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9 Owner of Parcel 037-0-012-435 and Carty Ojai LLC; and Cross-Defendants, Gregg Garrison,
10 Rosanna Garrison, and Michael L. Rockhold, Trustee of the Michael Rockhold Trust.

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

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

17 STATE WATER RESOURCES
18 CONTROL BOARD, a California State
19 Agency;
20 CITY OF SAN BUENAVENTURA, a
21 California municipal corporation,
22 incorrectly named as CITY OF
23 BUENAVENTURA,

24 Respondents.

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

AND RELATED CROSS-ACTION

Case No. 19STCP01176

ASSIGNED FOR ALL PURPOSES TO
Judge: Honorable William F. Highberger
Department 10

**REQUEST FOR JUDICIAL RULING ON
THE SCOPE OF THE PHASE 1 TRIAL
FOR THE DETERMINATION OF BASIN
BOUNDARIES AND
INTERCONNECTEDNESS OR NOT OF
GROUNDWATER BASINS IN THE
VENTURA RIVER WATERSHED**

Court Hearing: November 15, 2021
Time: 1:30 PM
Dept.: 10

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

**REQUEST FOR JUDICIAL RULING ON THE SCOPE OF THE PHASE 1 TRIAL FOR THE
DETERMINATION OF BASIN BOUNDARIES AND INTERCONNECTEDNESS OR NOT OF
GROUNDWATER BASINS IN THE VENTURA RIVER WATERSHED**

1 Come now Attorneys for Real Party in Interest: Emily V. Brown, A Non-Named
2 Party in Action and Owner of Parcel 037-0-012-435 and Carty Ojai LLC; and Cross-
3 Defendants, Gregg Garrison, Rosanna Garrison, and Michael L. Rockhold, Trustee of the
4 Michael Rockhold Trust to **REQUEST FOR JUDICIAL RULING ON THE SCOPE OF**
5 **THE PHASE 1 TRIAL FOR THE DETERMINATION OF BASIN BOUNDARIES**
6 **AND INTERCONNECTEDNESS OR NOT OF GROUNDWATER BASINS IN THE**
7 **VENTURA RIVER WATERSHED** and nine other threshold issues related to the four
8 basins and the presence or absence of interconnectivity.
9

10 **INTRODUCTION**

11 On October 18, 2021, the Court sought clarification of its bifurcation of trial
12 issues. Before the Phase 1 February 14, 2022 trial, the Court has requested from the litigants
13 what the scope of the Phase 1 trial will be and what are the threshold issues for the Court to
14 consider for its November 15, 2021 Hearing. The proceedings of the Phase 1 trial should be
15 closely directed by the Presiding Judge to prevent scope creep. This can be accomplished by
16 following the law pertaining to groundwater which is governed by Code of Civil Procedure
17 Sections 830-852, Water Code section 10721, the Cal. Const., art. X, § 2, and reviewing
18 these nine other threshold questions.
19

20 **BACKGROUND**

21 The City of Ventura (hereinafter “COV”) is using this water adjudication to take
22 current and future water rights from Ojai Valley landowners to fuel the COV’s aggressive
23 development agenda without compensation to the current water rights holders that will have
24 water rights removed from their properties. Its *Third Amended Complaint* the COV has
25 multiple causes of action seeking a governmental taking of privately held water rights.
26
27
28

1 Nonparticipation will result in a default judgment and a governmental taking of the current
2 landowner's interests and water rights by the Court without due process or compensation.

3
4 Indeed, in its "Notice of Commencement of Groundwater Adjudication", the COV
5 states: "Failing to participate in this lawsuit could have a significant adverse effect
6 on any right to pump or store groundwater that you may have. Specifically, a judgment
7 may be entered that prevents any person now or in the future, who owns your land
8 from ever pumping, extracting, or storing groundwater from, under or on your
9 land." (Emphasis added) Nonparticipation is both punitive and permanent to current
10 landowner's interests and water rights.

11
12 **NINE THRESHOLD ISSUES FOR THE COURT TO CONSIDER WITH THE**
13 **FOUR RIVER BASINS AND INTERCONNECTIVITY OR LACK THEREOF**

14 Here are nine threshold issues for the Court to consider, elevate, analyze, and decide for
15 consideration during the Phase 1 trial. Note that the Court has decided not to seek a Special
16 Master as permitted by the CCP section 830, *et. al* to assist in the Court's review of the
17 scope and threshold issues of the Phase 1 trial.

18 **I COV's BURDEN OF PROOF THAT ITS INTENDED USES ARE REASONABLE**
19 **AND NECESSARY PER THE CALIFORNIA CONSTITUTION**

20
21 Has the COV suing for appropriative water rights from the current landowners'
22 interests and water rights met or exceeded the COV's constitutionally mandated burden of
23 proof that its intended water use is more reasonable and more beneficial than the current
24 landowner's interests and water rights and Ojai's conservation practices and sustainability
25 protects to the four water basins? No. In fact the entire reason for this comprehensive
26 adjudication is because the COV extracted too much water causing ChannelKeeper to
27
28

1 request the SWRCB to make a finding that COVs water use was harming Public Trust
2 Values in the river and was unreasonable. This judicial finding has not changed.
3

4 The California Constitution requires that the trial court judge to perform an analysis
5 of existing and future appropriative rights sought by COV in its water adjudication comply
6 with Cal. Const., art. X, § 2 which requires all current and future uses of water must be
7 reasonable and beneficial to each of the four separate basins. The Constitution therefore
8 dictates the basic principles defining water rights: that no one can have a protectible interest
9 in the unreasonable use of water, and that holder of water rights must use water reasonably
10 and beneficially.
11

12 COV is suing for appropriative water rights from the current landowners' interests
13 and water rights. The COV must meet its constitutionally mandated burden of proof that its
14 intended water use is more reasonable and more beneficial than the current landowner's
15 interests and water rights. The current water rights communities in the four Ojai basins have
16 independently and separately practiced low growth, conservation, and groundwater basin
17 sustainability in the face of a decades-long drought and climate change challenging each
18 water basin in unique and unprecedented ways. It is unreasonable and not beneficial to now
19 strain basins and threaten future overdraft by way of the COV's *Third Amended Complaint*.
20

21 **II IN TIMES OF DROUGHT, OVERDRAFT, PERIODIC WILDFIRES AND**
22 **CLIMATE CHANGE WATER USES MUST BE TESTED IN THE CONTEXT OF**
23 **ATHESTRESSED NATURAL RESOURCES IN THE FOUR BASINS**

24 The California Constitution dictates the basic principles defining water rights: that
25 no one can have a protectible interest in the unreasonable use of water, and those holders of
26 water rights must use water reasonably and beneficially. Relatedly, in times of drought,
27 overdraft, water shortages, periodic wildfires and climate change impacting the four water
28

1 basins are the COV's appropriative rights superior and in a greater priority for fueling
2 unprecedented growth and development in Ventura than the current landowner's interests
3 and water rights and their current beneficial and reasonable uses of conservation and
4 sustainability in times of drought and climate change?
5

6 **III THE PUBLIC TRUST DOCTRINE AND THE CALIFORNIA CONSTITUTION**

7 Are the COV's past, current, and future water uses consistent with the Public Trust
8 Doctrine and the mandates of reasonable and necessary use as required by Cal. Const., art.
9 X, § 2? These uses are a threshold questions *before* the court can determine if the water
10 adjudication and related causes of action can proceed. In other words, the COV has claimed
11 its rights to the water by way of its *Third Amended Complaint*, but it has not made a
12 showing that its water uses are reasonable, necessary, or prudent compared to the current
13 existing uses, conservation, and sustainability practices in each one of the four Ojai Basins.
14

15 **IV UNCOMPENSATED GOVERNMENTAL TAKING**

16 Does the COV's *Third Amended Complaint* and multiple causes of action violate the
17 protections of a governmental uncompensated taking in the Fifth and Fourteenth
18 Amendments that a physical appropriation is a taking whether it is permanent or temporary
19 of the current landowner's interests and water rights? The Fourteenth Amendment prohibits
20 a governmental taking of property from all persons. The Fifth Amendment states that no
21 private property shall be taken for public use, without compensation.
22

23 Any regulation that physically "invades" a person's property automatically counts as
24 a taking. The right to exclude is universally held to be a fundamental element of the
25 property right in land. The purpose of the COV's action is a taking. It seeks to take away
26 the property and water rights of the four basins owners, which requires compensation under
27 the Fifth Amendment. Matters of equity, the Public Trust Doctrine and fundamental fairness
28

1 are triggered by the COV's threatened taking. In its "Notice of Commencement of
2 Groundwater Adjudication", the COV states: "Failing to participate in this lawsuit could
3 have a significant adverse effect on any right to pump or store groundwater that you may
4 have. Specifically, **a judgment may be entered that prevents any person now or in the**
5 **future, who owns your land from ever pumping, extracting, or storing groundwater**
6 **from, under or on your land.**" (Emphasis added) Nonparticipation is both punitive and
7 permanent to current landowner's interests and water rights.
8

9 V CALIFORNIA ENVIRONMENTAL QUALITY ACT

10 Does the COV's *Third Amended Complaint* and multiple causes of action violate the
11 environmental spirit, intention, and protections of the California Environmental Quality Act
12 (CEQA), California Public Resources Code § 21000 et seq.,? Would a CEQA based process
13 versus a water adjudication during drought and climate change conditions provide a more
14 equitable environmentally balanced and permeant solution versus a draconian water
15 adjudication. The Court should evaluate CEQA-based protections guaranteed by statute.
16

17 This lawsuit has a significant adverse effect on any right to pump or store
18 groundwater of the current landowners' interests and water rights. Specifically, a judgment
19 may be entered that prevents any person now or in the future, who owns land from ever
20 pumping, extracting, or storing groundwater from, under or on their land. An Environmental
21 Impact Report would quantify the currently unknown environmental impact of the COV's
22 taking of existing water rights. Are there alternatives the CEQA-process can propose?
23

24 The CEQA codifies a statewide policy of environmental protection. According to the
25 act, all state and local agencies must consider environmental protection in regulating public
26 and private activities and should not approve projects for which there exist feasible and
27 environmentally superior mitigation measures or alternatives.
28

1 **VI PLAIN MEANING OF A WATER BASIN PURSUANT TO STATUTE**

2 The plain meaning of the statutes is *one basin* per Water Code section 10721
3 and Code of Civil Procedure section 832. The four basins are: (1) Upper Ojai Groundwater
4 Basin; (2) Ojai Basin Groundwater Management Agency; (3) Upper Ventura River
5 Groundwater Agency; and (4) Ventura River Valley – Lower Ventura River. Each basin is
6 separated by geology, hydrology, location, and governing authorities.
7

8 **VII INTERCONNECTIVITY OR NOT BETWEEN THE FOUR OJAI BASINS**

9 Is there an interconnectivity or not between the four Ojai basins? A determination of
10 the interconnection between the surface water and groundwater in the Ventura River
11 Watershed, including the interconnection between surface water and the four groundwater
12 basins, and the interconnection between those groundwater basins and the Ventura River
13 and its tributaries. The four basins are: (1) Upper Ojai Groundwater Basin; (2) Ojai Basin
14 Groundwater Management Agency; (3) Upper Ventura River Groundwater Agency; and (4)
15 Ventura River Valley – Lower Ventura River. Each basin is separated by geology,
16 hydrology, location, and governing authorities.
17

18 **VIII ONE BASIN PER ONE GROUNDWATER ADJUDICATION**

19 Whether the Court can, (or should), determine rights to extract groundwater among
20 all rights holders across four separate basins in one legal proceeding is the final threshold
21 issue. This lawsuit is being prosecuted under a relatively new statute, commonly referred to
22 as streamlined groundwater adjudication. (See CCP section 832 et. seq., 2016) We have
23 argued before the Court that the adjudication statute clearly states that only one basin shall
24 be adjudicated in a proceeding. In this lawsuit, the COV has claimed that it can adjudicate
25 the entire Ventura River Watershed in one action which includes four basins, the Ventura
26 River, underlying streambeds, and groundwater. The black letter law, albeit new law,
27
28

1 governs groundwater now and into the future. The law as it is written does expand it to
2 include surface water, or water flowing in subterranean streams (see CCP Section 833 (c)).
3

4 **IX FINDING OR DENIAL OF INTERCONNECTIVITY WITHIN THE FOUR**
5 **SEPARATE BASINS**

6 Is there sufficient evidence to support or deny a finding that there is a surface water
7 body or subterranean stream flowing through known and definite channels that
8 is interconnected with the groundwater that is used, or subject to, the named Cross-
9 Defendants' right to pump from, such that any pumping would impact the flow of that
10 surface water body or subterranean flow. Perhaps a scientific advisor can assist the court on
11 this technical and hydrogeologic issue.
12

13 DATED: November 8, 2021

14
15 By: 
16 GARRISON LAW CORPORATION

17 Gregg S. Garrison

18 Attorneys for Real Party in Interest: Emily V. Brown, A Non-Named Party in Action and
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