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12 CITY OF SAN BUENAVENTURA

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

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

Case No. 19STCP01176

17 Petitioner,

Judge: Hon. William F. Highberger

18 v.

STATUS CONFERENCE REPORT

19 STATE WATER RESOURCES CONTROL
20 BOARD, etc., et al.,

Date: August 16, 2021
Time: 1:30 p.m.
Dept: SS10

21 Respondents.

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

22 CITY OF SAN BUENAVENTURA, etc.,

23 Cross-Complainant,

24 v.

25 DUNCAN ABBOTT, an individual, et al.,

26 Cross-Defendants.
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STATUS CONFERENCE REPORT

Defendant and Cross-Complainant City of San Buenaventura (City) submits this status conference report (Report) in advance of the status conference scheduled for August 16, 2021 at 1:30 p.m. On August 4, 2021, the City emailed a draft of this Report to all parties who have appeared and invited input and joinder. The City revised this report pursuant to input from Cross-Defendant Villa Nero Trust. Consistent with the Court’s instructions, some parties may submit their own status conference reports.

1. UPDATE PROOFS OF SERVICE AND DEFAULTS

The City filed an ex parte application requesting a final extension of time to file proofs of service to allow the City to complete service on the 38 Cross-Defendants who are being served via publication in the *Ventura County Star*. The last publication date of these 38 Cross-Defendants is August 13, 2021.

The City is in the process of requesting defaults for 1,376 Cross-Defendants. As of August 3, 2021, the City has filed 825 requests for entry of default in packages 1 through 42, with 20 requests per package. Seven requests were rejected by the Court, including five that have been resubmitted and one that will be resubmitted to the Court. The Court has accepted and processed 587 requests for entry of default. The City will file another 328 requests for defaults for this initial group of non-appearing Cross-Defendants. The City also anticipates having to request defaults of approximately 500 non-appearing Roe Cross-Defendants in the upcoming months.

Defaults submitted	825
Defaults rejected, to be resubmitted	1
Defaults not yet processed by the Court	238
Defaults accepted	587
Defaults to be submitted for initial group	328
TOTAL	1,376

1 2. PROPOSED PHYSICAL SOLUTION

2 Pursuant to the Court’s instructions at the July 23, 2021 further status conference, on July
3 27, 2021 Best Best & Krieger staff spoke with Mr. Sanchez, Clerk of the Court, and was asked to
4 provide the Court with a complete set of the filings relating to the Proposed Physical Solution.
5 On July 28, 2021, the City provided the Court with one organized and indexed binder consisting
6 of twenty (20) filings regarding the Proposed Physical Solution. All of these documents were
7 previously served on File&ServeXpress, and the City will also post them on the Ventura
8 Adjudication River Watershed Adjudication website, available at
9 <https://www.venturariverwatershedadjudication.com/>.

10
11 3. SOLD PROPERTIES/SUBSTITUTION OF PARTIES

12 The City is aware of instances where Cross-Defendants or other parties (e.g., stipulating
13 overlier parties) sold parcels at issue and now seek to be dismissed, in conjunction with the
14 transferee-in-interest substituting into the case. While the City is not required to name transferees
15 after having accomplished service on the original property owner (see Code Civ. Proc., §§ 851;
16 836(f)), the City seeks to propose a procedure for substitutions as a result of property transfers by
17 filing of a notice of transfer and proposed order.

18 Pursuant to Code of Civil Procedure section 368.5, the transfer of an interest in the action
19 or proceeding does not abate the proceeding, because “the action or proceeding may be continued
20 in the name of the original party, or the court may allow the person to whom the transfer is made
21 to be substituted in the action or proceeding.” (*Id.*; see also *Hearn Pacific Corp. v. Second*
22 *Generation Roofing, Inc.* (2016) 247 Cal.App.4th 117 [trial court has discretion to allow litigation
23 to continue in the name of original plaintiff rather than substitute transferee].) Code of Civil
24 Procedure section 368.5 does not require a specific procedure for substitution. Witkin comments
25 that, “contrary to the rule requiring substitution after death so as to bring in the real party in
26 interest [citation], the transferee has the convenient election to continue in the name of the
27 transferor, avoiding the trouble of substitution.” (4 Witkin, California Procedure (5th Ed. 2020),
28 “Pleading,” § 262.)

1 Here, for transferees-in-interest who seek to substitute into the case, the City proposes to
2 submit a stipulation and proposed order authorizing the substitution of the transferee-in-interest,
3 and correspondingly correcting, without further action, the Third Amended Cross-Complaint
4 pursuant to Code of Civil Procedure section 473 to reflect the name of the transferee in place of
5 the transferor, wherever it appears in the pleading. Attached hereto as Exhibit A is a template
6 stipulation and proposed order that the City proposes to use. The City requests that the Court
7 approve the City's use of this template form at the August 16, 2021 status conference.
8

9 4. MAP OF APPEARING PARTIES

10 The City has prepared a preliminary map of the parcels owned by the parties that have
11 appeared in the case, attached hereto as Exhibit B. The City is working on a more detailed map
12 that will allow the parties to identify party names and if possible, parcel numbers and estimates
13 that it will be able to serve this more detailed map before or at the August 16, 2021 status
14 conference.
15

16 5. DRONE FOOTAGE OF WATERSHED

17 At the April 19, 2021 status conference, the City advised the Court of its ongoing meet
18 and confer efforts regarding potential use of a drone or other video surveillance device to create
19 or compile a comprehensive video tour of the Watershed. The parties selected a drone operator
20 and agreed on twenty-four locations to be filmed within the Watershed. The drone operator has
21 completed filming all but two locations and anticipates completing all filming in short order. The
22 City will work with the parties for any final edits to the video and anticipates presenting the video
23 to the Court at a status conference in September or October 2021. The video would become part
24 of the record of the proceeding and could be used by the parties in future evidentiary hearings as
25 appropriate and subject to proof.
26
27
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1 6. FUTURE STATUS CONFERENCES

2 As the parties prepare for Phase 1 trial, the City believes that the Court and the parties
3 should discuss whether monthly status conferences are necessary at this time or whether holding
4 status conferences every other month would be more efficient for the Court and the parties.

5
6 7. NON-SUBSTANTIVE AMENDMENT TO CITY’S THIRD AMENDED
7 CROSS-COMPLAINT

8 The City wishes to advise the Court that it will be bringing an application to file a Non-
9 Substantive Amendment to its Third Amended Cross-Complaint (3ACC) pursuant to Code of
10 Civil Procedure section 473(a)(1). The City will request this non-substantive amendment to
11 address a structure in the pleadings for Roe Cross-Defendants that has proven to be unworkable
12 in practice. As it is currently pled and before the number of parties in the case increased
13 dramatically, the 3ACC assigns separate and distinct “Roe” numbers for the diverters of water
14 from the Ventura River and its different tributaries, as well as from the four groundwater basins
15 within the Ventura River Watershed.

16 In the process of serving Roe Cross-Defendants once their identities were ascertained, it
17 became infeasible for the City to serve newly identified Cross-Defendants with a Roe number that
18 corresponded to the specific watercourse and/or basin from which he/she/it diverts and/or extracts
19 water given the number of Roe Cross-Defendants that needed to be served. Instead, in order to
20 minimize confusion and logistical challenges that would invariably arise through the assignment
21 of non-consecutive numbers for the large amount of Roe Cross-Defendants that needed to be
22 served, consecutive Roe numbers were used for new Cross-Defendants, as their identities were
23 ascertained. In other words, each new Roe Cross-Defendant was assigned a Roe number based
24 on *when* his/her/its identity was ascertained, and not on the *location* of his/her/its extraction or
25 diversion of water from the Ventura River Watershed. This proved to be a simpler and more
26 straightforward method of keeping track of the numerous Roe Cross-Defendants and the status of
27 their responses, but as a result, the Roe numbers that were assigned to each new Cross-Defendant
28 do not necessarily correspond to the numbers identified in the 3ACC for those who had to be

1 named as parties in this action.

2 The City's proposed Amendment will merely seek to conform the 3ACC to the manner by
3 which the Roes have been served. Because the Amendment will be non-substantive, it will not
4 require new responses from any Cross-Defendant. The City will also be seeking leave of Court to
5 serve the Amendment on all parties that have appeared via "File & Serve Xpress" and on the
6 remaining parties that have been served but who have not yet appeared and have not yet been
7 defaulted via overnight mail.

8

9 8. CONCLUSION AND SUMMARY OF REQUESTS

10 The City respectfully requests that the Court consider taking the following actions at the
11 August 16, 2021 status conference:

- 12 • Provide guidance on the frequency of future status conferences.
- 13 • Provide guidance re substitution of parties after property transfers.


14

15 Dated: August 9, 2021

BEST BEST & KRIEGER LLP

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17

By: 
SHAWN D. MAGERTY
CHRISTOPHER MARK PISANO
SARAH CHRISTOPHER FOLEY
PATRICK D. SKAHAN
Attorneys for Respondent and Cross-
Complainant
CITY OF SAN BUENAVENTURA

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22 Dated: August 9, 2021

HERUM CRABTREE SUNTAG

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24

By: /s/ Jeanne Zolezzi
JEANNE ZOLEZZI
Attorneys for Cross-Defendants MEINERS
OAKS WATER DISTRICT AND
VENTURA RIVER WATER DISTRICT

25

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EXHIBIT A

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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16 SANTA BARBARA CHANNELKEEPER, a
17 California non-profit corporation,
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21 BOARD, et al.,
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23 Respondents.

23 CITY OF SAN BUENAVENTURA, et al.,
24
25 Cross-Complainant,

25 v.

26 DUNCAN ABBOTT, an individual, et al.,
27
28 Cross-Defendants.

Case No. 19STCP01176

Judge: Hon. William F. Highberger

**STIPULATION ALLOWING
SUBSTITUTION OF**

[PROPOSED] ORDER AND

[New Owner Name; APN]

Action Filed: Sept. 19, 2014

Trial Date: Feb. 14, 2022

1 WHEREAS, the following are cross-defendants in this matter concerning the Ventura
2 River Water Adjudication:

- 3 1. [CROSS DEFENDANT NAME]
4 2. [CROSS DEFENDANT NAME]

5 1. WHEREAS, Cross Defendants [Insert Cross Defendant
6 Names] owned property within the Basin referenced as Assessor Parcel
7 Number(s) _____ (the "Property").

8 2. WHEREAS, [Insert Transferees' name]
9 ("_____") recently acquired the Property. A true and correct copy of the grant deed
10 between [Insert Cross-Defendant Names] and [Insert
11 Transferees' name] is attached hereto as Exhibit A.

12 3. WHEREAS, [Insert Transferees' name] as successor
13 in interest to [Insert Cross-Defendant Names] seeks to substitute into this
14 matter pursuant to Code of Civil Procedure section 368.5.

15 4. WHEREAS, pursuant to Code of Civil Procedure section 473, Cross-Complainant
16 City of San Buenaventura requests that its Third Amended Cross-Complaint be amended to
17 reflect the true name [Insert Transferees' name] in place of [Insert Cross-Defendant Names].

18 BASED ON THE FOREGOING, THE PARTIES STIPULATE AS FOLLOWS:

19 1. This action may proceed with [Insert Transferees' name]
20 as a successor in interest to [Insert Cross-Defendant Names].
21 [Insert Transferees' name] shall continue to be represented by
22 _____.

23 2. [Insert Cross-Defendant Names] is
24 hereby dismissed from this action.

25 This Stipulation may be signed in counterpart and facsimile signatures shall be considered
26 as originals.

27 It is hereby stipulated.
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Dated: _____, 2021

BEST BEST & KRIEGER LLP

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

Dated: _____, 2021

[LAW FIRM NAME]

By: _____

Attorneys for
CROSS-DEFENDANT, _____

Dated: _____, 2021

By: _____

CROSS-DEFENDANT

Dated: _____, 2021

By: _____

SUBSTITUTING CROSS-DEFENDANT

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ORDER

GOOD CAUSE APPEARING, the Court having considered the stipulation of the parties hereby orders as follows:

This action may proceed with _____ as a successor in interest to:
_____.

The following parties are hereby dismissed from this action:
_____.

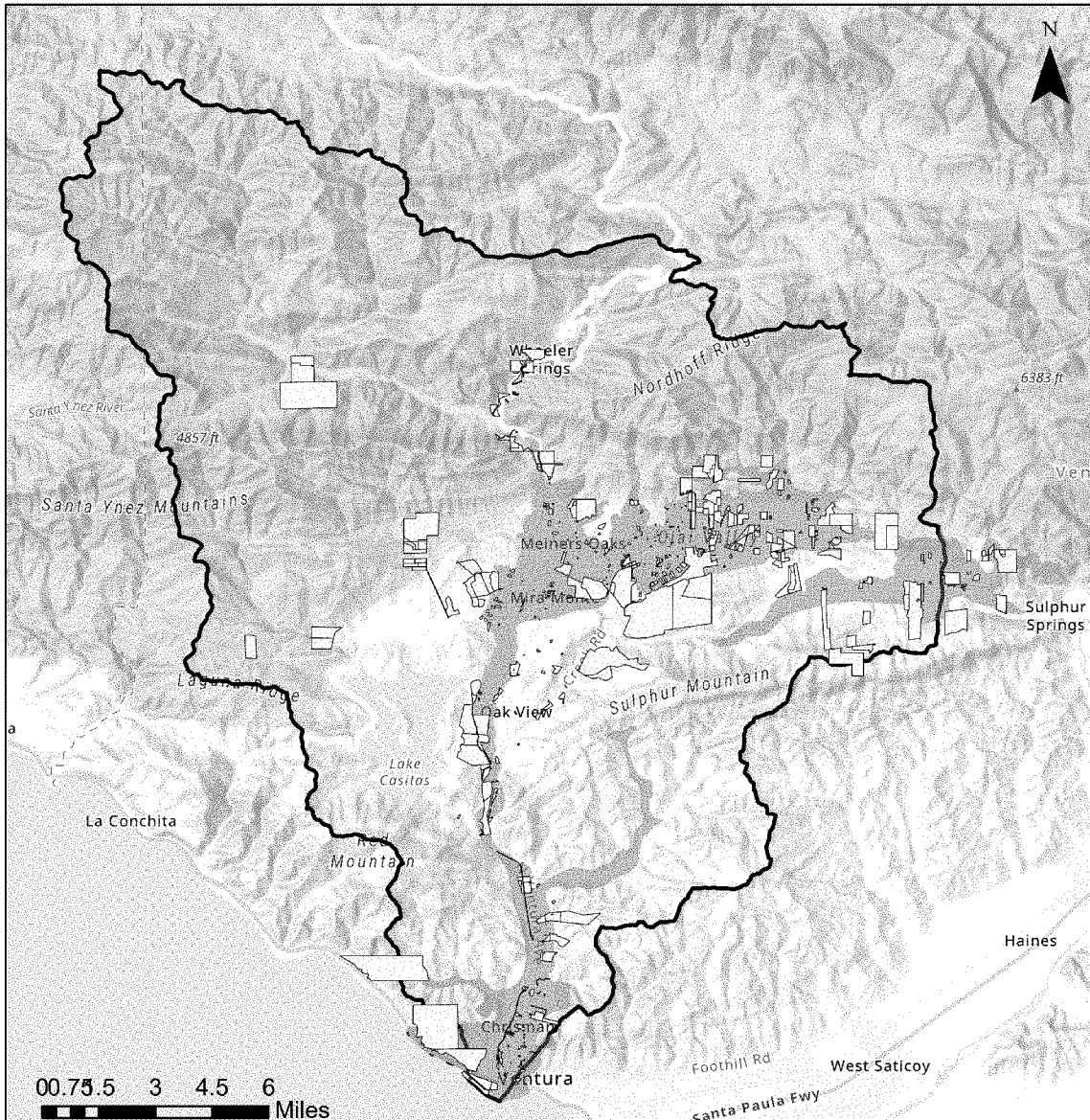
Pursuant to Code of Civil Procedure section 473, Cross-Complainant City of San Buenaventura’s Third Amended Cross-Complaint is amended to reflect the true name [Insert Transferees’ name] in place of [Insert Cross-Defendant Names], wherever it appears in the pleading.

IT IS SO ORDERED

Dated: _____, 2021




JUDGE OF THE SUPERIOR COURT

EXHIBIT B



Ventura River Watershed Adjudication: Parcels of Appearing Parties

Legend

-  Groundwater Basins
-  Ventura River Watershed
-  Appearing Parties

Spatial Reference
 Name: WGS 1984 Web Mercator Auxiliary Sphere
 PCS: WGS 1984 Web Mercator Auxiliary Sphere
 GCS: GCS WGS 1984
 Datum: WGS 1984