



1 **MUSICK, PEELER & GARRETT LLP**

2 2801 Townsgate Road, Suite 200
3 Westlake Village, California 91361
Telephone (805) 418-3100
Facsimile (805) 418-3101

4 Gregory J. Patterson (State Bar No. 136665)
5 *g.patterson@musickpeeler.com*

6 Attorneys for The Thacher School; Friend's Ranches, Inc.; Topa Topa Ranch & Nursery, LLC;
7 Finch Farms, LLC; Red Mountain Land & Farming, LLC; Thacher Creek Citrus, LLC; The Finch
8 Family Trust; James P. Finch; Robert Calder Davis, Jr.; Robert Calder Davis, Jr., TTEE of Trust
9 Owned Properties; Sharon H. Booth, Trustee of The Survivor's Trust Created Under Declaration
10 of Trust of Richard G. Booth and Sharon H. Booth Dated July 10, 1980; David Robert Hamm; Ojai
11 Oil Company; Ojai Valley School; Reeves Orchard, LLC and Ojai Valley Inn (Collectively
12 referred to as the East Ojai Group)

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES, COMPLEX CIVIL DIVISION**

16 SANTA BARBARA CHANNELKEEPER, a
17 California non-profit organization

18 Petitioner,

19 vs.

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

24 Respondents.

25 AND RELATED CROSS-COMPLAINT

CASE No. 19STCP01176

**EAST OJAI GROUP'S RESPONSE BRIEF
REGARDING TIMING OF EXPERT
DISCLOSURE DATES**

Date: July 19, 2021
Time: 3:00 p.m.
Dept. SS10

Action Filed: September 19, 2014
Phase One Trial Date: Feb. 14, 2022

26 Defendants, collectively referred to as the East Ojai Group, submit this brief to provide
27 authority by which this Court can require Cross-Complainant, City of San Buenaventura ("City"),
28 to disclose its expert witnesses and expert witness reports prior to the named defendants'
disclosure of experts and reports and when that disclosure should occur.

**California Code of Civil Procedure Section 843 Provides the Court With the
Authority to Require the City to Disclose its Experts and Reports First.**

This case of first impression seeks a comprehensive water adjudication of no less than four

1 groundwater basins and the entire Ventura River watershed, as admitted by the City. (City Brief
2 Regarding Discovery Schedule at page 3, lines 1-6) It has sued all the diverse overlying water
3 rights holders who pump water and all users who divert surface water within the entire watershed
4 and the City seeks to impose a physical solution that requires all of these parties to be subject a
5 physical solution.

6 In such a complicated case involving hundreds of parties with markedly differing water
7 uses and complicated water rights and water use issues, California Code of Civil Procedure
8 Section 843 provides this Court with the authority to modify the expert witness disclosures to
9 properly address the varying issues in a case that is much different than the standard case requiring
10 joint disclosure required under the Civil Discovery Act.

11 Section 843 specifically provides, "a party shall make the disclosures of any expert it
12 intends to present at trial, except for an expert witness presented solely for the purposes of
13 impeachment or rebuttal, at the times and **in the sequence ordered by the Court.**" Code of Civ.
14 Proc., Section 843, subd. (d) (emphasis added.)

15 This section clearly provides authority for this Court to schedule the sequence of expert
16 witness disclosures as it deems appropriate. The City asserts that because this case is not "solely"
17 a water adjudication case, and Section 843 should not control. A review of the causes of action
18 asserted by the City shows that this is not a valid argument. The City has asserted nine causes of
19 action in its Third Amended Complaint. Except for the Sixth Cause of Action seeking a
20 comprehensive adjudication of all party rights, the remaining eight causes of action (First, Second,
21 Third, Fourth, Fifth, Seventh, Eighth and Ninth causes of action) essentially assert that the City's
22 use of water is a reasonable and beneficial use of water and the City asserts various priority rights
23 that have nothing to do with the main issue presented in the Phase One Trail: (*Do groundwater*
24 *water pumpers affect surface water flow that is harmful to the fishery and therefore should be*
25 *subject to a physical solution, and if so, to what degree.*) The resolution of this issue will require
26 a careful analysis of water pumping, water rights, water use and any imposed mitigation measures
27 in which these parties may be required to participate.
28

1 Thus, this Court has the authority to order the sequence of the disclosures under Section
2 843.

3 **There Are Practical Reasons to Require that the City Disclose its Experts and Expert**
4 **Reports First in the Interest of Judicial Economy and Fairness to the Parties**

5 The City has been involved in this case for many years and has had the resources and
6 abundant time to develop its case, including the identification, retention, and development of
7 expert witness opinions and reports. The defendants, on the other hand, are a diverse group,
8 consisting of certain large agricultural interests, other mutual water companies and a myriad of
9 other private and public water interests, many of which have only appeared recently.

10 Given the enormous scope of the City's case, the number of parties who may or may not
11 have experts retained and who may or may not wish to retain experts, and depending on the City's
12 position supported by its experts, it makes sense to require the City to disclose first. Such a
13 procedure will potentially narrow the issues subject to Court review, provide the defendants with
14 some focus on the City's position and lessen the burden of expert witness disclosures and attendant
15 costs on those opposing the City's position. As the Court has heard, many parties who may be
16 subject to a City imposed physical solution who are not City residents cannot afford to retain an
17 expert to rebut the City's contentions, but would be forced to do so because they do not know the
18 City's position and will retain an expert anyway in order to protect their respective water rights.

19 With respect to the East Ojai Group, some of whom have retained an expert at tremendous
20 burden and cost, such an initial disclosure will allow its expert to focus on the key issues raised by
21 the City and preserve both Court time and litigation costs.

22 It is understandable, that, in a general adversarial litigation matter, the City would seek to
23 require all parties to disclose simultaneously. However, this is not your garden variety litigation.
24 It involves specific and unique property rights, water rights, and in some respects, their
25 livelihoods. An initial disclosure by the City is in the general public interest and will promote
26 judicial economy as this complicated case moves forward.

27 The City has suggested that parties who have not retained experts would have additional
28


1 time to identify experts, hire an expert and have that expert prepare a report while those that have
2 retained an expert simultaneously disclose. This proposal does not narrow the issues that may be
3 involved in the initial expert disclosures and provides very little time for those who have not
4 retained experts to develop robust and comprehensive reports for the Court's review. An initial
5 City disclosure will allow all parties to focus on the issues that are relevant to that party and
6 inform the Court on those issues it needs to address.

7 **The Date for Initial Disclosure for Defendants Should be, at the Earliest,**
8 **September 24th 2021.**

9 There has been some discussion suggesting an August 2021 date for the initial disclosure.
10 The East Ojai Group consisting of multiple parties cannot meet that early disclosure date. While
11 the Group views the September 24th 2021 date for disclosure as very aggressive, it can meet that
12 date, but would ask the Court to consider a later date depending on availability of experts and
13 other issues that can be discussed at a later status conference.

14 DATED: July 14, 2021

MUSICK, PEELER & GARRETT LLP

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17 By: 
18 Gregory J. Patterson
19 Attorneys for The Thacher School; Friend's
20 Ranches, Inc.; Topa Topa Ranch & Nursery, LLC;
21 Finch Farms, LLC; Red Mountain Land &
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