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4 In Pro. Per.

5
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF LOS ANGELES

8 SANTA BARBARA CHANNELKEEPER,
9
10 A California non-profit corporation,
11
12 Petitioner/Plaintiff,

13 v.

14 STATE WATER RESOURCES
15 CONTROL BOARD, a California State
16 Agency,
17 CITY OF SAN BUENAVENTURA, a
18 California municipal corporation.
19
20 Respondent/Defendant

Case No. 19STCPO1176

Judge: Honorable William F. Highberger

**OBJECTIONS TO THE PROPOSED
DRAFT PHYSICAL SOLUTION
DATED MAY 17, 2021**

Date: July 15, 2021

Action Filed: Sept. 19, 2014
Trial Date: Phase 1 February 14, 2022.

21
22 CITY OF SAN BUENAVENTURA, a California
23 municipal corporation, incorrectly named as
24 CITY OF BUENA VENTURA,
25 Cross-Complainant

26 v.

27 Duncan Abbott, an individual. et al.,
28 Cross-Defendants

1 The Draft Physical Solution contains multiple reserved water rights claims that are not relevant
2 to providing relief to the Southern California Steelhead Trout! The words describing water rights
3 to the waters in the Ventura River are only self-serving for the Plaintiff. The claims can't help
4 the Steelhead Trout.¹ The court has the authority to amend the Draft Physical Solution by
5 removing the reserved water rights claims or, the CITY OF SAN BUENAVENTURA could
6 voluntarily remove the water rights claims as suggested by the court on April 19, 2021.

7
8 The court must make a judgement that shows the Draft Physical Solution is in compliance with
9 the California Constitution Article X, Section 2, and CCP §850 (a). Another important law to
10 follow is the Doctrine of Public Trust Resources found in Article X § 4 of our Constitution.
11 Added into this judicial mix is the Streamlined Adjudication Statutes (CCP §830 et seq.) The
12 final judgement in the Phase One Trial will become a cornerstone of the adjudication suit
13 because of the molecules of water flowing on the surface and flowing underground and whether
14 they can be joined together to provide water for the safety of the fish. Also, whether human
15 consumptive uses of that water upstream has any impact on the habitat of the Ventura River and
16 the Southern California Steelhead Trout.

17
18 The Draft Physical Solution as written, with multiple causes of action regarding water rights that
19 have not been part of a court judgement, would be contrary to Article X, Section 2 of our
20 Constitution. California water law is complicated. What once was considered
21 "reasonable" can be deemed unreasonable in the future. The Doctrines of Reasonable Use,
22 Beneficial Use, Reasonable Method of Use, Public Trust Resources and no waste of the water
23 produces the foundation of Article X Section 2 of the Constitution. This case is controlled by
24 California State law and at least some of the remedies sought by the CITY OF SAN

25
26 ¹ Draft Physical Solution Section 3.2, Reservation of Claims, in the Physical
27 Solution is the first Section to describe the reservation of claims from the
28 Third Amended Cross-Complaint. Draft Physical Solution Section 9.2,
Continuing Jurisdiction, describes how the court could "require the
quantification of use and declaration of rights" when the Physical Solution
fails to keep the fish in good condition.

1 BUENAVENTURA in the proposed Draft Physical Solution should be stricken as contrary to
2 law.

3
4 Because the CITY OF SAN BUENAVENTURA claims that the Draft Physical Solution keeps
5 the Southern California Steelhead Trout population in “good condition,” all participants should
6 presume the CITY OF SAN BUENAVENTURA has some strategy for the aftermath stemming
7 from the ultimate failure of the Physical Solution. The three-dimensional chess game being
8 played must ultimately be proven to be consistent with Article X Section 2 of the Constitution.
9 Code of Civil Procedure § 850 (a)(1) states that the court may enter a judgement if the court
10 finds that the judgement is **consistent** with Section 2 of Article X of the California Constitution.

11 **ARTICLE X SECTION 2, CALIFORNIA CONSTITUTION**

12 Article X, Section 2 of the California Constitution contains many provisions that restrain and
13 control one of the most contentious and controversial dual regulatory issues in our state:
14 appropriative and riparian rights. The black letter law of the Constitution makes it clear that it
15 requires the use of water to be (1) usufructuary, used but not owned; (2) that it be limited to only
16 beneficial uses; (3) that the water use must be reasonable; (4) that there must not be any
17 unreasonable method of use; and (5) that there shall not be any waste of water! Finally, nothing
18 in this Section shall be construed to deprive any landowner of riparian/overlying water rights to
19 use the water to which they are entitled.

20
21 Given these facts, it would be impossible to make the Comprehensive Adjudication and the Draft
22 Physical Solution comply with the Article X, Section 2 of the Constitution and CCP Section
23 850(a). If the Pueblo, Treaty, Prescriptive, Public Trust and Appropriative claims in the Draft
24 Physical Solution are removed, which encompasses **all** the flow in the Ventura River, the
25 opposition to the Draft Physical Solution might dissipate. I have personally asked the CITY OF
26 SAN BUENAVENTURA Council on various occasions to remove these claims, but the Council
27 has consistently refused to do so.

1 The Doctrines of Reasonable Use and Reasonable Method of Use, **Public Trust**, Prescription
2 upstream and harming all other water users in the watershed should be considered according to
3 23 CCR 780, which sets forth the State's authority to condition water rights. This authority is
4 further strengthened by the California Supreme Court in 1983:

5
6 *"The state is not confined by past decisions and has the power to reconsider allocations, even*
7 *though such decisions were made after due considerations of their effect on the public trust.*
8 *Decisions which failed to weigh \and consider public trust uses present an even stronger case for*
9 *reconsideration."* 33 3d 419. *National Audubon Society v. Superior Court.*

10
11 The *Statements of Diversion and Use* forms that have been filed with the Water Boards clearly
12 show that the full amount of appropriated water has not been, never been, put to beneficial use
13 and the remainder has unreasonably been allowed to waste to the ocean. This water waste has
14 been the case for 150 years.

15
16 Compliance with Article X, Section 2, and Article X, Section 4 of the California Constitution
17 would be difficult if not impossible to prove based on reasonable use, reasonable method of use,
18 public trust values being protected, and 150 years of water waste.

19
20 **CONTINUING JURISDICTION FOR THE COURT**

21
22 Code of Civil Procedure § 852 states *"The court shall have continuing jurisdiction to modify or*
23 *amend a final judgement in a comprehensive adjudication in response to new information,*
24 *changed circumstances, the interests of justice, or to ensure based that the criteria of*
25 *subdivision (a) of Section 850 are met. If feasible, the judge who heard the original*
26 *comprehensive adjudication shall preside over actions or motions to modify or amend the final*
27 *judgement."* (Emphasis added)

1 The overarching question before the court is: **Why is the reservation of all the water rights**
2 **claims from the Third Amended Cross-Complaint a part of this Draft Physical Solution**
3 **plan to rescue the Southern California Steelhead Trout from extinction?** What relevance
4 does this reservation of water rights have to do with keeping fish in “good condition?” There is
5 **absolutely no relevance** between the purported reservation of rights and the singular purpose of
6 the proceedings - keeping the fish in “good condition.” The plan for the reserved water rights
7 claims can only be to retain access to all the water from the Ventura River for the CITY OF SAN
8 BUENAVENTURA. If approved by the court as written, all parties are bound. That outcome is
9 not just, nor is it equitable.

10
11 The only legitimate relief in this convoluted endeavor is the relief sought for the endangered
12 species the Southern California Steelhead Trout and other species resident in the habitat of the
13 Ventura River. Judicial relief should not be afforded to a litigant who created the unfavorable
14 circumstances for the Steelhead Trout population and is attempting to use the procedure to
15 restrict water use by other parties it drug into the litigation while preserving its own abusive
16 overuse of the water under the guise that the abuse is “beneficial.” The procedure designed to
17 save the trout population simply does not allow for the manipulation and distortion of purpose
18 requested by the CITY OF SAN BUENAVENTURA.

19
20 **WHICH GROUNDWATER IS SUBJECT TO COMPREHENSIVE ADJUDICATION?**

21
22 According to the California State Department of Water Resources groundwater is only found in
23 saturated alluvium confined or unconfined by impervious bedrock. This is the official definition
24 of a groundwater basin in the State of California. Groundwater flowing in a subterranean stream
25 within a known and definite channel is not groundwater according to the state definition of a
26 groundwater basin. This type of groundwater in a basin is known as percolating groundwater.
27 The definition of groundwater is extremely important in this case. In determining the legal
28 classification of groundwater, the State Water Resources Control Board (SWRCB) has relied on

1 the California Supreme Court decision in *Los Angeles v. Pomeroy (Pomeroy) (1899) 124 Cal.*
2 *597 5 [57 p. 585]*, which established the distinction between subterranean streams and
3 percolating groundwater.
4

5 There are four criteria developed by the SWRCB for identifying subterranean streams flowing
6 through known and definite channels, (1) a subsurface channel must be present, (2) the channel
7 must have relatively impermeable bed and banks, (3) the course of the channel must be known or
8 capable of being determined by reasonable inferences and, (4) groundwater must be flowing in
9 the channel. There are three subterranean streams flowing in the Ventura River Watershed. The
10 groundwater flowing in those underground streams is not groundwater to be included in this
11 comprehensive adjudication because that groundwater is not in a groundwater basin in saturated
12 alluvium. Their locations are as follows:
13

14 **San Antonio Creek, following the Santa Ana Fault line - Lion Canyon Creek, following**
15 **Lion Canyon Creek from Upper Ojai Basin to San Antonio Creek - Ventura River (out of**
16 **Matilija Canyon to just south of Robles Diversion.**
17

18 The groundwater associated with these subterranean streams are not “groundwater” that can be
19 adjudicated from a groundwater basin. Code of Civil Procedure Section 833 (c) does not apply
20 because the court has not found it necessary to include water flowing through a subterranean
21 stream in a known and definite channel to determine groundwater rights in a **basin**. (emphasis
22 added). Official rights to groundwater are easily determined in real groundwater basins.
23

24 **THE FRAILTY OF THE DRAFT PHYSICAL SOLUTION**

25

26 Absent from the Draft Physical Solution are specific adaptive management policies that take
27 direct action to protect the endangered species. Examples are (1,) the estuary will become
28 dramatically moved north by climate change; (2.) Rising ocean levels within the planning

1 horizon of the Draft Physical Solution will transport the benthic and surface life forms within the
2 estuary that are beneficial to O. mykiss trout further north on the river; (3.) This will change the
3 sandbar that helps form the estuary. Climate change will also bring longer lasting droughts. The
4 likelihood for increased wildfires is present. The ash laden material in runoff is similar to
5 concrete and can prevent the Southern California Steelhead Trout (O. mykiss) females from
6 forming a spawning redd (nest or bed) and propagating the species. Also forecast for the future
7 are more intense storm events causing more flooding.

8
9 **CONCLUSION**

10 The CITY OF SAN BUENAVENTURA has patently added the reservation of water rights
11 claims to the Draft Physical Solution. The reserved water rights claims have no relevance to
12 keeping the Steelhead Trout in "good condition." There is another reason they are reserved. If
13 the Draft Physical Solution fails to keep the fish in good condition the reserved water rights
14 claims in the Draft Physical Solution will be brought back before the court for action by the
15 CITY OF SAN BUENAVENTURA. This is certainly contrary to Article X Section 2, and
16 Article X, Section 4 of the California Constitution. CCP Section 852 provides the court the
17 power to amend the Draft Physical Solution in favor of equity and fairness. Equity and fairness
18 require that this court remain mindful that the Cross-Complainant here is the reason the Ventura
19 River Steelhead Trout finds themselves in trouble because of the uncorrected municipal mantra
20 of "grow or die." We respectfully request that this court remove the reservation of claims: first,
21 second, third, fourth, fifth, seventh, eighth and ninth under the authority of Code of Civil
22 Procedure Section 852.

23
24 Dated: July 14, 2021.

Claude R. Baggerly & Patricia E. Baggerly

Cross-Defendants

In Pro. Per.

26 *Claude R. Baggerly*
27 _____

28 *Patricia Baggerly*
