



1 Gregg Scott Garrison (SBN 141653)  
2 Email: gsgarrison@garrisonlawcorp.com  
3 Garrison Law Corporation  
4 12986 MacDonald Drive  
5 Ojai, CA 93023  
6 Telephone: (650) 726-1111  
7 Fax: (805) 669-3168

8 Attorneys for Bob Andren; Loa E. Bliss and David A. Gilbert, Trustees of The Loa E. Bliss  
9 2006 Revocable Trust; DeWayne Boccali; Emily V. Brown; Carty Ojai LLC; Steven Norman  
10 Feig and Maria Olympia Feig, Trustees of the Steve and Maria Feig Living Trust; Rosanna  
11 Garrison; Gregg Garrison; Richard Gilleland; Alex Glasscock; Brandon Hansen; C.B. Heller  
12 and Miranda Heller, Trustees of the Heller Family Trust; Michael L. Rockhold, Trustee of  
13 The Michael Rockhold Trust; Linn Thompson; Bre Thompson; SISAR Mutual Water  
14 Company; and Denise Wizman, Trustee of the Denise Wizman Revocable Trust.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

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

17 v.

18 STATE WATER RESOURCES CONTROL  
19 BOARD, a California State Agency,

20 CITY OF SAN BUENAVENTURA,  
21 a California municipal corporation,  
22 incorrectly named as City of Buenaventura,

23 Respondents.

24 CITY OF SAN BUENAVENTURA,  
25 a California municipal corporation,  
26 Cross-Complainant

27 v.

28 DUNCAN ABBOTT, an individual, et al.  
Cross-Defendants.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

NOTICE OF MOTION AND MOTION FOR  
JUDGMENT ON THE PLEADINGS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
GREGG SCOTT GARRISON REGARDING  
COMPLIANCE WITH MEET AND CONFER  
REQUIREMENTS OF CODE OF CIVIL  
PROCEDURE § 439(a)

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

Hearing: January 18, 2022

Time: 1:30 PM

TO CROSS-COMPLAINANT CITY OF BUENAVENTURA, THEIR ATTORNEYS OF  
RECORD AND ALL PARTIES AND COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that on January 18, 2022 at 1:30 PM or as soon after that  
2 as the matter can be heard in the above-entitled court located at Superior Court of the State  
3 of California, County of Los Angeles, Cross-Defendants attorneys for Bob Andren; Loa E.  
4 Bliss and David A. Gilbert, Trustees of The Loa E. Bliss 2006 Revocable Trust; DeWayne  
5 Boccali; Emily V. Brown; Carty Ojai LLC; Steven Norman Feig and Maria Olympia Feig,  
6 Trustees of the Steve and Maria Feig Living Trust; Rosanna Garrison; Gregg Garrison;  
7 Richard Gilleland; Alex Glasscock; Brandon Hansen; C.B. Heller and Miranda Heller,  
8 Trustees of the Heller Family Trust; Michael L. Rockhold, Trustee of The Michael  
9 Rockhold Trust; Linn Thompson; Bre Thompson; SISAR Mutual Water Company; and  
10 Denise Wizman, Trustee of the Denise Wizman Revocable Trust will and do move this  
11 Court for Judgment on the Pleadings as to the first, second, third, fourth, fifth, sixth,  
12 seventh, eighth, and ninth claims for relief in Cross-Complainant's *Third Amended*  
13 *Complaint*.

14  
15  
16 Garrison Law Corporation (hereinafter "GLC") represents a wide variety of Cross-  
17 Defendants whose properties are in both the Ventura River Watershed and the Santa Clara  
18 Watershed. In addition to these two watersheds, GLC's represented cross-Defendants have  
19 properties located in five groundwater basins: (1) Upper Ventura Groundwater Basin  
20 (Bulletin 118 GWB 4-3.01); (2) Upper Ventura Groundwater Basin (Bulletin 118 GWB 4-  
21 2); (3) Lower Ventura Groundwater Basin (Bulletin 118 GWB 4-3.02); (4) Upper Ojai  
22 Valley Groundwater Basin (Bulletin 118 GWB 4-1); and (5) Santa Clara River Valley East  
23 Groundwater Basin (Bulletin 118 GWB 4-005.07). The USGS defines the boundaries of the  
24 Watersheds. The California Department of Water Resources (DWR) describes the  
25 boundaries for the basins. Groundwater basins 3 and 4, above, are not completely described  
26 by the DWR because they are low priority basins.  
27  
28

1 Gregg Scott Garrison (SBN 141653)  
2 Email: gsgarrison@garrisonlawcorp.com  
3 Garrison Law Corporation  
4 12986 MacDonald Drive  
5 Ojai, CA 93023  
6 Telephone: (650) 726-1111  
7 Fax: (805) 669-3168

8 Attorneys for Bob Andren; Loa E. Bliss and David A. Gilbert, Trustees of The Loa E. Bliss  
9 2006 Revocable Trust; DeWayne Boccali; Emily V. Brown; Carty Ojai LLC; Steven Norman  
10 Feig and Maria Olympia Feig, Trustees of the Steve and Maria Feig Living Trust; Rosanna  
11 Garrison; Gregg Garrison; Richard Gilleland; Alex Glasscock; Brandon Hansen; C.B. Heller  
12 and Miranda Heller, Trustees of the Heller Family Trust; Michael L. Rockhold, Trustee of  
13 The Michael Rockhold Trust; Linn Thompson; Bre Thompson; SISAR Mutual Water  
14 Company; and Denise Wizman, Trustee of the Denise Wizman Revocable Trust.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

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

17 v.

18 STATE WATER RESOURCES CONTROL  
19 BOARD, a California State Agency,

20 CITY OF SAN BUENAVENTURA,  
21 a California municipal corporation,  
22 incorrectly named as City of Buenaventura,

23 Respondents.

24 CITY OF SAN BUENAVENTURA,  
25 a California municipal corporation,  
26 Cross-Complainant

27 v.

28 DUNCAN ABBOTT, an individual, et al.  
Cross-Defendants.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

NOTICE OF MOTION AND MOTION FOR  
JUDGMENT ON THE PLEADINGS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
GREGG SCOTT GARRISON REGARDING  
COMPLIANCE WITH MEET AND CONFER  
REQUIREMENTS OF CODE OF CIVIL  
PROCEDURE § 439(a)

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

Hearing: January 18, 2022

Time: 1:30 PM

29 TO CROSS-COMPLAINANT CITY OF BUENAVENTURA, THEIR ATTORNEYS OF  
30 RECORD AND ALL PARTIES AND COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that on January 18, 2022 at 1:30 PM or as soon after that  
2 as the matter can be heard in the above-entitled court located at Superior Court of the State  
3 of California, County of Los Angeles, Cross-Defendants attorneys for Bob Andren; Loa E.  
4 Bliss and David A. Gilbert, Trustees of The Loa E. Bliss 2006 Revocable Trust; DeWayne  
5 Boccali; Emily V. Brown; Carty Ojai LLC; Steven Norman Feig and Maria Olympia Feig,  
6 Trustees of the Steve and Maria Feig Living Trust; Rosanna Garrison; Gregg Garrison;  
7 Richard Gilleland; Alex Glasscock; Brandon Hansen; C.B. Heller and Miranda Heller,  
8 Trustees of the Heller Family Trust; Michael L. Rockhold, Trustee of The Michael  
9 Rockhold Trust; Linn Thompson; Bre Thompson; SISAR Mutual Water Company; and  
10 Denise Wizman, Trustee of the Denise Wizman Revocable Trust will and do move this  
11 Court for Judgment on the Pleadings as to the first, second, third, fourth, fifth, sixth,  
12 seventh, eighth, and ninth claims for relief in Cross-Complainant's *Third Amended*  
13 *Complaint*.

14  
15  
16 Garrison Law Corporation (hereinafter "GLC") represents a wide variety of Cross-  
17 Defendants whose properties are in both the Ventura River Watershed and the Santa Clara  
18 Watershed. In addition to these two watersheds, GLC's represented cross-Defendants have  
19 properties located in five groundwater basins: (1) Upper Ventura Groundwater Basin  
20 (Bulletin 118 GWB 4-3.01); (2) Upper Ventura Groundwater Basin (Bulletin 118 GWB 4-  
21 2); (3) Lower Ventura Groundwater Basin (Bulletin 118 GWB 4-3.02); (4) Upper Ojai  
22 Valley Groundwater Basin (Bulletin 118 GWB 4-1); and (5) Santa Clara River Valley East  
23 Groundwater Basin (Bulletin 118 GWB 4-005.07). The USGS defines the boundaries of the  
24 Watersheds. The California Department of Water Resources (DWR) describes the  
25 boundaries for the basins. Groundwater basins 3 and 4, above, are not completely described  
26 by the DWR because they are low priority basins.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This motion for Judgment on the Pleadings is made pursuant to *Code of Civil Procedure* § 438 on the grounds that the first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth claims for relief in Cross-Complainant's *Third Amended Complaint* that the Court has no jurisdiction, and the Claim for Relief does not state facts to constitute a claim for relief against these Cross-Defendants. This Motion for Judgment on the Pleadings incorporates by reference the additional Motions for Judgment on the Pleadings filed by the other Cross-Defendants in this action, and those motions are made a part hereto for any subsequent relief granted by the Court for those Cross-Defendants against the City of Ventura (hereinafter "COV").

The Motion shall be based on this Notice and the attached Motion for Judgment on the Pleadings, the attached memorandum of points and authorities, the attached declaration of Gregg Scott Garrison regarding compliance with the meet and confer requirements of *Code of Civil Procedure* § 439(a), on the complete files and records of this action, and on such other oral and/or documentary evidence as may be presented at the hearing on the Motion.

Dated: December 19, 2021

  
Gregg Scott Garrison



1 CROSS-DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

2 Cross-Defendants hereby move this Court for judgment on the pleadings as to the  
3 first, second, third, fourth, fifth, sixth, seventh, eighth, and ninth claims for relief against the  
4 Cross-Complainant's *Third Amended Complaint* as follows:  
5

6 FIRST CLAIM FOR RELIEF

7 1. Defendant requests judgment on the pleadings as to the First Claim for Relief  
8 under Cal. Const. art. X, § 2 on the ground that the Court has no jurisdiction, and the Claim  
9 for Relief does not state facts to constitute a claim for relief against these cross-defendants.  
10 *Cal. Civ. Proc. Code* § 438.  
11

12 SECOND CLAIM FOR RELIEF

13 2. Defendant requests judgment on the pleadings as to the Second Claim for  
14 Relief under the Public Trust Doctrine on the ground that the Court has no jurisdiction, and  
15 the Claim for Relief does not state facts to constitute a claim for relief against these cross-  
16 defendants. *Cal. Civ. Proc. Code* § 438.  
17

18 THIRD CLAIM FOR RELIEF

19 3. Defendant requests judgment on the pleadings as to the Third Claim for  
20 Relief for Declaratory Relief under Pueblo and/or Treaty Water Rights on the ground that  
21 the Court has no jurisdiction, and the Claim for Relief does not state facts to constitute a  
22 claim for relief against these cross-defendants. *Cal. Civ. Proc. Code* § 438.  
23

24 FOURTH CLAIM FOR RELIEF

25 4. Defendant requests judgment on the pleadings as to the Fourth Claim for  
26 Relief for Common Count for Declaratory Relief under Prescriptive Water Rights on the  
27 ground that the Court has no jurisdiction, and the Claim for Relief does not state facts to  
28 constitute a claim for relief against these cross-defendants. *Cal. Civ. Proc. Code* § 438.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

GARRISON LAW CORPORATION

FIFTH CLAIM FOR RELIEF

5. Defendant requests judgment on the pleadings as to the Fifth Claim for Relief for Declaratory Relief under Appropriative Water Rights on the ground that the Court has no jurisdiction, and the Claim for Relief does not state facts to constitute a claim for relief against these cross-defendants. *Cal. Civ. Proc. Code* § 438.

SIXTH CLAIM FOR RELIEF

6. Defendant requests judgment on the pleadings as to the Sixth Claim for Relief for Cal Civ. Proc Code Sections 830-852 under a Comprehensive Adjudication on the ground that the Court has no jurisdiction, and the Claim for Relief does not state facts to constitute a claim for relief against these cross-defendants. *Cal. Civ. Proc. Code* § 438.

SEVENTH CLAIM FOR RELIEF

7. Defendant requests judgment on the pleadings as to the Seventh Claim for Relief for Declaratory Relief under Municipal Priority on the ground that the Court has no jurisdiction, and the Claim for Relief does not state facts to constitute a claim for relief against these cross-defendants. *Cal. Civ. Proc. Code* § 438.

EIGHTH CLAIM FOR RELIEF

8. Defendant requests judgment on the pleadings as to the Eighth Claim for Relief for Declaratory Relief under the Human Right to Water on the ground that the Court has no jurisdiction, and the Claim for Relief does not state facts to constitute a claim for relief against these cross-defendants. *Cal. Civ. Proc. Code* § 438.

NINTH CLAIM FOR RELIEF

9. Cross-Defendants requests judgment on the pleadings as to the Ninth Claim for Relief for Declaratory Relief that the cross-defendants' uses are not reasonable and necessary on the ground that the Court has no jurisdiction, and the Claim for Relief does not

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

state facts to constitute a claim for relief against these cross-defendants. *Cal. Civ. Proc.*  
*Code* § 438.

Dated: December 19, 2021

  
Gregg Scott Garrison

CARRISON LAW CORPORATION



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

The steelhead trout are a red herring. Under the guise of restoring the habitat of an endangered species, the COV seeks to misappropriate water of an entire watershed. Neither the red herring (*Ignoratio Elenchi*) nor steelhead trout (*Oncorhynchus mykiss*) exist in the Upper Ojai Water Basin. They are not indigenous to the Upper Ojai Basin, nor do they exist in its surface waters or tributaries. The Upper Ojai Basin is a delineated basin that straddles the surface boundary between the Santa Clara River Watershed and the Ventura River Watershed. Yet, through its *Third Amended Complaint*, the COV unjustifiably claims appropriative water rights over the Upper Ojai Basin. Through its Claims for Relief, the COV subverts the CEQA process and circumvents environmental due diligence and due process.

Expert Jordan Kear states that the Upper Ojai Basin is materially disconnected from the separately delineated groundwater basins at the lower elevations within the Ventura River Watershed. Discharge from the Upper Ojai Basin flows to the east – away from the San Antonio Creek and habitats for the steelhead trout – via Sisar Creek, which is a tributary to perennial Santa Paula Creek, a significant source of recharge to the Santa Clara River Groundwater Basin and its adjudicated subbasin (Santa Paula Basin). “California Department of Fish and Wildlife (then Fish and Game) surveys conducted in the late 1940s concluded that Lion Creek was of ‘no value to fish life’ and was too dry for an important fishery (Entrix, 1997). Natural passage barriers, including naturally absent perennial flow, limit the habitat potential for Lion Creek, a partially defeated stream.”<sup>1</sup>

---

<sup>1</sup> *Opinions of Jordan Kear, P.G., C.H.G., in Regard to Lack of Percolating Groundwater Connectivity of the Upper Ojai Valley Groundwater Basin*, Page 4, December 14, 2021.

1 By way of its lawsuit, the COV seeks to appropriate water from not only the Upper  
2 Ojai Basin but also the entire Ventura River Watershed to meet its obligation to restore the  
3 steelhead trout habitat in reaches three and four in the Ventura River. This obligation arose  
4 from the Santa Barbara Channelkeeper lawsuit that alleged the COV was diverting too much  
5 water from the lower Ventura River and harming the steelhead trout and its habitat. In its  
6 amended settlement, the COV has agreed to monitor and maintain average stream flows of  
7 3.0 cfs (equivalent to 2.04 mph). The volume of water required to maintain this very low  
8 flow rate in the lower Ventura River to protect the steelhead trout has not been identified by  
9 the COV. However, in its claims for appropriative water rights against Cross-Defendants,  
10 the COV claims appropriative rights to more water than the average annual flow of the  
11 Ventura River. In other words, the COV claims it already has rights to all the water in the  
12 Ventura River and needs all that water to restore the steelhead trout habitat.<sup>2</sup>  
13

14  
15 As an elected governmental body, the expectations are that the COV should marshal  
16 existing resources, protect the watersheds, and seek additional water through conventional  
17 means of importing water, retrofitting dilapidated water appliances and water delivery  
18 systems, conservation measures, recycling, reuse of wastewater discharges, and  
19 moratoriums on issuance of water connections.  
20

21 Instead of seeking a CEQA-protected process or guarding against compensable  
22 takings, the COV subverts those statutory protections for the 12,500 Cross-Defendants and  
23 natural resources by misusing the newly enacted comprehensive water adjudication statutes  
24 as a weapon to appropriate water rights while the Physical Solution does not address  
25

26  
27 <sup>2</sup> Letter from COV, dated November 11, 2011, to California State Division of Water Rights re: *Statement of*  
28 *Diversion and Use* with attached water rights deed of the Santa Ana Water Company. (See COV's Fifth Claim  
for Relief: "City [of Ventura] . . . has priority pre-1914 appropriative rights to use water from the watershed."  
*Third Amended Complaint*, page 70, 135.)

1 improving the stream regime in reaches three and four of the lower Ventura River.

2 By employing the CEQA process as the legislature intended, the Court would  
3 have to look at the rights of all stakeholders and the natural resources in a balancing test  
4 with a duty to seek alternative environmental options to restore stream regimes in the  
5 lower Ventura River. Without a CEQA balancing test, the court would not fulfill the  
6 legislature's intention to afford the fullest possible protection to the environment.  
7

8 The inequitable result of the COV's lawsuit seeking appropriate, prescriptive,  
9 riparian and groundwater rights through uncompensated takings in two watersheds and  
10 five basins must be subject to CEQA review.  
11

12 Here, the COV is not acting as a democratic governmental body balancing the  
13 needs of its people, Ventura County and the natural resources. By way of its NOTICE OF  
14 COMMENCEMENT OF GROUNDWATER BASIN AND WATERSHED  
15 ADJUDICATION and its Proposed Physical Solution (containing reservation of all its  
16 water rights claims in the *Third Amended Complaint*), the COV stands in the boots of a  
17 thirsty land developer seeking water at all costs to meet its court-ordered obligations for  
18 its historical and current violations of overtaxing the Ventura River Watershed and the  
19 related water basins.  
20

21 There potential adverse consequences if the court were to award the COV's  
22 Claims for Relief: (1) permanent injunction against cross-defendants for ALL water in  
23 the watershed (under COV's First Claim for Relief); (2) uncompensated takings of water  
24 rights (under COV's groundwater adjudication Sixth Claim for Relief); and (3)  
25 declaratory relief of COV's alleged superior, priority water rights (under COV's Third,  
26 Fourth, Fifth, Seventh, Eight Ninth Claims for Relief) to the COV against the cross-  
27 defendants by way of the COV's *Third Amended Complaint* will be irreversible. This  
28

1 court-sanctified ruling would be the greatest man-made disaster in the history of Ojai  
2 Valley. This is an attack on all cross-defendants in the watershed of biblical proportions.  
3 COV seeks in its First Claim for Relief a permanent injunction against all cross-  
4 defendants for all groundwater, surface water, subsurface flow in the Water River  
5 Watersheds under the California Constitution.  
6

7 Claude R. Baggerly, Board Member of the Casitas Municipal Water District from  
8 2005 to 2020, succinctly warns, “This case along with the current proposed Physical  
9 Solution, is based on a misapplication of statutory law which fails to comply with the  
10 supreme law of the land in the California Constitution, Article X Section 2.”<sup>3</sup> Mr.  
11 Baggerly’s water agency experience and water management expertise were also  
12 developed from the enabling legislation SB 534 (1991) for the creation of the Ojai Basin  
13 Groundwater Agency. Mr. Baggerly was required to serve on the Ojai Basin  
14 Groundwater Management Agency Board of Directors from 2005 – 2020 because he was  
15 the elected representative from Casitas Municipal Water District’s Division 5.  
16

17 COV seeks by way of its Ninth Claim for Relief the declaration of the court that  
18 its rights are superior to the rights and uses of the Cross-Defendants: “City contends, and  
19 is informed and believes that the Cross-Defendants dispute, that: (a) City’s use of the  
20 Ventura River Watershed as compared to all other users and sues is reasonable and  
21 beneficial and does not violate the public trust doctrine (b) Cross-Defendants uses are not  
22 reasonable or beneficial and violate the public trust doctrine as compared to the City’s  
23 use of the Ventura Watershed.”<sup>4</sup>  
24

25 California’s Public Trust Doctrine is a concept that protects the people of the  
26  
27

28 <sup>3</sup> See Claude R. Baggerly STATUS CONFERENCE COMMENTS, filed April 9, 2021, Page 3, lines 23-25.

<sup>4</sup> *Third Amended Complaint*, page 73, paragraph 154.



1 California democracy from the inequitable usurpation of their water rights. In a word, the  
2 Public Trust Doctrine protects the Cross-Defendants from the COV's watershed water  
3 grab. The Public Trust Doctrine is an ancient legal doctrine under which some waters,  
4 tidelands and wildlife resources of the State are held in trust for all the people, and the  
5 State and courts as the Trustees to protect these resources for present and future  
6 generations. "By the law of nature these things are common to mankind – the air, running  
7 water, the sea, and consequently the shores of the sea. . . . All rivers and ports are public:  
8 hence the right of fishing in a port, or in rivers, is common to all men."<sup>5</sup> In California,  
9 this Doctrine has been recognized to extend to the protection of navigable surface waters,  
10 to non-navigable tributaries of those waters, to aquatic resources, and to birds and other  
11 wildlife. Without the Public Trust Doctrine to check the unbridled thirst of COV, the Ojai  
12 Valley will face certain economic doom.

13  
14  
15 The economic value of losing a water right to a property in the Ojai Valley is not  
16 linear. It is exponential. The uncompensated taking of a water right from a property has a  
17 direct calculable value. The loss to the property owner, however, is exponential.

18  
19 A property in the Ojai Valley without the right to exercise its water rights suffers  
20 an immediate economic loss of 75 percent of value. By way of example, a property in the  
21 Ojai Valley with water rights was valued at \$400,000. After the discovery the property  
22 did not have water rights, its value was decimated to \$100,000. Moreover, property  
23 without water rights has a reduced potential buyers' market. Rural land without water has  
24 the lowest market value, classified as mere "conservancy land". Literally dirt.

25  
26 As a direct economic devastation to the Ojai Valley and Cross-Defendants, the  
27 uncompensated taking COV seeks in its Declaratory Relief actions and water

28  

---

<sup>5</sup> *Institutes of Emperor Justinian*, Book 2, Div. 1 (535 A.C.E)



1 adjudication claim for relief are the linear value of water rights to the property and the  
2 exponential and immediate loss of property value and marketability of the property  
3 stripped of its water rights. The potential economic losses to the cross-defendants for  
4 COV's appropriation of water rights would be in the billions of dollars and create an  
5 economic collapse in the real estate market for decades. The Ojai Valley's historic  
6 traditions, beauty, and unique lifestyles would be destroyed.  
7

8 As COC states in its *Notice of Commencement of Groundwater Adjudication*:

9 Failing to participate in this lawsuit could have significant adverse effect  
10 on any right to pump or store groundwater that you may have.  
11 Specifically, a judgment may be entered that prevents any person now or  
12 in the future, who owns your land from ever pumping, extracting or  
13 storing groundwater from, under your land. (Page 2, COV's *Notice of  
Commencement of Groundwater Adjudication*)

14 This economic disaster will be permanent and more punitive than any natural disaster of  
15 flood, wildfire, or drought suffered by the Ojai Valley. If the existing water rights the  
16 COV claims in this lawsuit are appropriated to the COV from the Ojai Valley, the results  
17 will be catastrophic, irreversible, and permanent.  
18

19 The unnatural and predictable legacy of the Ojai Valley without its water rights in  
20 this action are dystopic and unmitigable. The Ojai Valley will become known as the  
21 "other Owens Valley".<sup>6</sup> An arid valley, a desert. Already property owners in the Ojai  
22 Valley have sold their properties and left due to the looming threat and costs associated  
23 with the COV's action. New buyers are shunning the Ojai Valley due to the burdens and  
24

---

25 <sup>6</sup> In 1970, LADWP completed a second aqueduct from Owens Valley. More surface water was diverted and  
26 groundwater was pumped to feed the aqueduct. Owens Valley springs and seeps dried and disappeared,  
27 and groundwater-dependent vegetation died. Valley winds carried toxic dust. Nearly 80 years after the dust  
28 storms began and after 30 years of legal battles, Los Angeles has begun a dust mitigation project. LA spent  
\$1.5B on gravel to keep down the dust and pumped in 90,000-acre feet of water for dust control. LADWP  
customers' bills went up as LADWP needs to replace that water and buys it from elsewhere.  
<https://www.kcrw.com/news/articles/part-2-what-happened-to-the-owens-valley>

1 unpredictable future the COV's lawsuit has wrought.

2 The court has the authority to stem this catastrophe and place a tourniquet on the  
3 bleeding by granting the Motion for Judgment on the Pleadings in equity, for the Public  
4 Trust, and fundamental fairness to prevent further devastation to the Ojai Valley and its  
5 cross-defendants.  
6

7  
8 II. STATEMENT OF FACTS

9 Cross-Complainant filed its *Third Amended Complaint* against Cross-Defendants,  
10 with nine claims for relief. Cross-Defendants contend that the Fifth Claim for Relief  
11 (Declaratory Relief - Appropriative Water Rights) cannot be granted on the ground that the  
12 Court has no jurisdiction, and the Claim for Relief does not state facts to constitute a claim  
13 for relief against these cross-defendants. *Cal. Civ. Proc. Code* § 438.

14 The moving party has complied with the with the meet and confer requirements of  
15 *Code of Civil Procedure* § 435.5(a) as shown by the declaration of Gregg Scott Garrison.  
16 For these reasons, this motion for judgment on the pleadings should be granted in its  
17 entirety.  
18

19 III. ARGUMENT

20 A. THE COURT HAS AUTHORITY TO GRANT THIS MOTION FOR  
21 JUDGMENT ON THE PLEADINGS AS TO THE FIRST, SECOND, THIRD,  
22 FOURTH, FIFTH, SIXTH, SEVENTH, EIGHT, AND NINTH CLAIMS FOR  
23 RELIEF OF CROSS-COMPLAINANT'S *THIRD AMENDED COMPLAINT*

24 *Code of Civil Procedure* § 438 states in pertinent part that, "A party may move for  
25 judgment on the pleadings on the following grounds, if the moving party is a defendant that  
26 the complaint does not state facts sufficient to constitute a cause of action against the  
27 defendant."  
28

1 A motion for judgment on the pleadings has the same function as a general demurrer  
2 but can be made after the time for demurrer has expired. Except as provided by statute, the  
3 rules governing demurrers apply. See *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal  
4 App.4th 995, 999, (Citing text). A demurrer admits the truth of all facts pleaded. *Rosland v.*  
5 *Morgan Stanley Dean Witter Co.*, 80 Cal.App.4th 345, 349, (2000). Nevertheless, a general  
6 demurrer does not admit contentions, deductions, or conclusions of fact or law alleged in the  
7 complaint. *Blank v. Kirwan*, (1985) 39 Cal.3d 311, 318.  
8

9 The failure of the pleading to state a cause of action results from the fact that the  
10 complaint appears deficient on the face of the pleading or from judicially noticed matter.  
11 *Hall vs. Chamberlin*, (1948) 31 Cal.2d 673, 679-680. Thus, the Court is authorized to grant  
12 this motion for judgment on the pleadings.  
13

14 Thus, the rules for pleading that are so commonly used in demurrers to complaints  
15 are also applicable to motions for judgment on the pleadings directed to a complaint. See  
16 e.g., *Ostling vs. Loring*, (1994) 27 Cal.App.4th 1731, ("Our system of code pleading  
17 requires only fact pleading."); *Butler vs. Wyman*, (1933) 128 Cal.App. 736, 740, ("It is a  
18 cardinal rule of pleading that every statement of fact must be direct and certain and not by  
19 way of inference"). Significantly, a pleading must allege facts and not mere conclusions.  
20 *Jones vs. Grewe*, (1987) 189 Cal.App.3d 950, 954, (1987). *In Daar vs. Yellow Cab*, (1967)  
21 67 Cal.2d 695, 713, the court stated: "A demurrer admits all material and issuable facts  
22 properly pleaded. However, it does not admit contentions, deductions or conclusions of fact  
23 or law alleged therein."  
24

#### 25 B. CEQA ISSUES

26 Cross-Defendants move for judgment on the pleadings as to all the claims of relief.  
27 *Code of Civil Procedure* § 438. Cross-Defendants request judgment on the pleadings, by  
28

1 way of an example, as to the Ninth Claim for Relief for Declaratory Relief that the cross-  
2 defendants' uses are not reasonable and necessary on the ground that the Court has no  
3 jurisdiction, and the Claim for Relief does not state facts to constitute a claim for relief  
4 against these cross-defendants. *Cal. Civ. Proc. Code* § 438. The COV's *Third Amended*  
5 *Cross-Complaint* and multiple claims for relief violate the environmental spirit, intention,  
6 and protections of the California Environmental Quality Act (CEQA), California Public  
7 Resources Code § 21000 et seq.

9 A critical threshold question is what quantity of water is required by COV to  
10 maintain the judicially ordered water flows in reaches 3 and 4 of the Ventura River?  
11 Relatedly, what CEQA process has the COV completed and documented to determine  
12 alternative, environmentally and economically sound water solutions and sources to meet  
13 this need?  
14

15 The amount of water sought by COV through its attempted total watershed  
16 adjudication is grossly disproportionate to the volume of water needed to meet the current  
17 interim settlement requirements for water flow in reaches 3 and 4. COV has not met its  
18 burden of proof to show that the relief sought under the nine claims for relief in its  
19 complaint are commensurate with the prior ruling of the court in the underlying matter.  
20

21 This threshold question must be asked and answered in order to determine if this  
22 litigation should be allowed to go forward. The appropriateness, reasonableness and  
23 validity of COV's Third Amended Complaint is the subject of this Motion for Judgment  
24 on the Pleadings.

25 The CEQA process would explicitly and scientifically answer this threshold  
26 question for the Court, the parties, and the environment to ensure protection under the  
27 Public Trust Doctrine.  
28



1           The Court of Appeals decision (*Third Amended Complaint*, Page 67, paragraph  
2 116) does not direct the COV to commence a total watershed adjudication and litigation  
3 for the physical taking and direct appropriation of vast water resources for maintaining  
4 stream flows in reaches 3 and 4 of the Ventura River for the steelhead trout. The amount  
5 of water needed for COV to comply with the Appellate Court’s ruling is *de minimis* in  
6 comparison to the amount of water COV seeks through its Claims for Relief including an  
7 adjudication of the Ventura River Watershed and parts of the Santa Clara River  
8 Watershed.  
9

10           The COV has turned this adverse ruling into an opportunity to seize water from  
11 the Ojai Valley. The Ventura River Watershed is one of the smallest watersheds in  
12 California and will become another Owens Valley once the spigots are turned on for  
13 COV’s unrestrained growth and development. The breadth and scope of this action, suing  
14 12,500 parties, for the stated purpose of increasing stream flows in reaches 3 and 4, is  
15 outrageous, inequitable and fundamentally unfair. *Aegrescit medendo* – the cure is worse  
16 than the disease.  
17

18           This CEQA process ensures that the environmental solution is proportionate to  
19 the environmental problem, preventing waste of natural resources. The CEQA process  
20 will confirm that the sum certain amount of water required to maintain stream flows in  
21 reaches 3 and 4 does not require the taking of Cross-Defendants’ water rights from five  
22 basins, surface water, groundwater, and subsurface flows, and water rights in the Ventura  
23 River Watershed and Santa Clara River Watershed to meet requirements resulting from  
24 Santabarbara Channelkeeper’s victory over COV.<sup>7</sup> It begs the question is the COV  
25  
26

27  
28 <sup>7</sup> “The trial court retains substantial discretion to structure the proceedings but may not prevent the City from cross-complaining against entities that the City maintains are responsible for the reduced water flow in reaches 3 and 4 of the Ventura River.” *Santa Barbara v. City of Buenaventura* (2018) 19 Cal.App.5th 1176, 1192-1193.



1 exploiting its loss to procure water beyond the need to maintain stream flows for the  
2 steelhead. If so, this litigation should immediately be dismissed and referred to the CEQA  
3 process to ensure compliance with the state's environmental administrative procedures  
4 that protect finite natural resources. If one basin could revolve the Ventura River flow  
5 deficit, why sue 12,500 Cross-Defendants?  
6

7 A CEQA Environmental Impact Report is required based on the admitted action  
8 of the COV's taking of existing water rights that they claim the cross-defendants' uses  
9 are not reasonable and necessary. This lawsuit has a significant adverse effect  
10 on any right to pump or store groundwater impacting current landowners' interests and  
11 water rights. Specifically, a judgment may be entered that prevents any person now or in  
12 the future, who owns land from ever pumping, extracting, or storing groundwater from,  
13 under or on their land.  
14

15 Instead of prosecuting a claim for taking ALL groundwater, surface water and  
16 subsurface water from the Ventura River Watershed by a governmental municipality, the  
17 safeguards and environmental protections in CEQA require the COV to equitably,  
18 reasonably and equally explore environmental solutions and/or alternatives based on  
19 water connection moratoriums, conservation, and recycling. There are alternatives the  
20 CEQA process can propose other than the Draconian claims for relief in the COV's  
21 declaratory relief and comprehensive water adjudication. Indeed, a comprehensive water  
22 adjudication is akin to using a firehose to extinguish a match. Limited growth,  
23 sustainability, and conservation are all mandated by the Constitution and CEQA in these  
24 unprecedented times of drought, water rationing, and water shortages in the Ventura  
25 Watershed. Ironically, the granting of the COV's claims for relief would not lead to  
26 conservation or sustainability because the COV will just have more water to continue its  
27  
28

1 expansion and water mismanagement to the utter prejudice to the Ojai Valley.

2 City officials are common law fiduciaries. In transacting the Third  
3 Amended Complaint, COV is like a trust or corporation and its officials are subject to  
4 fiduciary duties of loyalty and care. This litigation is a *de facto* breach of the COV's  
5 duties to its constituents, the environment and the Cross-Defendants. The COV by  
6 maintaining this instant action has fallen far below the standard of care expected of  
7 elected officials in their fiduciary duties.  
8

9 C. IMPROPER TAKING

10 Cross-Defendants move for judgment on the pleadings as to all the claims  
11 of relief. *Code of Civil Procedure* § 438. Here, the Cross-Defendants water rights are  
12 superior and in priority to the appropriative rights of the COV. In its Ninth Claim for  
13 Relief, COV states "The City's use of the Ventura River Watershed as compared to all  
14 other users and uses is reasonable and beneficial and does not violate the public trust  
15 doctrine." The opposite is true.  
16

17 The California public trust doctrine applies to the protection of the Cross-  
18 Defendants' water rights against a takings claim from COV. COV's claim will fail  
19 because the public and private interests served by exploiting the water for current priority  
20 purposes are outweighed by the public interest in fish protection under the Endangered  
21 Species Act. See generally, *Casitas Mun. Water Dist. v. United States*, No. 0568L, 2011  
22 WL 6017935, (Fed. Cl. Dec. 5, 2011). The COV should seek waters for the Ventura  
23 River habitat restoration for the steelhead trout through a moratorium on new water  
24 connections, conservation, recycling and from water market purveyors. The three  
25 controlling Supreme Court decisions, *International Paper Co. v. United States* (282 U.S.  
26 399 [1931]), *United States v. Gerlach Live Stock Co.* (339 U.S. 725 [1950]), and *Dugan*  
27  
28

1 v. *Rank* (372 U.S. 609 [1963]), each found to have involved “direct appropriations” rather  
2 than “restrictions on use.”

3  
4 The COV’s *Third Amended Complaint* and multiple claims for relief violate the  
5 protections of a governmental uncompensated taking in the Fifth and Fourteenth  
6 Amendments that a physical appropriation is a taking whether it is permanent or  
7 temporary.

8 D. A MOTION FOR JUDGMENT ON THE PLEADINGS MAY BE MADE  
9 AT ANY TIME PRIOR TO THE TRIAL OR AT THE TRIAL ITSELF

10 Despite the language in *California Code of Civil Procedure* § 438 regarding time  
11 limits, and even though said statute was enacted in 1994, the Courts have ruled that a  
12 motion for judgment on the pleadings may be made at any time prior to the trial, or at the  
13 trial itself.  
14

15 A motion for judgment on the pleadings may be made at any time either prior to the  
16 trial or at the trial itself.” *Stoops v. Abbassi* (2002) 100 Cal. App. 4th 644, 650, see also  
17 *Smiley v. Citibank (South Dakota) N.A.* (1995) 11 Cal.4th 138, 145, fn. 2 — “common law  
18 motion for judgment on the pleadings” upheld despite fact CCP § 438 had been enacted  
19 during course of proceedings.  
20

21 Thus, this motion is timely as the law is clear that the grounds for a general demurrer  
22 are never waived. See *California Code of Civil Procedure* § 430.80.

23 E. IN ORDER TO AVOID THIS COURT SUSTAINING THIS MOTION FOR  
24 JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND, CROSS-  
25 COMPLAINANT MUST SHOW IN WHAT MANNER THEY CAN AMEND  
26 THEIR THIRD AMENDED CROSS-COMPLAINT, AND HOW THAT  
27 AMENDMENT WILL CHANGE THE EFFECT OF THEIR THIRD AMENDED  
28

1 CROSS-COMPLAINT

2 The California Supreme Court has ruled that in order to avoid the sustaining of a  
3 demurrer without leave to amend, a Plaintiff must show in what manner they can amend the  
4 complaint, and how that amendment will change the effect of their complaint.  
5

6 A plaintiff seeking to avoid the sustaining of a demurrer without leave to amend to a  
7 complaint for a defect in pleading must show in what manner he can amend his complaint  
8 and how that amendment will change the effect of his pleading. *Goodman v. Kennedy*  
9 (1976) 18 Cal.3d 335, 349; see also *Hendy v. Losse* (1991) 54 Cal.3d 723, 742.  
10

11 The burden is on the plaintiff to show in what manner they can amend the complaint,  
12 and how that amendment will change the effect of their complaint. *Schifando v. City of Los*  
13 *Angeles* (2003) 31 Cal.4th 1074, 1081.

14 The burden of proving such reasonable possibility is squarely on the plaintiff.  
15 *Maxton v. Western States Metals* (2012) 203 Cal.App.4th 81, 95. To satisfy this burden, a  
16 plaintiff must show in what manner he can amend his complaint and how that amendment  
17 will change the legal effect of his pleading by clearly stating not only the legal basis for the  
18 amendment, but also the factual allegations to sufficiently state a cause of action. (Ibid.)  
19

20 Because all the claims in the COV's *Third Amended Complaint* and multiple claims  
21 for relief are deficient, Cross-Defendants contend that this Court should sustain Cross-  
22 Defendants' motion for judgment on the pleadings without leave to amend. However, if the  
23 Court is inclined to grant leave to amend, Cross-Defendants request that the Court requires  
24 the COV to show in what manner it can amend, and how that amendment will change the  
25 effect of their complaint, as stated by the California Supreme Court.  
26

27 IV. CONCLUSION

28 Based on the foregoing facts, arguments, and points of law, the Court is respectfully

1 urged to grant this motion for judgment on the pleadings as to the First, Second, Third,  
2 Fourth, Fifth and Sixth, Seventh, Eighth, and Ninth Claims for Relief without leave to  
3 amend, or in the event that the Court is inclined to grant leave to amend, that the Court  
4 require Cross-Complainant to show how they can amend their *Third Amended Cross-*  
5 *complaint*, and how that amendment will change the effect of their *Third Amended Cross-*  
6 *complaint*.  
7

8  
9 Dated: December 19, 2021

10   
Gregg Scott Garrison

11 Attorneys  
12 GARRISON LAW CORPORATION  
13 Attorneys for Bob Andren; Loa E. Bliss and David A.  
14 Gilbert, Trustees of The Loa E. Bliss 2006 Revocable  
15 Trust; DeWayne Boccali; Emily V. Brown; Carty Ojai  
16 LLC; Steven Norman Feig and Maria Olympia Feig,  
17 Trustees of the Steve and Maria Feig Living Trust;  
18 Rosanna Garrison; Gregg Garrison; Richard Gilleland;  
19 Alex Glasscock; Brandon Hansen; C.B. Heller and  
20 Miranda Heller, Trustees of the Heller Family Trust;  
21 Michael L. Rockhold, Trustee of The Michael  
22 Rockhold Trust; Linn Thompson; Bre Thompson;  
23 SISAR Mutual Water Company; and Denise Wizman,  
24 Trustee of the Denise Wizman Revocable Trust.  
25  
26  
27  
28



1  
2  
3 DECLARATION OF GREGG SCOTT GARRISON REGARDING COMPLIANCE WITH  
4 MEET AND CONFER REQUIREMENTS OF CODE OF CIVIL PROCEDURE § 439(a)

5 I, GREGG SCOTT GARRISON, declare as follows:

6 1. I am an attorney duly admitted to practice law before the courts of the State  
7 of California and the attorney of record for the Cross-Defendants in the above-captioned  
8 action entitled SANTA BARBARA CHANNELKEEPER v. STATE WATER  
9 RESOURCES CONTROL BOARD now pending before the County of Los Angeles  
10 County Superior Court, as case number 19STCP01176.

11 2. I have personal firsthand knowledge of the facts set forth herein and if called  
12 as a witness I could and would testify competently to the truth of the facts set forth in this  
13 declaration.  
14

15 3. I make this declaration regarding my compliance with the meet and confer  
16 requirements imposed by *Code of Civil Procedure* § 439(a) before any motion for judgment  
17 on the pleadings may be filed with the court.  
18

19 4. On December 9, 2021, December 13, 2021, and December 17, 2021, which  
20 was at least five days before any responsive pleading was due, I have met and conferred  
21 with counsel for the CITY OF BUENAVENTURA on numerous occasions concerning  
22 attorney Whitman's, the City of Ojai's, and GLC's filed briefs on the below multiple issues  
23 requesting that the City of Ventura withdraw and dismiss its *Third Amended Complaint* on  
24 the basis of the standing issues presented by Mr. Whitman, "one basin one adjudication"  
25 rule presented by the City of Ojai, and that the City of Ventura needs to overcome  
26 challenges of eminent domain, uncompensated taking, and/or by a suit under CEQA that  
27 filed the pleading namely the *Third Amended Complaint* to determine whether an  
28

1 agreement can be reached that would resolve the objections to be raised in the motion for  
2 judgment on the pleadings that I wanted to file.

3  
4 5. I clearly identified the legal support for the alleged deficiencies. However,  
5 we were not able to reach an agreement resolving the objections that were to be raised in the  
6 motion for judgment on the pleadings.


7 6. I met and conferred via GLC email dated December 9, 2021, to Chris Pisano,  
8 Shawn Haggerty and Sarah Foley of BBK and the Court Hearing on December 9, 2021.

9 7. I met and conferred via Zoom conference with Chris Pisano, Shawn  
10 Haggerty and Sarah Foley of BBK on December 13, 2021, and Court Hearing on December  
11 13, 2021.

12 8. I met and conferred via email dated December 17, 2021, to Chris Pisano,  
13 Shawn Haggerty and Sarah Foley of BBK and voice mail to Shawn Haggerty on December  
14 17, 2021.

15 I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct, and that this declaration is executed on December 19, 2021, at  
17 Ojai, California.  
18

19  
20  
21 Dated: December 19, 2021

22  
23  
24  
25  
26  
27  
28  
  
Gregg Scott Garrison