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10 Attorneys for Respondent and Cross-Complainant
11 CITY OF SAN BUENAVENTURA

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

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

17 Petitioner,

18 v.
19 STATE WATER RESOURCES
CONTROL BOARD, etc., et al.,

20 Respondents.

22 CITY OF SAN BUENAVENTURA, etc.,
23 Cross-Complainant

24 v.
25 DUNCAN ABBOTT, an individual, et al.
26 Cross-Defendants.

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

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 10 2020

Sherril R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy
Steven Drew

Case No. 19STCP01176
Judge: Honorable William F. Highberger
STATUS CONFERENCE REPORT
Date: August 17, 2020
Time: 1:30 p.m.
Dept: SS10

Action Filed: Sept. 19, 2014
Trial Date: Not Set

COPY

1 Proposing Parties is attached hereto as Exhibit A.

2 The City conducted telephonic conferences with Channelkeeper, the State Board, and
3 CDFW regarding the proposed schedule on July 28, 2020 and July 31, 2020. Channelkeeper, the
4 State Board, and CDFW explained that until they have been able to analyze and evaluate the
5 proposed Physical Solution, they cannot estimate the likely scope of an evidentiary hearing or the
6 time necessary to prepare for that evidentiary hearing. The Proposing Parties understand why
7 Channelkeeper, the State Board, and CDFW feel that they cannot agree on a schedule until they
8 see the Physical Solution. On August 3, 2020, the State Board and CDFW provided the City with
9 their own proposed schedule (which is attached as Exhibit B) (and provided that schedule to the
10 other represented parties on August 5, 2020, after a draft of this Report was circulated). The State
11 Board and CDFW believe their schedule provides more realistic timing given the potential
12 complexities of this comprehensive adjudication and also takes into account the timing of the
13 studies of the water flow needs of wildlife in the Ventura River and the interaction of
14 groundwater and surface water in the Ventura River Basin that CDFW and the State Board,
15 respectively, have been conducting over the past few years. The parties are continuing to meet
16 and confer. In light of this meet and confer process, the Proposing Parties agreed to modify their
17 proposed schedule to provide more time to meet and confer on the Physical Solution and the
18 schedule, and to finalize the schedule at a proposed further status conference in November.

19 Specifically, the Proposing Parties have agreed to provide their proposed Physical
20 Solution to all parties by the close of business on September 15, 2020. The parties will then meet
21 and confer until October 30, 2020 about the Physical Solution and a schedule that will be
22 presented to the Court at the next Status Conference for a discovery plan, pretrial proceedings,
23 and, if necessary, evidentiary hearing regarding the Physical Solution. The Proposing Parties
24 believe that the proposed schedule attached hereto as Exhibit A is reasonable and provides a
25 workable framework for the parties to attempt to reach an agreement on all terms, and in the
26 event the parties cannot reach an agreement on the Physical Solution, for the parties to then
27 conduct discovery, and ultimately try the matter in a contested hearing. However, the Proposing
28 Parties appreciate that the other parties need time to review the Physical Solution before they can

1 be in a position to meet and confer on such a proposed schedule. The parties request the Court set
2 a further Status Conference, for the week of November 16, 2020, to facilitate this process.

3
4 2. REQUEST FOR EXTENSION OF TIME FOR CROSS-DEFENDANTS TO
5 RESPOND

6
7 In light of the plan to provide the Physical Solution to all parties on September 15, 2020,
8 the City requests an additional extension of time for Cross-Defendants to file a responsive
9 pleading to the City's Third Amended Cross-Complaint. This will allow them time to evaluate
10 the Physical Solution and determine whether they want to participate in the case. On February
11 27, 2020, the Court extended the time for Cross-Defendants to file and serve their answers or
12 other responsive pleadings to September 8, 2020. City requests that the Court grant a further
13 extension to October 30, 2020 and is filing an application for extension of time concurrently with
14 this Report, attached hereto as Exhibit C. No party has objected to this request as of the filing of
15 this report.

16
17 3. CITY AND CHANNELKEEPER MEET AND CONFER

18
19 At the June 24, 2020 Status Conference, the Court ordered counsel for the City and
20 counsel for Channelkeeper to meet and confer regarding Channelkeeper's potential motion
21 practice for interim relief and to post a message as to whether setting a hearing date on
22 Channelkeeper's motion is necessary. City and Channelkeeper met via telephone on several
23 occasions throughout July; posted updates for the Court on the case message board on July 6,
24 2020 and July 13, 2020; and have resolved this issue and eliminated the need for motion practice.
25 A term sheet setting forth the terms of this resolution is attached hereto as Exhibit D.

1 4. SERVICE OF THE THIRD AMENDED CROSS-COMPLAINT AND NOTICE
2 OF COMMENCEMENT OF GROUNDWATER AND WATERSHED
3 ADJUDICATION
4

5 On or around July 15, 2020, City sent correspondence regarding its Third Amended
6 Cross-Complaint to those property owners who either were not personally served or did not return
7 a return receipt of the Notice of Commencement of Groundwater Basin and Watershed
8 Adjudication (“Notice of Commencement”). During the week of August 10, 2020 City will
9 commence mailing service packets and Notice of Commencement packets, requesting return of
10 the notice and acknowledgment form or the return receipt, as applicable. If a notice and
11 acknowledgment is not received for the remaining Cross-Defendants, City will ask the Court for
12 permission to serve them via publication pursuant to Civil Procedure Code section 415.50. If a
13 return receipt is not received for a noticed property, City will take other action to complete the
14 notice process, including as a last resort physically posting the Notices of Commencement on any
15 remaining parcels pursuant to Civil Procedure Code section 836(d)(1)(C).

16 On January 29, 2020, City received a list of California Native American tribes who may
17 have an interest in the Ventura River Watershed from the Native American Heritage Commission
18 (“NAHC”). Pursuant to Civil Procedure Code Section 835(a)(5), on July 10, 2020, City mailed
19 the requisite notice letters via First Class Mail to the entities on the NAHC’s list.

20 The Ojai Basin Groundwater Management Agency and the State Board sent City lists of
21 persons reporting extractions in the Watershed on December 30, 2019 and January 23, 2020,
22 respectively. Pursuant to California Civil Procedure Code section 835(a)(8), during the week of
23 August 10, 2020, City will mail the requisite notice letters via First Class Mail to persons and
24 entities reporting extractions whom City believes have not otherwise been noticed or served.

25 City continues to maintain and update the neutral adjudication website, available at:

26 <https://www.venturariverwatershedadjudication.com/>.

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5. NEWLY APPEARING PARTIES

The following additional party has filed an answer to the City’s Third Amended Cross-Complaint: Brian A. Osborne, July 15, 2020.

6. REQUEST OF CROSS-DEFENDANT VOOGD

Cross-Defendant Anthonie M. Voogd requests that the case be set for trial forthwith. The case is at issue as to him. He has no interest in settling and does not contemplate conducting discovery.

7. CONCLUSION AND SUMMARY OF REQUESTS

Based on the above Report, the parties request that the Court consider taking the following actions:

- Extend until October 30, 2020 the time for Cross-Defendants to file and serve their answers or responsive pleadings; and
- Set a further Status Conference, for the week of November 16, 2020, to provide an update on the parties’ efforts to meet and confer about the Proposing Parties’ proposed Physical Solution and potentially to set a schedule and process for the Court’s and parties’ consideration of the Physical Solution.

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Dated: August 10, 2020

BEST BEST & KRIEGER LLP

By: 

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

Dated: August 10, 2020

SYCAMORE LAW, INC.

By: /s/Daniel Cooper (with permission)

DANIEL COOPER
Attorneys for Petitioner and Plaintiff
SANTA BARBARA CHANNELKEEPER

EXHIBIT A

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10 Attorneys for Respondent and Cross-Complainant
11 CITY OF SAN BUENAVENTURA

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14 SPRING STREET COURTHOUSE

15 SANTA BARBARA CHANNELKEEPER, a
16 California non-profit corporation,
17 Petitioner,
18 v.
19 STATE WATER RESOURCES CONTROL
20 BOARD, a California State Agency; CITY
OF SAN BUENAVENTURA, a California
21 municipal corporation, etc.,
22 Respondents.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

**CONSUMPTIVE USERS' PROPOSED
SCHEDULE FOR THE SUBMISSION
AND EXCHANGE OF A PHYSICAL
SOLUTION**

23 CITY OF SAN BUENAVENTURA, a
California municipal corporation,
24 Cross-Complainant
25 v.
26 DUNCAN ABBOTT, an individual, et al.
27 Cross-Defendants.
28

Action Filed: September 19, 2014
Trial Date: Not Set

PROPOSED SCHEDULE

At the June 24, 2020 Status Conference, the City of San Buenaventura (“City”) and other consumptive users (the “Proposing Parties”) informed the Court that they were working collaboratively on a proposed stipulated judgment and physical solution (“Physical Solution”). The Proposing Parties indicated that by August 2020, they would be ready to propose a schedule by which they would provide the Physical Solution to all parties for review, as well as a schedule and process for the Court’s consideration of the Physical Solution. The Court ordered a further Status Conference for August 17, 2020, and it ordered that the parties meet and confer in advance of the Status Conference regarding a proposed schedule.

The parties met and conferred over the course of multiple days between July 28, 2020 and August 3, 2020. Based on this meet and confer process, the Proposing Parties submit the following proposed schedule to the Court.

**1. EXCHANGE AND SUBMISSION OF PHYSICAL SOLUTION AND
SUBSEQUENT MEET AND CONFER THEREON:**

The Proposing Parties ask the Court to move the current response date for Cross-Defendants from September 8 to October 30, 2020.

The Proposing Parties will exchange the Physical Solution with all parties by the close of business on September 15, 2020.

Following the exchange of the Physical Solution, the parties will have a period until October 30, 2020 during which time they will meet and confer regarding the terms of the Physical Solution. During this time, the parties receiving the Physical Solution will assess whether they will support it, in whole or in part, whether they require more information about it, or whether they will oppose the Physical Solution. To facilitate this analysis, the Proposing Parties will make their expert consultants available once per week for a telephone call or other virtual meeting of at least one hour in length, during which time all other parties will be able to ask questions regarding the scientific bases for the specific terms in the Physical Solution. The telephone calls

1 with the Proposing Parties' expert consultants will only be available to those parties who agree in
2 writing that all such communications will be for settlement purposes only, and that the
3 communications with the Proposing Parties' consultants shall not be deemed a waiver of the
4 attorney-client privilege, attorney work product doctrine, or any other applicable privilege.

5 In addition to the telephone calls with the Proposing Parties' expert consultants, counsel
6 for all parties shall also meet and confer in good faith on a regular basis during this time period,
7 and assess whether the Physical Solution can be agreed upon by all, or at least a majority, of the
8 parties. The parties shall also discuss whether there are any proposed modifications to the
9 Physical Solution that would otherwise result in additional parties agreeing to its terms. All
10 parties who participate in the meet and confer calls must agree in writing that all such
11 communications will be for settlement purposes only.

12 During the meet and confer period, the discovery stay currently in place shall remain in
13 effect. The meet and confer period shall end on October 30, 2020. The court day after the meet
14 and confer period ends, the City shall lodge the Physical Solution with the Court, as well as a
15 status report indicating whether all parties were able to agree to the Physical Solution.

16 The Court shall conduct a further Status Conference on November ____, 2020 at ____m.,
17 or at such other date and time as is convenient for the Court. At this Status Conference, the
18 parties will discuss the results of the meet and confer efforts, and will identify those parties that
19 are agreeing to the Physical Solution, those parties who require additional information, and those
20 parties that are objecting to it. The parties will also discuss at the Status Conference any
21 foreseeable discovery issues, as well as potential dates for the Court's viewing of the Ventura
22 River, as is discussed in Section 2 herein, and the logistics associated with the Court's viewing of
23 the Ventura River, e.g., the locations of the River to be viewed and times of viewing.

24
25 **2. PROPOSED DISCOVERY PLAN AND PRETRIAL PROCEEDINGS:**

26 In the event the parties are unable to agree to a Physical Solution, the case will proceed to
27 a discovery phase, and then ultimately an evidentiary hearing.

28 The discovery phase shall commence on November 16, 2020, and shall close at the end of

1 the day on March 22, 2021. During the discovery phase, any party may serve percipient-based
2 written discovery and notices of deposition in accordance with the Civil Discovery Act. All such
3 discovery must be completed by the close of discovery.

4 The parties shall not be bound to provide initial disclosures to all parties in accordance
5 with Code of Civil Procedure Section 842. The parties agree that during the discovery phase the
6 parties and the Court shall jointly view the Ventura River on at least one mutually agreeable date.
7 At the November 2020 Status Conference, the parties and Court will discuss the date(s) for such a
8 viewing, and will discuss the locations that will be viewed. The parties will meet and confer and
9 attempt to agree to a mutually agreeable date or dates, and the locations for the Court and parties
10 to view the Ventura River.

11 For expert discovery, the parties shall comply with Code of Civil Procedure Section
12 2034.010, *et seq.*, based upon the proposed trial date as set forth herein. Any party may serve a
13 demand for exchange of expert witness information at any time during the discovery phase until
14 February 10, 2021. The exchange of expert witness information shall occur on March 2, 2021,
15 and parties exchanging information shall include all information required under Code of Civil
16 Procedure Sections 2034.260 and 2034.270. The exchange of any supplemental expert witness
17 information shall occur on March 22, 2021. The parties may conduct depositions of expert
18 witnesses in accordance with Code of Civil Procedure Section 2034.410, *et seq.*, with all expert
19 witness depositions concluding no later than April 6, 2021.

20
21 **3. PROPOSED EVIDENTIARY HEARING:**

22 The Court shall conduct a Final Status Conference on April 9, 2021 at _____m., or at
23 such other date and time as is convenient for the Court. The Court will hear all motions *in limine*
24 at the Final Status Conference, which shall be filed and served in accordance with Code of Civil
25 Procedure Section 1005, and L.A.S.C. Local Rule 3.25(f). On April 5, 2021, the parties shall file
26 and serve trial briefs, trial witness lists, and trial exhibit lists. The parties shall meet and confer
27 regarding the exchange of trial exhibits, and shall work to submit a joint list of exhibits that omits
28 duplicate copies of the same exhibit. Trial briefs shall be a maximum of 25 pages in length.

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The Court shall conduct an evidentiary hearing regarding the Physical Solution commencing on April 21, 2021 at _____ .m., or at such other date and time as may be convenient for the Court. The total number of court days assigned for the hearing will depend upon the number of parties who do not agree with the Physical Solution, and the issues that remain to be resolved. The total number of court days will be determined at the Final Status Conference.

Dated: August 3, 2020

BEST BEST & KRIEGER LLP

By: _____
SHAWN HAGERTY
CHRISTOPHER M. PISANO
SARAH CHRISTOPHER FOLEY
Attorneys for Respondent and
Cross-Complainant
CITY OF SAN BUENAVENTURA

EXHIBIT B

SB Ch'Keeper v. SWRCB

revised proposed schedule on City's partially-stipulated proposed judgment

Confidential Settlement Communication (Evid. Code, § 1152)

8-3-20

9-13-20	City releases its proposed judgment
9-13-20	City provides any written backup information it is prepared to provide, under settlement privilege
9-21-20	SB Ch'Keeper, SWRCB, CDFW, and Casitas meet with City via video and under settlement privilege to provide initial reactions to City's proposed judgment
9-28-20 to 10-30-20	City holds one or two information sessions for the general public, via video, to explain its proposed judgment and answer any questions from general public; City also makes experts available, via video, and under settlement privilege, to answer questions about basis for proposed judgment
11-6-20	City provides CMC statement to Court (after meeting and conferring with other parties) with update on service, update on form answers, and report on proposed judgment discussions to date; other parties may supplement CMC
11-13-20	Revised initial disclosure deadline
1-15-21	SB Ch'Keeper, SWRCB, CDFW, Casitas, and any other party provide redline counter-offers on proposed judgment
3-1-21	City provides counter-offer on proposed judgment
4-1-21	Settlement conference via video
4-15-21	City provides CMC statement to Court (after meeting and conferring with other parties) with update on service, update on form answers, report on proposed judgment discussions to date, and proposal as to future settlement discussions and/or judicial process; other parties may supplement
5-7-21	City takes default of all parties that have not answered the complaint
5-7-21	CMC
5-14-21	CMC

Optional additional dates [subject to change at 11-13-20 CMC or 5-14-21 CMC]:

5-19-21	City files motion to set evidentiary hearing on partially-stipulated proposed judgment, accompanied by evidence supporting a prima facie showing on the requirements of Code of Civil Procedure section 850, subdivision (a), accompanied by evidence supporting thresholds in Code of Civil Procedure section 850, subdivision (b), and seeking a court finding under Code of Civil Procedure section 833, subdivision (c)
6-24-21	Hearing on City's motion [all future dates being subject to motion being granted or subject to change at hearing]
12-24-21	Deadline for fact discovery
1-17-22	Deadline for filing of motions regarding fact discovery
2-28-22	Expert disclosures
3-28-22	Supplemental expert disclosures
6-27-22	Deadline for expert depositions
7-18-22	Deadline for filing motions regarding expert discovery

10-3-22	Pre-trial statements (including trial witness lists and trial exhibit lists), filing of all direct testimony via declaration, motions in limine, and trial briefs due
10-10-22	Responses to motions in limine due
10-17-22	Pre-trial status conference
11-7-22	Evidentiary hearing (first day)

EXHIBIT C

CASE NAME:
Santa Barbara Channelkeeper v. State Water Resources Control Board

CASE NUMBER:
19STCP01176

7. The pleading has not yet been filed and served on the parties listed in item 6 for the following reasons (*describe the efforts that have been made to serve the pleading and why service has not been completed*):

Many cross-defendants are not represented by counsel and have requested additional time to determine whether they need to retain counsel and/or file an answer or other pleading.

Continued on Attachment 7.

8. An extension of time to serve and file the pleading should be granted for the following reasons:

Settlement negotiations have continued to be productive during the extension period. Good cause exists to further extend the time to respond to allow additional time for negotiating parties to finalize a proposed settlement and physical solution and make it publicly available for cross-defendants to evaluate and determine a need to participate in the lawsuit.

Continued on Attachment 8.

9. If an extension of time is granted, filing and service on the parties listed in item 6 will be completed by (*date*):
October 30, 2020

10. Notice of this application under rules 3.1200–3.1207 has been provided as required (*describe all parties or counsel to whom notice was given; the date, time, and manner of giving notice; what the parties or counsel were told and their responses; and whether opposition is expected*) or is not required (*state reasons*):

City provided a draft copy of this application via email to all known counsel of record and all parties who have appeared on August 3, 2020 and requested notice of any opposition. Many parties support this application. No party has stated opposition as of the filing of this application.

Continued on Attachment 10.

11. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 10, 2020

Sarah Christopher Foley

(TYPE OR PRINT NAME OF APPLICANT OR ATTORNEY FOR APPLICANT)



Sarah Foley

(SIGNATURE OF APPLICANT OR ATTORNEY FOR APPLICANT)

Order on Application is below on a separate document.

ORDER

1. The application for an order extending time to serve and file the pleading is granted denied.

2. The pleading must be served and filed no later than (*date*): October 30, 2020

3. The case management conference is rescheduled to:

a. Date:

b. Time:

c. Place:

4. Other orders:

5. A copy of this application and order must be served on all parties or their counsel that have appeared in the case.

Date:

JUDICIAL OFFICER

EXHIBIT D

TERM SHEET FOR AMENDMENTS TO SETTLEMENT AGREEMENT

1. When daily average flows as measured at the VR-1 gage fall below 4.0 CFS for 3 consecutive days, the City will shut down wells Nye 7 and 8 before noon on the following business day.
2. If daily average flows as measured at the VR-1 gage fall below 3.0 CFS on any day of the time period in 1 above, the City would also shut down the subsurface intake at the same time as the shutdown in 1 above.
3. If the daily average flows as measured by the VR-1 gage fall below 4.0 CFS for 3 consecutive days, but stay above 3.0 CFS during that period, the City would shut down wells Nye 7 and 8 but would be permitted to continue to operate the subsurface intake until the daily average flows fall below 3.0 CFS for three consecutive days.
4. The City shall monitor the impact of pumping on instream flows for the life of this agreement. The City shall specifically evaluate the impact of continued pumping at the subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to paragraph 3 above. If monitoring at station VR-2 downstream demonstrates a sustained impact on instream flows after the shutdown of wells Nye 7 and 8, or after the shutdown of the subsurface intake, the parties shall meet and confer on or before 30 June of the following year to discuss whether continuing to pump groundwater when instream flows fall below 4.0 CFS may occur or whether all production should stop at 4.0 CFS. If the parties are unable to agree, either party may pursue any available legal remedy they have related to this issue by seeking resolution of the issue via the Court.
5. Other than as provided in paragraph 4, Channelkeeper agrees not to seek other interim relief regarding flow. This settlement relating to interim flows in no way impacts Channelkeeper's ability to comment on, support, or challenge the physical solution proposed by any party in this action.
6. The City shall continue to implement this revised flow regime at least until entry of the stipulated judgment and physical solution.
7. The revised flow regime may be temporarily modified or suspended under emergency conditions. Emergency conditions include Act of God, unforeseen pipe failure, and the inability of the City to obtain sufficient usable replacement water from Casitas Municipal Water District or other sources to serve its customers. The City shall promptly notify Channelkeeper in writing whenever such an emergency condition exists. The notification shall include the justification for the modification, and supporting documentation. If necessary, the parties shall meet and confer about the modification or suspension to limit its impact on Southern California Steelhead and other impacted species.
8. If the City seeks to modify the flow regime pursuant to paragraph 6 above because it is unable to obtain replacement water from Casitas Municipal Water District, the City shall provide Channelkeeper with 30 days written notice, if such notice is feasible in light of water management plans or testing trends, or as much advance notice as is feasible when the inability results from an unexpected event. If the modification is based on the inability to obtain replacement water from Casitas, the City shall implement the following specific water conservation measures in the impacted service area during the emergency period of modification or suspension:

City Actions.

1. Encourage maximum conservation by all customers and users in the impacted area.
2. No outdoor irrigation using potable water will be allowed.
3. All water use not required for health and safety is prohibited.
4. Suspend the issuance of any new development approvals and new water connections in the impacted area other than those required to be processed by state law. Building permits which do not create new demand for water or which are for emergencies, public safety and water conservation may be exempted by the City Manager.

Water Customer Actions

5. Comply with mandatory water conservation regulations.
 6. Prohibition of all outside water use unless necessary for the preservation of health and safety and the public welfare.
 7. Watering with hand-held five gallon maximum bucket, filled at exterior hose bib or interior faucet (not by hose) shall be allowed at any time. This will assist in preserving vegetable gardens or fruit trees.
 8. The filling of swimming and wading pools is prohibited.
9. Channelkeeper acknowledges that the City currently plans to construct the Foster Park notching project this fall in accordance with the Settlement Agreement. In the unlikely event that the implementation of the notching project impacts the City's ability to implement the revised flow regime, or in the possible event that the notching project temporarily impacts the City's ability to use VR-2 to monitor downstream impacts of the pumping regime, the parties shall meet and confer to discuss any modifications or suspensions of the flow regime or the monitoring process as necessary to complete the notching project.
10. The City and Channelkeeper will work in good faith to prepare a joint press release regarding this amendment to the Settlement Agreement. In addition, the City and Channelkeeper will meet and confer on whether they can work collaboratively on other public relations efforts to raise awareness of the need to protect the Ventura River Watershed and its habitat, including protections for the Southern California steelhead.