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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 COUNTY OF LOS ANGELES

<p>18 SANTA BARBARA CHANNELKEEPER, Petitioner, 19 v. 20 STATE WATER RESOURCES CONTROL BOARD, a California State Agency; CITY 21 OF BUENAVENTURA, a California 22 municipal corporation, Respondents.</p>	<p>Case No. 19STCP01176 SWRCB'S AND CDFW'S EARLY PHASE ONE PRE-TRIAL CONFERENCE STATEMENT Date: November 15, 2021 Time: 1:30 p.m. Dept.: 10 (South Spring Courthouse) Judge: Honorable William Highberger Trial Date: February 14, 2022 (Phase One) Action Filed: September 19, 2014</p>
<p>23 CITY OF SAN BUENAVENTURA, California municipal corporation, 24 Cross-Complainant, 25 v. 26 DUNCAN ABBOTT, an individual; et al., 27 Cross-Defendants.</p>	

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1 Respondent and intervenor State Water Resources Control Board (“State Water Board”)
2 and intervenor California Department of Fish and Wildlife (“CDFW”) respectfully and jointly
3 submit this early phase one pre-trial conference statement. At the status conference on October
4 18, 2021, the Court requested that the parties file statements outlining what they perceive as the
5 issues of law and fact relevant to the phase one trial currently scheduled to begin on February 14,
6 2022. The Court also indicated that the parties should discuss the structure and sequence of the
7 trial, and whether any issues can be decided by the Court prior to the first day of trial.

8 The State Water Board and CDFW believe that there are four issues that should be
9 decided in this first phase of trial. Those are as follows, and discussed further below:

- 10 ■ The first issue is the boundaries of the Ventura River Watershed.
- 11 ■ The second issue is the boundaries of each of the four groundwater basins
12 at dispute in this adjudication.
- 13 ■ The third issue is a legal question raised by the City of Ojai and related to
14 the second issue: whether all four basins at issue in this case should be adjudicated
15 together in this one streamlined adjudication, as proposed in the cross-complaint of
16 City of San Buenaventura (“City of Ventura”).
- 17 ■ Finally, the last issue to be determined in the first phase of trial is the issue
18 of whether the surface water that exists in the watershed is sufficiently
19 interconnected with the groundwater of the four groundwater basins such that
20 including the users of those surface waters is “necessary for the fair and effective
21 determination of the groundwater rights.”

22 The State Water Board and CDFW believe that this phase one trial can be relatively easily
23 organized, and many issues can be resolved prior to trial. The provisions of the streamlined
24 comprehensive groundwater adjudication statutes, Code of Civil Procedure sections 830 to 852,
25 are clear and provide the basis for determining the answers to the four questions to be decided in
26 this first phase of trial.

27 The State Water Board and CDFW believe that the issues of the boundaries of the
28 watershed and the boundaries of the groundwater basins (as set forth in Bulletin 118) will not be

1 seriously contested. As discussed below, Code of Civil Procedure section 841, which is part of
2 the streamlined comprehensive groundwater adjudication statutes, is clear that the boundaries of
3 any groundwater basin at issue in such an adjudication are the boundaries set out in Department
4 of Water Resources Bulletin 118. In fact, none of the disclosed experts contest Bulletin 118's
5 findings, nor do they contest the boundaries of the watershed. Therefore, the State Water Board
6 and CDFW suggest a meet and confer process or some other informal process to determine the
7 scope of any objections to the boundaries. Assuming no disputes arise in the informal
8 proceedings that will be contested at trial, the City of Ventura can simply put on a truncated
9 version of its case in chief on this issue, and this can be the extent of the first phase of trial on
10 these first two issues.

11 As for the legal issue of whether four groundwater basins can be adjudicated together, this
12 issue will be contested. The State Water Board and CDFW (among others) believe that it is
13 proper to adjudicate all four basins together in this single adjudication, provided that as required
14 by the streamlined adjudication statutes the groundwater rights of each basin are determined as
15 part of any judgment in the case. The City of Ojai and others are likely to disagree. However,
16 much, if not the entire issue, involves issues of law or uncontested issues of fact that can be
17 resolved through motion practice. The State Water Board and CDFW believe that the simplest
18 way to resolve these issues of fact would be for the Court to set a briefing schedule on this issue
19 and decide the issue by dispositive motion.

20 Finally, the last issue to be determined by the first phase of trial is the interconnection of
21 the surface water and groundwater in the basins. The sole issue on interconnection in this phase
22 of trial is whether the water in the Ventura River and/or its tributaries (including San Antonio
23 Creek and Lion Canyon Creek) is connected enough to each of the four groundwater basins,
24 looking at each groundwater basin as a whole, that including the users of those surface waters is
25 "necessary for the fair and effective determination of the groundwater rights." The State Water
26 Board and CDFW believe that if the Court finds that that formulation of the issue controls, then
27 the parties are not likely to be far apart on the result of this issue at trial. The Court can then
28 order the parties to meet and confer or engage in some other informal process to try to work out

1 any small differences that remain. If these informal procedures are successful, then there can be a
2 truncated trial. However, if the differences remain, or if the Court declines to formulate the issue
3 as suggested by the State Water Board and CDFW, then the parties can put on their cases at a
4 more lengthy trial.

5 **I. THE CITY OF VENTURA’S MOTION TO BIFURCATE**

6 The City of Ventura brought the motion to bifurcate this case and set a phase one trial.
7 That motion sought “an order bifurcating this proceeding such that the Court try the issues of
8 boundaries of the Ventura River Watershed (“Watershed”) and the four groundwater basins
9 therein, as well as the interconnectivity of the Watershed and the groundwater basins in a first
10 phase of trial.” (City of San Buenaventura’s Notice of Motion to Bifurcate and Partial Lifting of
11 the Discovery Stay, served May 11, 2021, p. 2.) The notice of ruling filed stated simply that
12 “[t]he Court granted the City’s Motion to Bifurcate and Partial Lifting of the Discovery Stay for
13 matters relevant to the Phase 1 trial on the basin and watershed boundaries and interconnectivity.”
14 (Notice of Ruling, served July 2, 2021, p. 3.)

15 No party opposed that motion to bifurcate (though the parties argued about the schedule),
16 and the State Water Board and CDFW do not do so now. The agencies believe it is important to
17 determine the initial four issues outlined above in a first phase of trial. The agencies do object
18 though to the attempts by the City of Ojai and the East Ojai Group to enlarge the scope of this
19 first phase of trial to include anything related to the effects of groundwater pumping or surface
20 waters on the fishery or the health of the species in the watershed. That is a discovery intensive
21 process that will involve the need to analyze the cumulative effects of the entire system of
22 pumping and diverting and other processes and the biological and hydrologic questions related to
23 the health of the fishery and its needs for water, which have not been analyzed by any of the
24 experts disclosed to date and would require at least another year of pre-trial work by all parties.

25 **II. THE STREAMLINED COMPREHENSIVE GROUNDWATER ADJUDICATION STATUTES**
26 **APPLY TO THIS ACTION**

27 The streamlined comprehensive groundwater adjudication statutes, Code of Civil
28 Procedure section 830 to 852, were enacted in 2015. (Stats. 2015, ch. 672.) The City of Ventura

1 brought its cross-complaint pursuant to those statutes, and invoked the notice provisions to
2 provide the Court with in rem jurisdiction in this case. To date, there has been no party that has
3 raised an objection to the use of these statutes in this case. In fact, the State Water Board and
4 CDFW believe that the streamlined comprehensive groundwater adjudication statutes must be
5 followed in this case and apply to this action as a whole (including this first phase of trial).

6 To date, there are no published cases interpreting the provisions of the streamlined
7 comprehensive groundwater adjudication statutes. In fact, this case appears to be the first case
8 utilizing its provisions. The legislative history does not appear to be useful either in interpreting
9 many of the issues in this first phase of trial. So, we must interpret the words of the provisions of
10 the statutes as written, and be faithful to the motivating purpose of this new statute: streamlining
11 adjudications. (E.g., *In re Reeves* (2004) 35 Cal.4th 765, 770-71.)

12 The streamlined comprehensive groundwater adjudication statutes explain their reach:
13 “Except as provided in subdivision (b), this chapter applies to actions that would
14 comprehensively determine rights to extract groundwater in a basin, whether based on
15 appropriation, overlying right, or other basis of right.” (Code Civ. Proc., § 833, subd. (a).) (See
16 *id.*, § 833, subd. (b).) The third amended cross-complaint reveals that this is such an action, and
17 that none of the exceptions in subdivision (b) apply. (See Respondent and Cross-complainant
18 City of San Buenaventura’s Third Amended Cross-Complaint for etc., filed Jan. 2, 2020.) In
19 addition, it should be obvious that it is not just the sixth cause of action in the cross-complaint
20 that seeks to comprehensively determine rights to groundwater. The other causes of action seek
21 to do that, too. After all, the very first, introductory paragraph states that the “Cross-Complaint
22 seeks a judicial determination of rights to all water within the Ventura River Watershed.” (*Id.*, ¶
23 1, p. 30.) Therefore, the streamlined comprehensive groundwater adjudication statutes apply to
24 this action as a whole, and certainly to this first phase of trial.

25 **III. THE BOUNDARIES OF THE WATERSHED APPEAR TO BE UNDISPUTED**

26 To the State Water Board’s and CDFW’s knowledge, there is currently no dispute as to the
27 first issue in this phase of trial, the boundary of the Ventura River Watershed. The State Water
28 Board and CDFW believe that the City of Ventura is prepared to carry its burden of proof to show

1 the boundaries of the watershed. That could happen at trial, or the Court could resolve that in
2 other ways (for example, by requiring the City of Ventura to submit its proof and by issuing an
3 order to show cause to all other parties to identify if and why they dispute that proof).

4 **IV. THE BOUNDARIES OF THE GROUNDWATER BASINS SHOULD BE AS SET FORTH IN**
5 **BULLETIN 118**

6 As to the second issue to be decided in the first phase of trial, the boundaries of the basins,
7 the streamlined comprehensive groundwater adjudication statutes prescribe the boundaries of any
8 adjudication proceeding under those statutes. “Except as otherwise provided in this section, the
9 boundaries of the area subject to a comprehensive adjudication shall be consistent with the
10 boundaries of a basin.” (Code Civ. Proc., § 841, subd. (a).) The term “‘Basin’ has the same
11 meaning as defined in Section 10721 of the Water Code.” (*Id.*, § 832, subd. (a).) Water Code
12 section 10721 in turn defines a “basin” as “a groundwater basin or subbasin identified and defined
13 in Bulletin 118 or as modified pursuant to Chapter 3 (commencing with Section 10722).” (Wat.
14 Code, § 10721, subd. (b).) Bulletin 118 is the Department of Water Resources’ report entitled
15 “California’s Groundwater: Bulletin 118,” as detailed in the City’s Notice of Service re Bulletin
16 118, served Oct. 18, 2021. (Wat. Code, § 10721, subd. (c).) Thus, under section 841 of the
17 streamlined comprehensive groundwater adjudication statutes, the boundaries of a groundwater
18 basin are those set by Bulletin 118. Section 841 is also consistent with the statutes’ purpose; it
19 avoids disputes and competing expert testimony about the boundaries of groundwater basins.

20 Section 841 provides the only exceptions to following Bulletin 118. First, if the
21 Department of Water Resources revises the boundaries “after a comprehensive adjudication has
22 been initiated,” the Court can then revise the boundaries for the adjudication. (Code Civ. Proc., §
23 841, subd. (b).) Second, upon the proper showing, “the court may direct” certain persons “to
24 submit a request to the [Department of Water Resources] to revise the basin boundaries.” (*Id.*, §
25 841, subd. (c).) What is clear from these provisions is that the Department of Water Resources
26 must be the one to revise the boundaries of basins, not the Court or anyone else. In the absence of
27 action by the Department of Water Resources, the boundaries of a basin are those described by
28

1 Bulletin 118. Again, this is consistent with the purpose of streamlining groundwater
2 adjudications, because it funnels all potential changes to basin boundaries to one place.

3 Further, the State Water Board and CDFW are unaware of any party that disputes the
4 boundaries of the four groundwater basins as set forth in Bulletin 118. The agencies believe that
5 through the meet and confer process or by some other informal means (for example, by issuing an
6 order to show cause to all other parties to identify if and why they dispute those boundaries and
7 resolving those issues as a matter of law), any issues that exist can be resolved on this issue. If
8 not, then the State Water Board and CDFW believe that the City of Ventura is prepared to carry
9 its burden of proof to show the boundaries of each of the four groundwater basins at issue at trial.
10 Assuming those boundaries conform with Bulletin 118, then the State Water Board and CDFW
11 will likely not object.

12 **V. THE LEGAL DISPUTE REGARDING WHETHER ALL FOUR BASINS AT ISSUE HERE**
13 **CAN BE ADJUDICATED TOGETHER SHOULD BE RESOLVED BY DISPOSITIVE**
14 **MOTION**

15 The third issue for the first phase of trial is an argument raised by the City of Ojai. The
16 City of Ojai has argued that because the streamlined comprehensive groundwater adjudication
17 statutes repeatedly refer to “a basin” in the singular, it was not proper for the City of Ventura to
18 group four groundwater basins together in this case. This is an issue of law, which can be briefed
19 at any point, and probably makes sense to brief before the parties waste too much time and
20 resources with expert depositions. (Those are currently set to begin on December 6, 2021.) The
21 State Water Board and CDFW disagree with the City of Ojai’s interpretation of this statute. The
22 agencies believe that since these four basins are within the same watershed, and are connected to
23 the surface waters of the Ventura River and/or its tributaries, these four basins can be adjudicated
24 together. The State Water Board and CDFW are prepared to brief those issues for the Court.

25 **VI. THE FOURTH AND PRIMARY QUESTION BEFORE THE COURT IN THE FIRST PHASE**
26 **OF TRIAL IS WHETHER THE SURFACE WATER IN THE WATERSHED IS**
27 **SUFFICIENTLY INTERCONNECTED WITH THE GROUNDWATER OF THE FOUR**
28 **GROUNDWATER BASINS THAT IT IS NECESSARY THAT ANY SURFACE WATER**
RIGHTS BE DETERMINED BY THIS ADJUDICATION

With the watershed and basin boundaries defined, the final issue in the first phase of trial is
interconnectivity, that is, the extent to which the surface water in the watershed is connected to

1 the groundwater basins. The streamlined comprehensive groundwater adjudication statutes speak
2 to this issue as well:

3 If the court finds that including an interconnected surface water body or
4 subterranean stream flowing through known and definite channels is necessary for
5 the fair and effective determination of the groundwater rights in a basin, the court
6 may require the joinder of persons who claim rights to divert and use water from
7 that surface water body or subterranean stream in a comprehensive adjudication
8 conducted pursuant to this chapter.

9 (Code Civ. Proc., § 833, subd. (c).) While this language is phrased in terms of who should be
10 joined to the action — and the City has already joined all groundwater and surface water rights
11 holders in this case — it makes sense to apply this same standard to decide whether to adjudicate
12 the surface water rights with the groundwater rights in this action. Examining the words of the
13 statute, the issue has two parts: (1) whether the surface water and the groundwater are
14 “interconnected”; and (2) whether including the surface water is “necessary for the fair and
15 effective determination of the groundwater rights in a basin.” This is the City of Ventura’s
16 burden to show at trial, but the State Water Board and CDFW believe that there is sufficient
17 evidence to support both of those findings for the Ventura River and its tributaries.

18 In fact, the agencies believe that there is general agreement that the surface waters that
19 flow through the four groundwater basins are connected such that flows in one groundwater basin
20 will affect the flows in another and in the Ventura River itself (and its tributaries). The first part
21 of the issue of interconnectivity is therefore a much simpler question than some of the parties
22 claim. The question before the court is not whether every groundwater pumper’s well is
23 interconnected with the surface water in that basin or any of the other basins, but whether the
24 groundwater in the basin as a whole is interconnected with the surface water in the basins as a
25 whole.¹ That question is easily answered in the affirmative.

26 And it is not entirely clear that any party disputes the State Water Board and CDFW’s
27 proposition that there is some groundwater in the four basins that is interconnected with the
28

¹ The question of the effects from each individual’s pumping may be something that will need to be decided in a later phase of trial.

1 surface waters that run through those basins. No one appears to dispute that there is *some*
2 connection between each of the groundwater basins and the Ventura River and/or its tributaries.

3 The second part of the issue of connectivity is also not in serious dispute: whether
4 including the surface water is “necessary for the fair and effective determination of the
5 groundwater rights in a basin.” (Code Civ. Proc., § 833, subd. (c).) Although there may be a
6 dispute about the answer to the question of how much surface water is needed to bring the
7 steelhead population back into good condition and to maintain that good condition, there is no
8 dispute that this is one of the questions that will be decided in this adjudication. The State Water
9 Board and CDFW maintain that protecting public trust uses in the Ventura River by people, fish,
10 and other species will necessarily entail a close examination of the groundwater pumping, and
11 therefore groundwater rights, in all four basins that impact those public trust uses. In fact,
12 Channelkeeper’s initial lawsuit that brought about this case sought to protect that public trust and
13 ensure that the Ventura River watershed has sufficient surface water for federally endangered
14 Southern California steelhead to be in good condition. Given the need for this close examination
15 of the groundwater pumping and the public trust needs in the watershed, it would be effective,
16 fair, and necessary to include the users of both the groundwater and interconnected surface water
17 in any adjudication of the groundwater basins here.

18 The State Water Board and CDFW believe that it is likely that this fourth issue can be
19 resolved through informal meet and confers or other informal means if the Court were to find that
20 the fourth issue is simply a question of: (1) whether the surface water and the groundwater are
21 “interconnected”; and (2) whether including the surface water is “necessary for the fair and
22 effective determination of the groundwater rights in a basin.” The State Water Board and CDFW
23 are open to resolving these legal issues about the meaning of interconnection ahead of trial.

24 Absent an informal resolution ahead of trial, the trial should proceed with the City of
25 Ventura making its case first, since it has the burden of proof. (Evid. Code, § 500.) The State
26 Water Board should present its evidence next, since it agrees that the surface water and
27 groundwater are interconnected in this case. Other parties supporting a finding of
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1 interconnectivity (including CDFW) should proceed next. And, lastly, all other parties should
2 present their contrary proof, in whatever order those counsel might agree.

3 A ruling in the agencies' or the City of Ventura's favor at this first phase of trial does not
4 mean that all parties will need to participate in later phases of this adjudication. The streamlined
5 comprehensive groundwater adjudication statutes provide that small users can opt out upon a
6 sufficient showing:

7 If the court finds that claims of right to extract or divert only minor quantities of
8 water, not to exceed five acre-feet of water per year, would not have a material
9 effect on the groundwater rights of the other parties, the court may exempt those
10 claimants with respect to those claims for only minor quantities of water, but a
person who is exempted may elect to continue as a party to the comprehensive
adjudication.”

11 (Code Civ. Proc., § 833, subd. (d).) The State Water Board and CDFW believe that similar
12 principles could be applied to parties who divert water from very deep depths (for oil extraction,
13 for example) or who otherwise divert water from depths or places that are not materially
14 connected to the surface water here. But those will need to be analyzed later in this case — in
15 future phases of trial — in the context of knowing how much water the fishery and other species
16 need and an accounting of the water use in this watershed, because it is only with that information
17 that we can decide whether a particular diversion has a “material effect on the groundwater rights
18 of the other parties.”

19 CONCLUSION

20 In sum, the State Water Board and CDFW believe that the trial of phase one of this case
21 can be organized in this fashion:

22 1. There appears to be no dispute as to the boundaries of the Ventura River Watershed
23 and the four groundwater basins at issue, and the Court can devise a procedure for determining
24 whether there actually is no dispute. If there is a dispute, depending on the contours of that
25 dispute, the City of Ventura will need to make its case at trial.

26 2. On the legal issue raised by the City of Ojai regarding whether the Court can
27 adjudicate four groundwater basins in one action under the streamlined comprehensive
28

1 groundwater adjudication statutes, the Court should entertain dispositive briefing pre-trial to
2 resolve that issue.

3 3. On the issue of interconnection, the question is whether there is sufficient connection
4 between the surface water flowing through each basin, such as the Ventura River and/or its
5 tributaries (including San Antonio Creek and Lion Canyon Creek), and the groundwater in each
6 of the basins, looking at each groundwater basin as a whole, that including the users of surface
7 waters is “necessary for the fair and effective determination of the groundwater rights.” If the
8 Court agrees with that formulation, there may not be a need for a trial. If there is a trial, the City
9 of Ventura would have the burden of proof and thus would present its case first, followed by the
10 proof of other parties.

11
12 Dated: November 8, 2021

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