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10 VENTURA RIVER WATER DISTRICT and
MEINERS OAKS WATER DISTRICT

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

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

vs.

STATE WATER RESOURCES CONTROL BOARD, a California State Agency; CITY OF SAN BUENAVENTURA, a California municipal corporation,

Respondents.

Case No.: 19STCP01176

CROSS-DEFENDANTS' VENTURA RIVER WATER DISTRICT AND MEINERS OAKS WATER DISTRICT BRIEF ON BACKGROUND ISSUES OF LAW FOR THE PHASE 1 TRIAL

Date: November 15, 2021
Time: 1:30 p.m.

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

CITY OF SAN BUENAVENTURA, a California municipal corporation,

Cross-Complainant

vs.

DUNCAN ABBOTT, an individual, et al.

Cross-Defendants.

1 Cross-Defendants Meiners Oaks Water District and Ventura River Water District
2 **(Districts)** submit this brief on the issues of background water law and adjudication concepts for
3 the Phase 1 trial. This brief sets forth fundamental concepts of California water law and
4 adjudications to assist the court in understanding and ruling on the five Phase 1 issues.

5 **I. FUNDAMENTAL CONCEPTS OF CALIFORNIA WATER LAW**

6 **A. BASICS AND TERMINOLOGY**

7 1. The State Owns All Water and Holds it in Trust. There is no private right
8 of ownership in water in California. The California Water Code section 102 provides that “[a]ll
9 water within the State is the property of the people of the State, but the right to use of water may
10 be acquired by appropriation the manner provided by law”. The California Supreme Court
11 explained as early as 1853:

12 It is laid down by our law writers, that the right to property in water is usufructuary, and
13 consists not so much of the fluid itself as the advantage of its use The owner of land
14 through which a stream flows, merely transmits the water over its surface, having the
15 right to its reasonable use during its passage. The right is not in the *corpus* of the water,
and only continues with its possession.

16 *Eddy v. Simpson* (1853) 3 Cal. 249, 252. “Usufruct – the legal right of using and enjoying the
17 fruits or profits of something belonging to another.” Merriam-Webster Dictionary. This rule is
18 also reflected in Water Code section 1001: “Nothing in this division shall be construed as giving
19 or confirming any right, title, or interest to or in the corpus of any water.”

20 Water flowing in a natural stream is not the subject of private ownership. Private rights
21 that attach thereto – whether appropriative or riparian – are strictly usufructuary rights to
22 take the water from the stream into physical possession for the purpose of putting it to
beneficial use. This, in western water law...is a very old and well-established principle.

23 *Water Rights Laws in the Nineteen Western States*, Hutchins (1971) Volume I, page 137.

24 One of the “first principles” of the law of watercourses...is that the running water of a
25 natural stream is, as a corpus, the property of no one – variously expressed as being in the
26 “negative community,” “common,” “*publici juris*,” “the property of the public,” or “the
property of the State in trust for the people.”

27 *Id.*, page 140.

1 Thus, the usufructuary right to use water is a private, proprietary principle of ownership
2 according to the holder a vested real property right upon compliance with the statutory requirement
3 applicable to the right and actual reasonable and beneficial use. *See People v. Shirokow*, 26 Cal.
4 3d 301 (1980); *Casitas Mun. Water Dist. v. United States*, 7908 F.3d 1340 (2013); and *North*
5 *kern Water Storage Dist. v. Kern Delta Water Dist.*, 147 Cal.App.4th 555 (2007).

6 2. Surface Water. California water law has traditionally distinguished
7 between surface water and groundwater – with the primary importance of the distinction being
8 the State Water Resources Control Board (**Water Board**) has jurisdiction over surface water,
9 and not percolating groundwater.

10 a. *Definition*. Water Code section 1200 generally provides the definition of
11 surface water: “Whenever the terms stream, lake or other body of water, or water occurs in
12 relation to applications to appropriate water permits . . . such term refers only to surface water,
13 and to subterranean streams flowing through known and definite channels.” As stated by the
14 Water Board:

15 The jurisdiction of the [Water Board] to issue permits and licenses for
16 appropriation of underground water is limited by section 1200 of the
17 California Water Code to “subterranean streams flowing through known
and definite channels.”

18 Underground water not flowing in a subterranean stream, such as water
19 percolating through a groundwater basin, is not subject to the [Water
Board’s] jurisdiction.

20 http://www.waterrights.ca.gov/application/forms/infobook.htm#_Toc442697730.

21
22 b. *Historical State Regulation of Surface Water*

23 Prior to 1872, surface water rights were acquired simply by taking and beneficially using
24 water. In 1872, sections 1410 through 1422 of the California Civil Code were enacted. These
25 sections established a permissive procedure for perfecting an appropriation of water, largely in
26 the manner that was undertaken prior to 1872, through posting of notice and diversion of the
27 water. The Water Commission Act took effect in 1914, and vested the State with authority over
28 appropriation of all surface water and established the state’s water right permit process.

1 The State Water Commission, the agency created by the act which ultimately became the Water
2 Board, was given the responsibility of permitting and licensing water appropriators post-1914,
3 but had no authority over rights perfects prior to 1914 (**Pre-1914 Rights**).

4 3. Groundwater

5 a. *Definition.* The Dictionary of Real Estate Appraisal, defines groundwater
6 as “all water that has seeped down beneath the surface of the ground or into the subsoil; water
7 from springs or wells.” Appraisal Institute, The Dictionary of Real Estate Appraisal, 4th ed.,
8 (Chicago: Appraisal Institute, 2002), p. 133

9 b. *State Board Limited Authority.* As mentioned earlier, the jurisdiction of
10 the Water Board to issue permits and licenses for appropriation of underground water is limited
11 by section 1200 of the California Water Code to “subterranean streams flowing through known
12 and definite channels.” The State Board acknowledges:

13 In most areas of California, overlying land owners may extract percolating
14 ground water and put it to beneficial use without approval from the State
15 Board or a court. California does not have a permit process for regulation
of ground water use.

16 https://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.html#rights.

17 c. *SGMA.* In 2014 the State of California adopted the Sustainable
18 Groundwater Management Act (“**SGMA**”), legislation that for the first time in California’s
19 history, imposed requirements on the management of groundwater under the oversight of the
20 State. SGMA defines “sustainable groundwater management” as the “management and use of
21 groundwater in a manner that can be maintained during the planning and implementation horizon
22 without causing undesirable results.” Under SGMA, high- and medium-priority basins, as
23 designated by the California Department of Water Resources (“**DWR**”), must establish
24 Groundwater Sustainability Agencies (“**GSAs**”). The GSAs, made up of one or more local
25 agencies overlying a defined groundwater basins, are required to develop Groundwater
26 Sustainability Plans (“**GSPs**”). GSAs responsible for high- and medium-priority basins must
27 adopt GSPs by Jan. 31, 2020 or Jan. 31, 2022, depending on whether the basin is in critical
28 overdraft. SGMA identifies four groundwater basins within the Ventura River Watershed.

1 i. The Lower Ventura River Basin is designated as Basin Number 4-
2 3.02 in DWR Bulletin 118¹ and has been designated by DWR as a very low priority basin under
3 SGMA, and is not required to prepare a GSP.

4 ii. The Upper Ventura River Basin is designated as Basin Number 4-
5 3.01 in Bulletin 118 and has been designated as a medium priority basin under SGMA. As a
6 medium priority basin, a GSP must be adopted for the basin on or before January 31, 2022 by
7 Upper Ventura River Groundwater Agency, the designated GSA.

8 iii. The Ojai Valley Groundwater Basin is designated as Basin
9 Number 4-2 in Bulletin 118 and has been designated by DWR as a high priority basin under
10 SGMA. As a high priority basin, a GSP or equivalent must be adopted for the basin by the
11 applicable GSA on or before January 31, 2022. The Ojai Basin Groundwater Management
12 Agency submitted a GSP alternative to DWR for evaluation and assessment under SGMA.
13 DWR did not approve the proposed alternative, citing, among other things, the fact that basin
14 groundwater is the primary contributor of flow to San Antonio Creek for much of the year, and
15 because no evidence was provided to indicate that subsequent studies of safe or sustainable yield
16 considered impacts to stream flows, or desired or optimal minimum groundwater discharge rates
17 to San Antonio Creek.

18 iv. The Upper Ojai Valley Basin is designated as Basin Number 4-1 in
19 Bulletin 118 and has been designated by DWR as a very low priority basin under SGMA, and is
20 not required to prepare a GSP.

21 d. Different Legal Regimes for Different Rights. Because of the dual system
22 of surface water rights (discussed below), and lack of Water Board jurisdiction over groundwater
23 rights, different legal regimes have developed for different water rights in California.
24 Historically, California courts have handled disputes over groundwater use to fill the regulatory
25 gap left by the Water Board's lack of jurisdiction. This has resulted in some disconnect between
26 groundwater decisions and surface water decisions.

27 ¹ California's Groundwater (Bulletin 118) is the State's official publication on the occurrence and nature of
28 groundwater in California. The publication defines the groundwater basin boundaries and summarizes groundwater
information for each of the State's 10 hydrologic regions.

1 California water law originally employed very rigid and artificial distinctions between
2 surface water and percolating groundwater.

3 . . . for much of its history the Water Board was an agency of limited scope and
4 power. Many water right disputes, such as those involving riparian rights, pueblo
5 rights, and prescriptive rights, did not fall within the jurisdiction of the board. But
6 even in cases which arguably came within the board's limited jurisdiction, the
7 parties often filed directly in the superior court, which assumed jurisdiction and
8 decided the case. (See, e.g., *Allen v. California Water & Tel. Co.* (1946) 29
9 Cal.2d 466.) All public trust cases cited in this opinion were filed directly in the
10 courts. Thus, a 1967 treatise on California water law could conclude that
11 "[generally], the superior courts of California have original jurisdiction over water
12 rights controversies . . ." but in some cases must share concurrent jurisdiction with
13 administrative bodies. (1 Rogers & Nichols, *op. cit. supra*, at p. 528.)

14 *Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 426.

15 e. Reconciling Jurisdiction. Over time, interpretation of Article X, section 2
16 of the California Constitution and multiple court decisions have clarified many of these
17 jurisdictional distinctions to better reflect hydrological realities. One example of this is the
18 "common source doctrine."

19 "[I]t has been recognized by California decisions that a percolating groundwater
20 supply, although not part of the flow of a stream, may nevertheless be
21 hydrologically connected with it, with the result that the extraction of water from
22 either source diminishes the amount of water in the other. In such a situation, the
23 percolating groundwater and the stream are regarded as one common water
24 supply" *United States v. Fallbrook* (S.D.Cal. 1958) 165 F.Supp 806, 847.

25 Where groundwater and surface waters are hydrologically interconnected, the "common
26 source" doctrine applies, integrating the water rights and applying priorities without regard to
27 whether the diversion is from surface water or groundwater. *Hudson v. Dailey* (1909) 156 Cal.
28 617, 627-628.

4. Terminology:

a. Acre-Foot. One acre-foot of water equals about 326,000 gallons, or
enough water to cover one acre of land, an area about the size of a football field, one foot in
depth. An average California household uses between one-half and one acre-foot of water per
year for indoor and outdoor use. [https://www.watereducation.org/general-information/whats-
acre-foot](https://www.watereducation.org/general-information/whats-acre-foot).

1 b. Overdraft “Overdraft” occurs where the average annual amount of
2 groundwater extraction exceeds the long-term average annual supply of water to the basin, or,
3 where total extractions exceed the Safe Yield and/or Sustainable Yield and any available
4 temporary surplus. Effects of overdraft can include seawater intrusion, land subsidence,
5 groundwater depletion, and/or chronic lowering of groundwater levels.
6 [https://water.ca.gov/programs/groundwater-management/bulletin-118/critically-overdrafted-](https://water.ca.gov/programs/groundwater-management/bulletin-118/critically-overdrafted-basins)
7 [basins.](https://water.ca.gov/programs/groundwater-management/bulletin-118/critically-overdrafted-basins)

8 c. Safe Yield. “Safe yield” is defined in *City of Los Angeles v. City of San*
9 *Fernando*, 14 Cal. 3d 199, 278 (1975) as “the maximum quantity of water which can be
10 withdrawn annually from a ground water supply under a given set of conditions without causing
11 an undesirable result. The phrase ‘undesirable result’ is understood to refer to a gradual lowering
12 of the ground water levels resulting eventually in depletion of the supply.”

13 d. Sustainable Yield. “Sustainable Yield” is a more recent term that SGMA
14 defines as the maximum quantity of water, calculated over a base period representative of long-
15 term conditions in the basin and including any temporary surplus, that can be withdrawn
16 annually from a groundwater supply without causing an undesirable result. California Water
17 Code section 10721(w).

18 e. Undesirable Result. SGMA defines an “Undesirable Result” as one or
19 more of the following effects caused by groundwater conditions occurring throughout the basin:

20 (1) Chronic lowering of groundwater levels indicating a significant and
21 unreasonable depletion of supply if continued over the planning and implementation horizon.
22 Overdraft during a period of drought is not sufficient to establish a chronic lowering of
23 groundwater levels if extractions and groundwater recharge are managed as necessary to ensure
24 that reductions in groundwater levels or storage during a period of drought are offset by
25 increases in groundwater levels or storage during other periods.

26 (2) Significant and unreasonable reduction of groundwater storage.

27 (3) Significant and unreasonable seawater intrusion.

28

1 (4) Significant and unreasonable degraded water quality, including the
2 migration of contaminant plumes that impair water supplies.

3 (5) Significant and unreasonable land subsidence that substantially interferes
4 with surface land uses.

5 (6) Depletions of interconnected surface water that have significant and
6 unreasonable adverse impacts on beneficial uses of the surface water.

7 California Water Code section 10721(x).

8 B. WATER RIGHTS. California is unusual in that it maintains a dual system of
9 water rights, both riparian and appropriative. *See Lux v. Haggin* 69 Cal. 255 (1886).

10 1. Surface Water Rights.

11 a. *Riparian.* A working definition of riparian water rights can be
12 obtained from the Dictionary of Real Estate Appraisal: The incidental right of the owners of land
13 bordering a lake or stream to the use and enjoyment of the water that flows across their land or is
14 contiguous to it; entitles the user to reasonable use that does not materially diminish the quality
15 or quantity of the water for other owners. The owner's rights are equal, regardless of their
16 location along the stream or the time when each property was purchased. Appraisal Institute,
17 The Dictionary of Real Estate Appraisal, 4th ed., (Chicago: Appraisal Institute, 2002), p. 250.

18 b. *Appropriative Surface Water.* An appropriative right is the right to
19 divert and use from a specified point of diversion a specific quantity of water, for a specific
20 purpose, in a specific location. Historic appropriative rights obtained prior to the Water
21 Commission Act (**Pre-1914 Rights**) continue to be valid, with all new rights issued after 1914
22 being subject to a much greater degree of oversight and regulation by the Water Board.

23 c. *Pueblo.* Pueblo water rights are one of the original "species of water
24 rights" recognized in early California law. *Pleasant Valley Canal Co. v. Borrer*, 61 Cal. App. 4th
25 742, 751 (1998). Pueblo water rights apply to and may be exercised by the municipal successors
26 of the Spanish and Mexican pueblos and it entitles the holder to water lying within the
27 boundaries of the historic pueblo for reasonable and beneficial uses. *City of Barstow v. Mojave*
28 *Water Agency*, 23 Cal 4th 1224, 1245, fn. 11 (2000).

1 d. *Federal Reserved*. The doctrine of federal reserved water rights traces
2 its origins to the decision of *Winters v. United States*, 207 U.S. 564 (1908). There, the United
3 States Supreme Court held that when the United States sets aside an Indian reservation, it
4 impliedly reserves sufficient water to fulfill the purposes of the reservation with a priority date
5 established as of the date of the reservation. Over half a century later, in *Arizona v. California*,
6 373 U.S. 546 (1963), the United States Supreme Court held that the reserved rights doctrine is
7 not limited to Indian reservations, but applies to all federally reserved public lands, such as
8 national forests, national recreation areas, and national wildlife refuges.

9 2. Groundwater Rights.

10 a. *Overlying*. Overlying groundwater rights are based on ownership
11 of the land that lies above a groundwater source which gives the landowner a right to extract and
12 use that groundwater on the overlying land for reasonable and beneficial use. The right is
13 correlative, meaning withdrawals are limited to an amount that is reasonable in light of the
14 competing demands of other overlying users. *An Evaluation of California's Adjudicated*
15 *Groundwater Basins* (2016) Langridge, Brown, Rudestam, Conrad, at p. 16².

16 b. *Appropriative Groundwater Rights*. Appropriative groundwater rights
17 exist where groundwater is diverted from its source for use on a non-overlying area, or for
18 municipal use. An appropriator can generally divert groundwater for reasonable and beneficial
19 use if it is not needed for overlying users, so long as use will not create an overdraft condition.
20 Thus, appropriative groundwater rights are subordinate to overlying groundwater rights. Among
21 appropriators, priority of right is: first in time is first in right. *An Evaluation of California's*
22 *Adjudicated Groundwater Basins, Id.*

23 c. *Correlative Groundwater Rights*. The doctrine of correlative
24 groundwater rights was developed by the California Supreme Court in *Katz v. Walkinshaw*, 141
25 Cal. 116 (1903) which held that in disputes among overlying groundwater users, all have equal
26

27 ² Can be found at permalink: <https://escholarship.org/uc/item/71n7v525>.

1 rights; if the supply of water is not sufficient for all demands, each user is entitled to a fair and
2 just proportion of the water.

3 d. *Prescriptive*. Prescriptive groundwater rights do not begin to accrue
4 until a condition of overdraft exists, a condition defined by the California Supreme Court as
5 when extractions exceed the safe yield of a basin plus any temporary surplus. *City of Los Angeles*
6 *v. City of San Fernando*, 14 Cal. 3d 199, 278 (1975). If during a condition of overdraft multiple
7 prescriptive rights holders continue their prescriptive uses for an extended period of time,
8 “mutual prescription” may apply, meaning all prescriptive users would bear proportionate
9 reductions caused by water shortages, rather than on the basis of temporal priority. *An*
10 *Evaluation of California’s Adjudicated Groundwater Basins, Id.*

11 C. LIMITATIONS ON USE OF WATER

12 1. Article X Section 2 – Reasonable Use. California Constitution Article X,
13 section 2, provides a restriction on the exercise of all water rights in the State:

14 “It is hereby declared that because of the conditions prevailing in this State, the
15 general welfare requires that the water resources of the State be put to beneficial
16 use to the fullest extent of which they are capable, and that the waste or
17 unreasonable use or unreasonable method of use of water be prevented, and that
18 the conservation of such water is to be exercised with a view to the reasonable
19 and beneficial use thereof in the interest of the people and for the public
20 welfare...”

21 What is reasonable depends upon the facts and circumstances of each situation and can vary as
22 the current situation changes. *See e.g., Environmental Defense Fund, Inc. v. East Bay Municipal*
23 *Utility District*, 26 Cal 3d 183 (1980); *Tulare Irr. Dist v. Lindsay-Strathmore Irr. Dist.*, 3 Cal. 2d
24 489 (1935); *Joslin v. Marin Municipal Water Dist.*, 67 Cal. 2d 132 (1967).

25 2. Public Trust Doctrine. The public trust doctrine derives from the idea that
26 certain property should not be privately owned but instead should be held by the government for
27 the benefit of all citizens. The public trust doctrine has been applied in different ways over the
28 decades but has evolved in California to impose a duty of continuing supervision over water
rights to determine whether or not the water is appropriated in a manner that is harmful to a
public trust value. *Nat’l Audubon Soc’y v. Superior Court*, 33 Cal 3d 419, 426 (1983). The

1 California Supreme Court has further directed that the public trust doctrine requires “discretion
2 and judgement to balance all . . . competing interests” including not only historical trust values,
3 but also “municipal, industrial, and agricultural uses.” *State Water Resources Control Board*
4 *Cases*, 136 Cal App 4th 674, 778 (2006).

5 II. CALIFORNIA WATER ADJUDICATIONS

6 A. ADJUDICATION AS THE ONLY WAY TO FULLY DETERMINE RIGHTS.

7 Adjudication is many times the only way to comprehensively determine water rights in a
8 watershed. As described earlier, California state courts share concurrent jurisdiction with the
9 Water Board on surface water controversies, but other than in limited exceptions, the Water
10 Board’s jurisdiction generally does not extend to percolating groundwater or Pre-1914 Rights.
11 Consequently, the only method to obtain comprehensive relief with respect to all water rights in
12 a watershed is through an adjudication filed in superior court.

13 The principal concept in adjudication is the determination of water rights between
14 competing users. One or more water users generally initiate an action including, but not
15 limited to, actions to quiet title or an action brought to impose a physical solution, and
request that the court determine their respective rights to the water resource.

16 *An Evaluation of California’s Adjudicated Groundwater Basins, Id., at pp. 7-8.*

17 The purpose of an adjudication is thus to settle and determine the parties’ conflicting
18 claims to the property and to obtain a declaration of the interests of each party. *City of Santa*
19 *Maria v. Adam* (2012) 211 Cal. App. 4th 266, 298.

20 In order for a court to declare the relative rights and priorities among competing users in
21 a groundwater basin, each party must first satisfy the common law elements that are essential
22 prerequisites to the successful assertion of a water right, whether that right is appropriative,
23 riparian, overlying, or prescriptive. “The request for definition is understandable in light of the
24 deleterious effects of uncertainty. “Initially, [uncertainty] inhibits long range planning and
25 investment for the development and use of waters in a stream system. . . . [P] Uncertainty also
26 fosters recurrent, costly and piecemeal litigation.” *Cent. & W. Basin Water Replenishment Dist.*
27 *v. S. Cal. Water Co.*, 109 Cal. App. 4th 891, 914, citing *In re Waters of Long Valley Creek*
28 *Stream System* (1979) 25 Cal.3d 339, 355.

1 B. DISPUTES. There are numerous disputes that bring about the need for parties to
2 bring litigation to adjudicate a basin or basins, with or without the added complexity of surface
3 water use. Adjudication is most often initiated because there is a perceived “problem” in the
4 basin and users turn to the court to determine who will be responsible for fixing the problem.
5 Those problems most often include declining groundwater levels and associated impacts
6 (overdraft), but can also include subsidence, salt water intrusion, well interference or
7 environmental uses. *An Evaluation of California’s Adjudicated Groundwater Basins, Id., at p.*
8 *11.*

9 C. HISTORICAL. Due to the overall lack of regulatory overview of groundwater
10 prior to 2014, and the Water Board’s lack of jurisdiction over Pre-1914 Rights, disputes among
11 groundwater pumpers are largely handled by the courts. An adjudication is simply a word for a
12 lawsuit and is used to refer to a collective attempt to resolve groundwater rights by bringing all
13 users in the basin into one litigation. In order to accomplish that in a comprehensive manner,
14 many parties must be joined, and over the years we have referred to such multi-party litigation as
15 comprehensive adjudications.

16 When water users within a basin are in dispute over legal rights to the water, a
17 court can issue a ruling known as an adjudication. Adjudications can cover an
18 entire basin, a portion of a basin, or a group of basins and all non-basin locations
19 between. The court decree will define the area of adjudication. The court typically
20 appoints a watermaster to administer the court's decree.

21 [https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-
22 Management/Adjudicated-Areas.](https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Adjudicated-Areas)

23 In 2016, a report prepared for the Water Board observed:

24 In the adjudication of a groundwater basin, the court generally defines and
25 determines water rights for all users and provides court-supervised basin
26 management by a Watermaster, who is usually appointed by the court to ensure
27 that the basin is managed in accordance with the court’s decree. Prior to
28 adjudication, key stakeholders and users of the groundwater in a basin
often negotiate a stipulation and physical solution to manage the basin, and the
court can then accept it in whole or in part, or reject it and craft a different
solution to manage the basin.

An Evaluation of California’s Adjudicated Groundwater Basins, Id., at p. 1.

At the time of SGMA's passage, 27 groundwater basins, located mostly in southern

1 California, were treated as adjudicated by SGMA. Since the passage of SGMA, two areas have
2 submitted court decrees adjudicating water rights. Adjudications have historically been governed
3 by common law, and over the decades, extensive common law rules and patterns have been
4 developed through these numerous comprehensive adjudications in the state. Those involved in
5 such litigation have historically complained about the time, effort and cost involved in such
6 litigation, and when the legislation that would be SGMA was being developed, attempts were
7 also made to streamline the adjudication process.

8 D. STREAMLINED ADJUDICATION STATUTE. In 2015, the California
9 legislature followed up passage of SGMA with groundwater adjudication reform legislation to
10 establish methods and procedures for comprehensive groundwater adjudications in an attempt to
11 make adjudications less lengthy and costly. As described in the text of AB 1390 adopting the
12 **“Streamlined Adjudication Statute”**:

13 This bill would establish special procedures for a comprehensive adjudication,
14 which is defined as an action filed in superior court to comprehensively determine
15 rights to extract groundwater in a basin. The bill would authorize the court to
16 determine all groundwater rights of a basin, whether based on appropriation,
17 overlying right, or other basis of right, and use of storage space in the basin. The
18 bill would provide that these special procedures governing comprehensive
19 adjudications do not apply in certain cases that do not involve a comprehensive
20 allocation of a basin’s groundwater supply. The bill would authorize a judge of
21 the superior court to determine if the action is a comprehensive adjudication, as
22 specified.

23 Groundwater adjudications are historically complex, expensive and time consuming. AB
24 1390 and SB 226, passed by the California Legislature in the 2015–2016 Regular Session,
25 provide some procedures for comprehensive groundwater adjudications. SB 226 is placed
26 within SGMA’s statutory framework in the California Water Code. AB 1390 appends a chapter
27 to the Code of Civil Procedure (“CCP”) that adds the method and procedure for comprehensive
28 groundwater adjudications.

The special procedures added by SGMA to the CCP are available *only if* the court deems
an action to be a “comprehensive adjudication”. The bill defines “comprehensive adjudication”
as “an action filed in superior court to comprehensively determine rights to extract groundwater

1 in a basin,” and overall seeks to streamline groundwater adjudications. Thus, the Streamlined
2 Adjudication Statute found in CCP sections 830-852 serves as a roadmap for streamlining the
3 adjudication process, but does not supplant the common law that has developed over the decades.
4 It is clear from reviewing the historical problems with adjudication litigation that the legislation
5 attempted to provide tools to streamline the common law process that have governed
6 adjudications for decades.

7 E. TRADITIONAL ADJUDICATION PROCESS.

8 In the adjudication of a groundwater basin, the court generally defines and determines
9 water rights for all users and provides court-supervised basin management by a
10 Watermaster, who is usually appointed by the court to ensure that the basin is
11 managed in accordance with the court’s decree. Prior to adjudication, key
12 stakeholders and users of the groundwater in a basin often negotiate a stipulation and
physical solution to manage the basin, and the court can then accept it in whole or in

13 *An Evaluation of California’s Adjudicated Groundwater Basins, Id.*, at p. 11.

14 1. Duration. The adjudication process many times include decades of active
15 litigation and perpetual post-judgment management. A review of historical adjudications have
16 determined that, while timelines vary, many situations involve 10 to 20 years of negotiations,
17 and can cost multiple millions of dollars. *Id.* at p. 13. Parties often return to court for continued
18 oversight and to resolve ongoing disputes. The court also retains jurisdiction after the initial
19 litigation phase of the adjudication. “Reservation of continuing jurisdiction by the trial court
20 overseeing the adjudication is an essential tool to address changing conditions to ensure that the
21 water supply supports the maximum number of beneficial uses. By maintaining jurisdiction, the
22 trial court can determine, on a case-by-case basis, whether new or changed uses are in fact
23 reasonable and beneficial. Subsequently, the court can make corresponding adjustments in the
24 quantity of water available to other parties as inchoate rights vary over time.” *Tulare Irr. Dist. v.*
25 *Lindsay-Strathmore Irr. Dist.*, 3 Cal. 2d 489, 525 (1935).

26 2. Adjudication Issues/Phases.

27 a. *Parties and Service*. One of the most expensive, time-consuming and
28 difficult aspect of any adjudication is to identify and serve the multiple parties that have or may

1 have water rights in the basin or watershed. The Streamlined Adjudication Statute allows for
2 service by publication, which is intended to streamline and shorten the service process.

3 b. *Basin/Watershed Boundaries.* The first step in many adjudications is to
4 determine the basin and/or watershed boundaries. The Streamlined Adjudication Statute assists
5 in this effort by establishing basin boundaries as identified by DWR in Bulletin 118 and allows
6 for adjustment of such boundaries by DWR when justified.

7 c. *Production/Diversion.* One of the reasons that groundwater adjudications
8 are time consuming is because there is little information on groundwater rights in California, as
9 they are neither regulated nor reported. The first multiple years of any adjudications involves
10 determining who claims rights to pump groundwater, and how much they have historically used.
11 Again, the Streamlined Adjudication Statute attempts to streamline this process by requiring
12 parties to early and expeditiously disclose information regarding their preceding 10 years of
13 groundwater use and any other relevant, associated, water use under penalty of perjury. CCP
14 section 842.

15 d. *Water rights.* While the stated goal of many adjudications is to
16 comprehensively determine water rights, very often that is not done. Rather than face the
17 draconian rules of pumping limitations and determination of priorities, many adjudications are
18 resolved through negotiations and compromise, thus avoiding a final comprehensive determine
19 of water rights and priorities.

20 3. Physical Solution. Prior to actual adjudication of water rights, key stakeholders
21 and users of the water in a basin often negotiate a stipulation and physical solution to manage the
22 basin, and the court can then accept it in whole or in part, or reject it and craft a different solution
23 to manage the basin. Trial courts have traditionally had great discretion in adopting a physical
24 solution and imposing it on the parties in groundwater adjudications and SGMA continues this
25 authorization “where necessary and consistent with Article 2 of Section X of the California
26 Constitution.” CCP 849(a). *See* BRIEF OF PROPOSING PARTIES REGARDING THE
27 PHYSICAL SOLUTION DOCTRINE filed March 8, 2021.

28

1 The Streamlined Adjudication Statute provides additional tools regarding physical
2 solutions, and CCP section 850 specifically allows the court to impose a physical solution that is
3 part of a stipulated judgment as a component of the final judgment if the physical solution
4 satisfies specific criteria, and if a party submits a proposed stipulated judgment that is supported
5 by: more than 50 percent of all named parties in the adjudication action and groundwater rights
6 holders holding title to at least 75 percent of the groundwater production during the past 10 years
7 in the basin. Again, while this section provides another tool for moving a stipulated judgment
8 ahead under certain circumstances, it is not the only tool, and the Streamlined Adjudication
9 Statute clearly continues to allow the court to exercise its discretion to and duty to adopt physical
10 solutions in other circumstances by including language acknowledging the court’s common law
11 duty:

12 The court shall have the authority and the duty to impose a physical solution on the
13 parties in a comprehensive adjudication where necessary and consistent with Article 2
14 of Section X of the California Constitution.

15 CCP section 849(a), and by explicitly leaving common law water rights in place. (Wat. Code, §
16 10720.5 [stating that “[n]othing in this part, or in any groundwater management plan adopted
17 pursuant to this part, determines or alters surface water rights or groundwater rights under
18 common law or any provision of law that determines or grants surface water rights”]; CCP, §
19 830, subd. (b)(7) [stating that “[e]xcept as provided in this paragraph, this chapter shall not alter
20 groundwater rights or the law concerning groundwater rights”].)

21 4. Watermaster.

22 The appointment of a Watermaster is one of the most positive features of
23 adjudication. The Watermaster is required to comply with and enforce the court
24 judgment, and generally has to monitor the basin and provide annual reports to the
25 court, which has continuing jurisdiction.

26 ***An Evaluation of California’s Adjudicated Groundwater Basins, Id., at p. 3.***

27 Management is generally moving away from a single Watermaster to a committee or a group of
28 committees. Committees generally represented interested parties, but also included parties who
were not necessarily in agreement regarding basin management.

Id., at p. 29.

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III. CONCLUSION.

The court is proceeding in this adjudication in a manner consistent with both the common law and the new tools provided by the Streamlined Adjudication Statute. The first step in this process is for the court to determine the five Phase I Issues to be tried as set forth in the City of San Buenaventura’s Brief of the Issues of Fact and Law for the Phase I Trial, in which Districts hereby fully join. Resolution of these issues in Phase I will allow the court to proceed in an orderly fashion to consider the Physical Solution proposed by some of the parties, and resolve any additional issues needed consistent with the requirements of both historic common law and the Streamlined Adjudication Statute.

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