your clients aren't surprised on Friday.

Best,
Jeremy

Jeremy N. Jungreis

18575 Jamboree Road, 9th Floor | Irvine, CA 92612

O. (714) 641-5100 | D. (714) 338-1882

jjungreis@rutan.com | www.rutan.com



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From: Marc Melnick [mailto:Marc.Melnick@doj.ca.gov]

Sent: Wednesday, December 1, 2021 3:44 PM

To: Patterson, Gregory <G.Patterson@musickpeeler.com>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>; 'Gregg S. Garrison' <gsgarrison@garrisonlawcorp.com>; Holly J.

Jacobson <hjj@bkslawfirm.com>; Jungreis, Jeremy <JJungreis@rutan.com>

Cc: Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>; Matthew Bullock <Matthew.Bullock@doj.ca.gov>

Subject: Re: Deposition of Ms. Klug/expert witness disclosure

Greg, you already have the SWRCB's experts' model. It was made available to you and all other parties on August 31, 2021, and then produced again when we made our disclosure on September 24, 2021. If there's something specific that you think you didn't get, please let me know and I can look into that.

Marc

From: Patterson, Gregory <G.Patterson@musickeeler.com>

Sent: Wednesday, December 1, 2021 3:27 PM

To: Christopher Pisano; Shawn Hagerty; 'Gregg S. Garrison'; Holly J. Jacobson; Jeremy N. Jungreis Esq. (jjungreis@rutan.com); Marc Melnick

Subject: Deposition of Ms. Klug/expert witness disclosure

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Chris:

Thank you for your response to our request that Ms. Archer's model be produced prior to Ms. Klug's deposition. We view it as unfortunate that the City will not produce the model information as requested. To that end, I note that CCP 843(a)(2) requires the expert to provide "The facts or data considered by the witness in forming his or her opinions" at the time of producing the expert report. It is our position that this would include the model (data) upon which Ms. Archer clearly heavily relied upon in forming her opinions. We simply do not know currently how this model was run that forms the basis of Ms. Archer's opinions. To be clear, we are not simply requesting "documents" regarding the model, but the information, as provided in the notice, to allow our expert to independently examine the model.

Ms. Klug's input for the model raises questions regarding her input and how that affected the model and it is difficult to assess that without the model. We understand that it is the City's position that Ms. Klug had nothing to do with the construction of the model, but it does appear she was aware the model was being developed and may have information relevant to the model. Hard to ask questions when we don't know what the model looks like and how it was run.

Given our disagreement over what should be turned over and when, we agree with your proposal that we continue Ms. Klug's deposition until we resolve the modeling disclosure dispute. We will provide notice of the continuance. Please provide some dates in January that work for you and Ms. Klug.

We agree that everyone should play by the same rules with respect to expert witness disclosures. It appears that the City and the State both prepared models, but no other designated experts have done so. Aquilogic did not independently develop a model and we do not intend to do so, but we must have the opportunity and time to review the models upon which the City and the State rely and how those models were run.

In order to provide sufficient time to allow experts to review the model and advise their clients, we propose that the modeling information requested in the notice be mutually produced 10 business days prior to the expert deposition because three business days does not provide sufficient time for our expert to advise us on his opinion of the model, parameters/assumptions/etc. in order to properly prepare for the deposition. All other files can be produced three days before per code. We also reserve the right to provide a rebuttal report after the City and State's depositions, assuming the models are produced at some point.

If we cannot reach agreement, we intend to file a status report or motion on this issue and try to key it up at the pending December 9th status conference for the Court to review.

I am copying the parties who I understand intend to participate in person or via zoom in the various depositions. If there are others who anyone thinks should see this, please forward.

Happy to discuss at your convenience.

Greg

SWRCB Ventura Model Supporting Information Request

Submitted by Casitas Municipal Water District (CMWD) on October 13, 2021

CMWD is requesting the following information for the Preliminary Draft version of the Groundwater-Surface Water Model of the Ventura River Watershed that was released by the SWRCB on August 31, 2021:

- (1) All codes and related source files of codes used to perform the building, running, and analysis of the model components and model results.
- (2) All GIS shape files, databases, and other supporting input data sets along with scripts used to make the various input files
- (3) All GIS shape files, databases, and other supporting information and data used in support of building and observations and calibration analysis.
- (4) Any input and output files as well as all GIS shape files, databases, and other supporting information and data used in support of building and running any parameter estimation software such as PEST or UCODE.
- (5) Groundwater Vistas (GWV) Map Files (there are six of these) that are shape files that were converted for visualization within GWV that were used to develop the model data sets including the model grid, layering and layer extent, SFR network, and other components of the model input and observations along with the other information specified previously.

Jungreis, Jeremy

From: Marc Melnick <Marc.Melnick@doj.ca.gov>
Sent: Tuesday, December 7, 2021 8:25 AM
To: Jungreis, Jeremy
Cc: Noah GoldenKrasner; Matthew Bullock
Subject: RE: CMWD Concerns with Omissions of Relevant Data/Files Supporting Expert Reports

Jeremy —

I've had time now to look into this. I'm happy to facilitate your client getting most of these documents in a timely way, and my understanding is that some of them have already been made public, but unfortunately there are so many inaccuracies and omissions in your email I need to respond to those, and make some additional observations.

First, Mr. Delano did respond to Ms. Dyer's email of October 13 and did so that very same day, acknowledging receipt of the request and letting her know he needed to do some investigation. That is the only request that I know of, and the only other follow up by Casitas that I know of is Ms. Dyer's email six weeks later, on November 30.

Second, this request was made in the context of the SWRCB ongoing regulatory process, and was treated as such. As I assume you know, the preliminary draft of the model released on August 31 was not put out for public comment. While the SWRCB is happy to receive constructive comments from Casitas earlier, that extensive public comment period will not start until another draft of the model is released later this month. It was that timeline that staff have in mind in responding to this request.

Third, in providing these documents to Casitas in the context of the administrative process, the SWRCB has to keep in mind its timeline for release of the model to the general public. It has limited staff, and limited budget with its consultants, and should prioritize the release of documents to the general public over special requests to one party.

Fourth, neither you nor anyone else has made a request for production of documents to the SWRCB in this case. There is a process for that. You could have done that as early as August 31, but did not. Thus, I have not known about this request until last week, and there has been no connection to the upcoming expert deposition schedule.

Fifth, Mr. Patterson's deposition notices for the SWRCB's experts request some of the same information as this request. We will of course respond to that, and you will receive whatever documents are produced that way in addition to whatever the SWRCB provides to Casitas directly.

Lastly, I really do not understand why any of this information will be relevant to the depositions. But perhaps I'm not understanding Casitas's position in this phase of this case. Feel free to explain that to me.

Mr. DeLano will continue to communicate with Ms. Dyer about her request. My understanding is that they exchanged emails last week about this.

Thank you.

Marc

From: Marc Melnick

Sent: Thursday, December 2, 2021 8:00 AM

To: Jungreis, Jeremy <JJungreis@rutan.com>; Patterson, Gregory <G.Patterson@musicpeeler.com>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>; 'Gregg S. Garrison' <gsgarrison@garrisonlawcorp.com>; Holly J. Jacobson <hjj@bkslawfirm.com>

Cc: Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>; Matthew Bullock <Matthew.Bullock@doj.ca.gov>

Subject: Re: CMWD Concerns with Omissions of Relevant Data/Files Supporting Expert Reports

Jeremy, I'll need to look into this, but I appreciate the heads up about Friday. Thanks. Marc

From: Jungreis, Jeremy <JJungreis@rutan.com>

Sent: Wednesday, December 1, 2021 6:44 PM

To: Marc Melnick; Patterson, Gregory; Christopher Pisano; Shawn Hagerty; 'Gregg S. Garrison'; Holly J. Jacobson

Cc: Noah GoldenKrasner; Matthew Bullock

Subject: CMWD Concerns with Omissions of Relevant Data/Files Supporting Expert Reports

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Good Evening Mark:

Please see attached. I recently learned that CMWD has on multiple occasions requested the information in the attached, regarding the State's model, since at least October 13. The requests were made directly Kevin Delano at the SWRCB, and to date CMWD has not received a response or the requested data/files. The requests in the attached seek data/files that would presumably have to have been available to the SWRCB prior to releasing its model on September 24. Without this information, which arguably should have been released on September 24 concurrently with the State's expert report per CCP 843 (b)(2), (3), it will be difficult for CMWD to depose the State's experts and/or prepare further rebuttal expert reports (should CMWD determine such reports are appropriate). It would be very helpful to obtain the information referenced and requested in the attached ASAP, and certainly well before the rebuttal expert deadline of January 7 (which may need to be revisited depending on when the requested data/files are provided).

On a related issue, CMWD anticipates filing a supplemental/rebuttal report this Friday regarding concerns CMWD has with the adequacy of the State's model to support the expert opinions proffered in the State's September 24 report. I just wanted to give you a heads up so you and your clients aren't surprised on Friday.

Best,

Jeremy

Jeremy N. Jungreis

18575 Jamboree Road, 9th Floor | Irvine, CA 92612

O. [\(714\) 641-5100](tel:(714)641-5100) | D. [\(714\) 338-1882](tel:(714)338-1882)

jjungreis@rutan.com | www.rutan.com



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From: Marc Melnick [<mailto:Marc.Melnick@doj.ca.gov>]

Sent: Wednesday, December 1, 2021 3:44 PM

To: Patterson, Gregory <G.Patterson@musicpeeler.com>; Christopher Pisano <Christopher.Pisano@bbklaw.com>; Shawn Hagerty <Shawn.Hagerty@bbklaw.com>; 'Gregg S. Garrison' <gsgarrison@garrisonlawcorp.com>; Holly J. Jacobson <hjj@bkslawfirm.com>; Jungreis, Jeremy <JJungreis@rutan.com>

Cc: Noah GoldenKrasner <Noah.GoldenKrasner@doj.ca.gov>; Matthew Bullock <Matthew.Bullock@doj.ca.gov>

Subject: Re: Deposition of Ms. Klug/expert witness disclosure

Greg, you already have the SWRCB's experts' model. It was made available to you and all other parties on August 31, 2021, and then produced again when we made our disclosure on September 24, 2021. If there's something specific that you think you didn't get, please let me know and I can look into that.

Marc

From: Patterson, Gregory <G.Patterson@musicpeeler.com>

Sent: Wednesday, December 1, 2021 3:27 PM

To: Christopher Pisano; Shawn Hagerty; 'Gregg S. Garrison'; Holly J. Jacobson; Jeremy N. Jungreis Esq. (jjungreis@rutan.com); Marc Melnick

Subject: Deposition of Ms. Klug/expert witness disclosure

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EXHIBIT 4

----- Forwarded message -----

From: **DeLano, Kevin@Waterboards** <Kevin.DeLano@waterboards.ca.gov>

Date: Fri, Dec 17, 2021 at 11:35 AM

Subject: Re: Information Request for Preliminary Draft Model of the Ventura River Watershed

To: Kelley Dyer <kdyer@casitaswater.com>

Cc: Worth, Daniel@Waterboards <Daniel.Worth@waterboards.ca.gov>, Ore, AnnMarie@Waterboards <AnnMarie.Ore@waterboards.ca.gov>, Michael Flood <mflood@casitaswater.com>, Jungreis, Jeremy <JJungreis@rutan.com>, Coupe, David@Waterboards <David.Coupe@waterboards.ca.gov>

Good Morning Kelley,

1. The items on this request were released to the public for the Preliminary Draft VRW GSFLOW Model in August 2021 and were released for the Draft VRW GSFLOW Model today.
2. For both the Preliminary Draft VRW GSFLOW and Draft VRW GSFLOW models, this has been provided with our expert disclosures in the court case that were provided on September 24, 2021, or December 3, 2021, or will be provided when we respond to the document requests for our consultants' (Al Preston (Geosyntec) and Greg Schnaar (DBS&A)) depositions in January 2022.
3. Same as 2
4. Same as 2
5. Please see attached.

Sincerely,

Kevin

Kevin DeLano, MS, GIT

Geologist, [Instream Flow Unit](#)

Division of Water Rights, State Water Board

kevin.delano@waterboards.ca.gov

Telework (Google Voice): 916-359-9827

Office: 916-319-0631

From: Kelley Dyer <kdyer@casitaswater.com>

Sent: Wednesday, December 15, 2021 10:54 AM

To: DeLano, Kevin@Waterboards <Kevin.DeLano@Waterboards.ca.gov>

Cc: Worth, Daniel@Waterboards <Daniel.Worth@waterboards.ca.gov>; Ore, AnnMarie@Waterboards <AnnMarie.Ore@waterboards.ca.gov>; Michael Flood <mflood@casitaswater.com>; Jungreis, Jeremy <JJungreis@rutan.com>

Subject: Re: Information Request for Preliminary Draft Model of the Ventura River Watershed

EXTERNAL:

Good morning, Kevin,

Since the model is being used as evidence in the adjudication lawsuit, we would like the files used to support the expert opinions in Phase 1 of the trial. However, we will be making this request through our attorneys given that is now the appropriate route.

We will also be looking for similar information with the future release of the model.

Best regards,

Kelley Dyer

805-649-2251 ext. 150

Cell 805-794-1060

On Fri, Dec 3, 2021 at 4:01 PM DeLano, Kevin@Waterboards <Kevin.DeLano@waterboards.ca.gov> wrote:

Good Afternoon Kelley,

Thank you for your email. Given the impending publication of the draft model and model report, scheduled for mid-December 2021, would you prefer to have any responsive and non-privileged records associated with your information request on the forthcoming draft model instead of the preliminary draft model? The draft model records would likely be much more helpful and germane as those records would inform any comments you may want to submit on the draft model and model report. The deadline to submit comments on the draft model would not be until sometime in March 2022.

We did not release the preliminary draft model to solicit comments. However, we would have considered comments from interested parties. Given that we are two weeks from publishing the draft model and model report, I'm sure you can appreciate that comments on the forthcoming draft model and model report would be more helpful. Please let me know.

If you are still interested in any remaining responsive and non-privileged records associated with the preliminary draft model, please confirm. If that is the case, we are planning to meet with our consultants next week to discuss their estimated timeline for providing the requested information. At that time, we can provide a timeline to you to provide any remaining responsive and non-privileged records.

Thanks again for your continued patience and understanding. I hope you are well too.

Sincerely,
Kevin

Kevin DeLano, MS, GIT

Geologist, [Instream Flow Unit](#)

Division of Water Rights, State Water Board

kevin.delano@waterboards.ca.gov

Telework (Google Voice): 916-359-9827

Office: 916-319-0631

From: Kelley Dyer <kdyer@casitaswater.com>

Sent: Tuesday, November 30, 2021 6:22 AM

To: DeLano, Kevin@Waterboards <Kevin.DeLano@Waterboards.ca.gov>

Cc: Worth, Daniel@Waterboards <Daniel.Worth@waterboards.ca.gov>

Subject: Re: Information Request for Preliminary Draft Model of the Ventura River Watershed

EXTERNAL:

Good morning, Kevin,

Hope you are well.

Just checking in to see if you have a timeline for providing the supporting information requested (attached for reference).

Thank you,

Kelley Dyer

805-649-2251 ext. 150

Cell 805-794-1060

On Thu, Oct 14, 2021 at 1:57 PM Kelley Dyer <kdyer@casitaswater.com> wrote:

Hi Kevin,

Thank you for your response and information on the updated schedule. We are requesting the files as soon as possible, so we may provide constructive comments sooner than later on the model.

We will keep an eye out for the upcoming announcement.

All the best,

Kelley Dyer

805-649-2251 ext. 150

Cell 805-794-1060

On Wed, Oct 13, 2021 at 5:43 PM DeLano, Kevin@Waterboards <Kevin.DeLano@waterboards.ca.gov> wrote:

Hi Kelley,

We have received your request. I will talk to the project team to determine how long it will take to pull the requested files together. When do you need the files by? The team is working hard this month on the upcoming Scenarios Webinar (look for an announcement tomorrow) and Draft GW-SW Model and Model Report.

FYI, in December 2021, we will release the Draft GW-SW Model with a Model Report (the next version of the model) for a 60+ day TAC and public comment period. We have not scheduled the model trainings yet. We will schedule 12-hours of training for local modelers during the 60+ day comment period. I anticipate the trainings will be after the GSAs' January 31, 2022 deadline. I'm eyeing February 2022. The comment period will be long enough to give modelers time to use the model after the training and write comments.

Hope you're doing well,
Kevin

Kevin DeLano, MS, GIT
Geologist, [Instream Flow Unit](#)
Division of Water Rights, State Water Board

kevin.delano@waterboards.ca.gov
Telework (Google Voice): 916-359-9827
Office: 916-319-0631

From: Kelley Dyer <kdyer@casitaswater.com>
Sent: Wednesday, October 13, 2021 4:27 PM
To: DeLano, Kevin@Waterboards <Kevin.DeLano@Waterboards.ca.gov>
Subject: Information Request for Preliminary Draft Model of the Ventura River Watershed

EXTERNAL:

Dear Kevin,

I hope this finds you well.

We are requesting additional information to complete our review of the preliminary draft model. Please see attached.

Also, could you please provide an update if any model training sessions will be scheduled?

Thank you, and best regards,

Kelley A. Dyer, P.E.
Assistant General Manager
Casitas Municipal Water District
1055 Ventura Avenue
Oak View, CA 93022
805-649-2251 ext. 150
Cell 805-794-1060

----- Forwarded message -----

From: <lyris@swrcb18.waterboards.ca.gov>

Date: Tue, Aug 31, 2021 at 4:55 PM

Subject: Release of Preliminary Draft Groundwater-Surface Water Model of the Ventura River Watershed

To: California Water Action Plan/Statewide Instream Flows

<waterrights_ca_water_action_plan@swrcb18.waterboards.ca.gov>



This is a message from the State Water Resources Control Board.

Today, the State Water Resources Control Board (State Water Board) and Los Angeles Regional Water Quality Control Board (collectively, the Water Boards) released a Preliminary Draft version of the Groundwater-Surface Water Model of the Ventura River Watershed (VRW GW-SW Model). The Water Boards are making these files available to give interested persons the opportunity to learn more about the VRW GW-SW Model and review preliminary draft model results. Please see the [Notice](#) for additional information and access instructions.

If you received this notice in a forwarded message and would like to receive future emails related to this and similar efforts, please subscribe to the “*California Water Action Plan/Statewide Instream Flows*” list under “*Water Rights*” on the State Water Board’s [Email Subscription List](#) webpage

at: https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

You are currently subscribed to waterrights_ca_water_action_plan as: kdyer@casitaswater.com.

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