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Electronically FILED by
Superior Court of California,
County of Los Angeles
5/09/2024 12:26 PM
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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

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

Case No. 19STCP01176

16 Petitioner,

Judge: Hon. William F. Highberger

17 v.

NOTICE OF RULING

18 STATE WATER RESOURCES CONTROL
19 BOARD, et al,

Date: May 3, 2024
Time: 9:00 a.m.
Dept.: 10

20 Respondents.

21 CITY OF SAN BUENAVENTURA, et al.,

Action Filed: Sept. 19, 2014
Trial Date: Not Set

22 Cross-Complainant,

23 v.

24 DUNCAN ABBOTT, an individual, et al.,

25 Cross-Defendants.
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NOTICE OF RULING

On May 3, 2024, the parties appeared at an Order to Show Cause hearing regarding why the current stay, which was extended to May 3, 2024, should not be further extended to January 31, 2025, the Honorable William F. Highberger, presiding. In advance of the May 3, 2024 hearing, the Court issued the Tentative Ruling attached as **Exhibit A**. At the hearing, the parties stated their appearances on the record and/or they are reflected on LA Court Connect records.

At the close of the hearing, the Court issued the following rulings:

1. The Court extended the current stay for all purposes to November 27, 2024.
2. The Court set an Order to Show Cause hearing for November 13, 2024 at 9:00 a.m. to consider any requests for a further extension of the stay.
 - a. Moving papers requesting such an extension must be filed and served by October 17, 2024.
 - b. Oppositions must be filed and served by October 30, 2024.
 - c. Reply papers must be filed and served before by November 5, 2024.
3. Defendant and Cross-Complainant the City of San Buenaventura shall coordinate the preparation of a Joint Report regarding the current status of the mediation and file and serve such a Joint Report on June 14, 2024, July 26, 2024 and September 6, 2024.
4. The Court entered a minute order dated May 3, 2024, attached hereto as **Exhibit B**.

Dated: May 9, 2024

BEST BEST & KRIEGER LLP

By: 
SHAWN D. HAGERTY
CHRISTOPHER M. PISANO
Attorneys for Defendant and Cross-Complainant
CITY OF SAN BUENAVENTURA

EXHIBIT A



19STCP01176 Santa Barbara Channelkeeper v. State Water Resources Control Board

May 3, 2024 Tentative

OSC re Extending Stay to March 31, 2025: Extend Stay to Sept. 3, 2024 without prejudice to further requests to extend stay beyond such date.

To assist the parties in preparing for May 3, this is being supplied before Reply Briefs in support of a further continuance of the stay are due.

Court's Thanks to Mediator David Ceppos for Progress to Date: It is clear from Prof. Ceppos' latest report and his resume that he brings essential subject-matter expertise regarding water issues in California as well as a trained mediator's skill in resolving human conflict to the task at hand. The Court is delighted to see the outwards signs of some recent progress, according to his latest report and the reports of others.

Impact of Mediation Privilege: As noted by various of the parties, the particulars of what is occurring in the mediation are currently subject to a privilege which is only waivable if all participants agree. This puts the Court (and non-participants such as plaintiff Santa Barbara Channelkeeper ["Channelkeeper"]) at a material information disadvantage. Insofar as the Court is asking factual questions in the balance of this Tentative, it hopes it can get useful answers notwithstanding the existence of such privilege. If necessary information cannot be supplied on account of the privilege, say so, and the Court will make such decisions as it must as best as it can on the information available.

Status of Modeling Exercises: To the Court's understanding, the State Water Resources Control Board has for many months (indeed years) been developing a model to predict the conditions of the groundwater basins at issue, their interrelatedness (if any), and related questions. The Court also sees that Channelkeeper has its own modeling analysis of flows in the Ventura River, which has recently been shared with the State and Consumptive Users on April 16, 2024. Channelkeeper states that the State and Consumptive Users did NOT share with Channelkeeper any similar models or technical information which they may have.

The Court understood that as of some years ago, it would be hard for the two State agencies to commit to any particular Physical Solution until their model(s) had been sufficiently developed to be of practical use. Hopefully, we have reached that point by now. Please confirm this is true, or, if not, state when a useful State model will be available. The Court understands that even after a useful State model is at hand, it will be refined and improved over time as more data is available and more technical refinements can be added to the algorithms.

Do other key players, such as the Consumptive Users, the two Cities, or any of the Water Districts, have their own models to be used as part of negotiation over a reasonable Physical Solution? If so, are they functional at this time or are they still in development? The Court's point is that this homework should already have been done, given the passage of time, and not be cited as an excuse for being unable to finalize negotiations regarding a Physical Solution.

Status of Data Gathering: Is there any additional data (apart from future weather observations and future flow observations) which is needed before final negotiations over a Physical Solution can proceed in earnest? If so, what is the needed information, who is supposed to get it, and what is the timeline for obtaining it? Again, the Court's point is that this homework should already have been done, given the passage of time, and not be cited as an excuse for being unable to finalize negotiations regarding a Physical Solution.

Need for a Deadline: Without a deadline, the negotiation/mediation process may and likely will grind on interminably. It is nice that Lake Casitas has recently reached full capacity, but that happenstance does not substitute for presentation of a workable Physical Solution. It is good that elected leaders are taking the lead in the negotiations with Prof. Ceppos, but each such person has a term of office, and some are subject to ultimate term limits on the length of their service. The tendency to put tough political questions off to the future is a natural consequence of holding public office. Even assuming that the first Physical Solution presented to the Court is adopted without change, the judicial supervision of the resulting Judgment will provide ample opportunity to revise and refine the Physical Solution to address any infirmities, unexpected consequences and unforeseen future developments.

The perfect is the enemy of the good, and the Court is waiting to see a "good" Physical Solution, not a "perfect" Physical Solution. There needs to be a deadline for one or more parties to present one or more Physical Solutions to the Court and the impacted public who live and work in the Ventura River Watershed. The Court believes this deadline should be September 3, 2024.

Trial Plan for One or More Physical Solutions: Assuming there is a consensus Physical Solution offered by most or all of the key players, what would a trial plan look like in terms of types and quantity of witnesses, necessary exhibits and likely trial time. Who, if anyone, provides the counter evidence; how does that proceed? Please confirm this is a court trial, not a jury trial. Please provide docket information for examples of such trials held in California State Court in the last 20 years.

Conversely, assuming that there is more than one Physical Solution on offer, e.g., Channelkeeper has its own proposal as compared to the other key players, how does that get tried? Has there ever been such a trial in California? If so, please provide docket information.

Nature of Current Physical Solutions on Offer: Channelkeeper advises that at a session on April 16, 2024, in the morning that it did not attend the State and Consumptive Users presented each other with competing proposed Physical Solutions. The Court realizes that these are almost certainly covered by the mediation privilege and thus off limits to this Court. For the very reason that the parties have chosen a process which blinds this Court to the most relevant information (i.e., these two apparently competing proposals), the Court has to act in an information vacuum as to how close or far apart the parties are.

Waiver of Mediation Privilege as Condition for Any Further Stay?: The Court is tempted to require that the parties waive the mediation privilege going forward as a condition for ANY extension of the stay past May 3, 2024, since it is close to impossible for the Court to discharge its duties properly in the current information vacuum.

Practical Suggestion: The Court would strongly urge Prof. Ceppos to parlay with Channelkeeper to see if there are any process arrangements which might abate Channelkeeper's objection to a stay past July 2, 2024. You've now got the State on board to this extended process, but absent Channelkeeper's assent that an unknown amount of further delay is tolerable, the Court is inclined to "pull the rip cord" and get this case set for trial by January 2025.

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 10

19STCP01176

**SANTA BARBARA CHANNELKEEPER vs STATE WATER
RESOURCES CONTROL BOARD, et al.**

May 3, 2024

9:00 AM

Judge: Honorable William F. Highberger
Judicial Assistant: E. Munoz
Courtroom Assistant: R. Sanchez

CSR: David Hurtado, CSR # 14379
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Order to Show Cause Re: Why the Current Stay Should Not be Extended a Further 12 Months

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, David Hurtado, CSR # 14379, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

APPEARANCES:

For Plaintiff(s): (via LACourtConnect) Daniel Cooper

For Defendant(s): Shawn Hagerty, Jeremy Jungreis and Noah Golden Krasner

For Defendant(s): (via LACourtConnect): Adam Kear, Brian E. Moskal, Christopher R. Guillen, Claude R. Baggerly, Gregory Patterson, Holly Jacobson, Loa E. Bliss, Marc N. Melnick, Nathan Metcalf, Peter Duchesneau, Ryan

Blatz, Tiernan Peter Dolan, Cedar Hobbs, Jeanne Zolezzi, and Neal Magurie

Mediator: (via LACourtConnect) Dave Ceppos

The matter is called for hearing.

The Court and counsel confer regarding the request for continued stay.

Having considered all documents pertaining to the order to show cause, the parties' oral arguments, and input of mediator Mr. Ceppos, the Court rules as follows:

The stay is extended until Wednesday, November 27, 2024.

Order to Show Cause Re: Why the Stay Should Be Further Extended is scheduled for 11/13/2024

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 10

19STCP01176

**SANTA BARBARA CHANNELKEEPER vs STATE WATER
RESOURCES CONTROL BOARD, et al.**

May 3, 2024

9:00 AM

Judge: Honorable William F. Highberger
Judicial Assistant: E. Munoz
Courtroom Assistant: R. Sanchez

CSR: David Hurtado, CSR # 14379
ERM: None
Deputy Sheriff: None

at 09:00 AM in Department 10 at Spring Street Courthouse.

Updated joint status report from the proponents of a further stay is to be filed and served by 10/17/2024. Objection is to be filed and served by 10/30/2024. Reply is to be filed and served by 11/05/2024.

The Court orders joint status reports be due every six (6) weeks.

Joint status reports are due on 6/14/2024, 7/26/2024, and 9/6/2024. The Court waives the filing of the joint status report for October 2024.

Mr. Hagerty to give notice.