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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES
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19 **SANTA BARBARA CHANNELKEEPER,**
20
21 **Petitioner,**
22 **v.**
23 **STATE WATER RESOURCES CONTROL**
BOARD, a California State Agency; CITY
24 **OF BUENAVENTURA, a California**
municipal corporation,
25
26 **Respondents.**

27 **CITY OF SAN BUENAVENTURA, a**
28 **California municipal corporation,**

Case No. 19STCP01176

**SWRCB AND CDFW'S CASE
MANAGEMENT CONFERENCE
STATEMENT AND OBJECTION TO
CITY OF SAN BUENAVENTURA'S
SCIENCE DAY PRESENTATION**

Date: January 30, 2020
Time: 8:30 a.m.
Dept.: 10
Judge: Honorable W. Highberger
Trial Date: None Set
Action Filed: September 19, 2014

I.

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Cross-Complainant,

v.
DUNCAN ABBOTT, an individual; et al.,

Cross-Defendants.

Respondent and intervenor State Water Resources Control Board (the “SWRCB”) and intervenor California Department of Fish and Wildlife (“CDFW”) respectfully request that the Court postpone the currently scheduled “science day” and require cross-complainant City of San Buenaventura (the “City”) to maintain its commitment to develop a science day presentation that is neutral, noncontroversial, agreed upon by all parties, and ultimately of assistance to the Court.

As the Court will remember, at the November 21, 2019 case management conference, the Court required the parties to meet and confer after the SWRCB had expressed concerns about the science day being adversarial and an attempt by the City to prejudge the Court’s evaluation of the merits of this case. The parties did meet and confer, which led to two postings on File & ServeXpress (on December 3 and 4, 2019, and attached) by the City’s counsel that described the parties’ agreement as to the science day. Critically, the parties agreed that “the presentation should be technical and neutral” and that “Settling Consumptive Users, State and Channelkeeper will agree upon the materials [provided to the Court] prior to the presentation.” (See also Notice of Ruling Regarding Status Conference, filed Dec. 9, 2019 [filed by the City].) Further, CDFW informed the City that it may need to present to the Court as well on the science day, but that it would wait until it could review the City’s proposed presentation before deciding whether or not an additional presentation was necessary. The parties stated their agreement on the record at the December 5, 2019 case management conference, which led the Court to set the current date for the science day. At the December case management conference, the parties also discussed whether the Court preferred the science day presenters to be attorneys only, or whether the Court

1 was open to hearing directly from consultants and experts; the Court said it was open to hearing
2 from anyone the parties wanted to present, and specifically said that CDFW was welcome to have
3 its own experts make a presentation.

4 The parties' agreement required the City to provide the consumptive users' presentation by
5 January 9, 2020. (See Notice of Ruling Regarding Status Conference.) Not knowing whether or
6 how the other parties would need to supplement the City's presentation, no deadline was set for
7 them to circulate comments or responsive presentation materials. (*Id.*) Consistent with that
8 agreement, the City provided its two draft power point presentations and thirteen documents
9 (totaling thousands of pages) to the parties on January 9, 2020. The City did not ask for
10 comments by a particular date, but the parties knew the presentations were due to the Court on
11 January 27, 2020. On January 16, 2020, the SWRCB suggested a slide be added to one of the
12 presentations and informed the City that more comments would be coming. On January 21, 2020,
13 the day after the long holiday weekend, counsel for the City agreed to add that slide, and told
14 others that counsel "would appreciate any [additional] comments by the end of Wednesday so I
15 can get feedback from the other consumptive users on Thursday, and discuss them with you on
16 Friday in case we have any issues." The next day, on January 22, 2020, the SWRCB provided its
17 additional comments, some of which requested additional slides but many of which made minor
18 suggestions as to wording to ensure accuracy and completeness. CDFW also informed the parties
19 that rather than providing comments it would make a presentation of its own, as it had raised as a
20 possibility as early as November 2019; the City requested CDFW's draft materials be provided by
21 the close of business the next day (January 23, 2020), which CDFW had already said it would do.

22 Then, abruptly, mid-afternoon on Wednesday, January 22, 2020, the City changed course
23 and informed the parties that it would be submitting its presentations "as is" to the Court. The
24 City said, "We do not have to time to work through the additional comments and DFW
25 PowerPoint with our four experts, talk with the other consumptive users, and then work with you
26 on the resolution of any differences in the short time remaining." CDFW, the SWRCB, and
27 petitioner Santa Barbara Channelkeeper suggested that, if the City is pressed for time, the better
28 course of action would be to postpone the science day so that the parties could work through the

1 issues without pressure and in a spirit of cooperation. The City has so far refused.

2 The science day the Court requested is supposed to be technical, neutral, and agreed upon
3 by the parties. It is not supposed to be adversarial or pit experts against each other. Yet the
4 City's draft presentations contain ambiguities, omissions, and inaccuracies that the SWRCB
5 identified in its comments to the City. The SWRCB and CDFW are optimistic that the parties can
6 work through the issues they have raised and develop a science day that everyone can agree to.
7 We understood that the Court's intent was not to wade through factual controversies at this stage
8 of this case.

9 There is no immediate rush to hold this science day. The case is currently stayed. The City
10 has just mailed out its notices to the thousands of landowners, and those cross-defendants need to
11 file form answers and provide initial disclosures. That is why the Court set the next case
12 management conference in June 2020.

13 The SWRCB and CDFW respectfully request that the Court reset this science day for
14 March or April 2020, and reiterate its order that the parties agree on the science day presentations
15 before they are provided to the Court. If the Court is in a position to rule on this request
16 sufficiently in advance of the case management conference scheduled for January 30, 2020, the
17 City may be prevented from prematurely providing its draft presentations to the Court. If the City
18 files its presentations anyway, the Court could strike that filing and require refileing once all

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1 parties have agreed on the presentations' content.

2 Dated: January 23, 2020

Respectfully Submitted,

3 XAVIER BECERRA
4 Attorney General of California

5 MYUNG J. PARK
6 Supervising Deputy Attorney General

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8 MARC N. MELNICK
9 Deputy Attorney General
10 *Attorneys for Respondent and Intervenor*
11 *State Water Resources Control Board*

12 ERIC M. KATZ
13 Supervising Deputy Attorney General

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15 for NOAH GOLDEN-KRASNER
16 Deputy Attorney General
17 *Attorneys for Intervenor California*
18 *Department of Fish and Wildlife*

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Marc Melnick

From: FileAndServeXpress <MessageBoardNotification@secure-mail.fileandservexpress.com>
Sent: Tuesday, December 3, 2019 1:51 PM
To: Marc Melnick
Subject: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

To: Melnick, Marc, Attorney General Office CA-Oakland
Subject: New Message Board Posting

Message Board Name: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Subject: Status Conference Update

Message Text: Counsel for City of San Buenaventura ("City"), Meiners Oaks Water District, Ventura River Water District, State Water Resources Control Board, California Department of Fish and Wildlife, and Santa Barbara Channelkeeper ("Channelkeeper") met and conferred by telephone and e-mail several times. Counsel for City has not had the opportunity to communicate with each of the Settling Consumptive Users so some parties may have different views. Here is the Settling Consumptive Users proposal to address the differences:

1. Settling Consumptive Users agree that the presentation should be technical and neutral.
2. Settling Consumptive Users will provide (i) background materials, (ii) the PowerPoint presentations and outlines of any scripts, and (iii) names of the experts to all parties and the Court three weeks in advance of the Court date.
3. Settling Consumptive Users, State and Channelkeeper will agree upon the materials in (3) above prior to the presentation.
4. All parties will agree on the record that statements and questions of experts or attorneys shall not be used as evidence or impeachment in any proceeding in this case.
5. Settling Consumptive Users request that presentation take place in late January.

The parties request the Court's guidance on any remaining areas of disagreement.

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https://urldefense.proofpoint.com/v2/url?u=https-3A__secure.fileandservexpress.com_MessageBoard_ShowPost.aspx-3FPostID-3D29293&d=DwlGaQ&c=uASjV29gZuJt5_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm_A9ukaX70&m=rx4PDJxYmp57MU2dCbDb827R5Ins_OzcJNAJNUHNvcQ&s=uuPsBTwAxgoLvaVVaYoWPvGuprAF5SJy1WiV36Rr_ml&e=

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Marc Melnick

From: FileAndServeXpress <MessageBoardNotification@secure-mail.fileandserveexpress.com>
Sent: Wednesday, December 4, 2019 2:32 PM
To: Marc Melnick
Subject: New Posting: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

To: Melnick, Marc, Attorney General Office CA-Oakland
Subject: New Message Board Posting

Message Board Name: Santa Barbara Channelkeeper vs State Water Resources Control Board et al

Subject: RE: RE: Status Conference Update

Message Text: Judge Highberger,

We should be able to conclude the presentation in 1/2 day. January 30 in the morning or January 31 in the morning or afternoon are convenient.

Also, based on my e-mails with Marc Melnick for the Water Board, two corrections to my posting yesterday are indicated below:

2. Settling Consumptive Users will provide (i) background materials, (ii) the PowerPoint presentations and outlines of any scripts, and (iii) names of the experts to all parties [DELETED: and the Court] three weeks in advance of the Court date [ADDED: and file it with the Court three days in advance of the Court date.]
3. Settling Consumptive Users, State and Channelkeeper will agree upon the materials in (changed 3 to 2) above prior to the presentation.

Thank you,

Gene Tanaka

A new message has been posted to a message board to which you are a member of. To view this message, click on the following link:

https://urldefense.proofpoint.com/v2/url?u=https-3A__secure.fileandserveexpress.com_MessageBoard_ShowPost.aspx-3FPostID-3D29306&d=DwlGaQ&c=uASjV29gZuJt5_5J5CPRuQ&r=fxcevG8X2KIHXH8KOP7a2TU8cwzuGdckPm_A9ukaX70&m=JnnGNyNgQoL81mx8MGVsCuycQgsx2EGE2GvhHSffNCY&s=9YUkG5IM7-6IJ-Ylt5_LNkt-1b8nh1MVyFqNJVmdROw&e=

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