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12 CITY OF SAN BUENAVENTURA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

15 SANTA BARBARA CHANNELKEEPER, a
16 California non-profit corporation,
17
18 Petitioner,
19
20 v.
19 STATE WATER RESOURCES CONTROL
BOARD, etc., et al.,
20
21 Respondents.

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23 CITY OF SAN BUENAVENTURA, etc.,
24
25 Cross-Complainant,
26
27 v.
26 DUNCAN ABBOTT, an individual, et al.,
27
28 Cross-Defendants.

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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court

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Case No. 19STCP01176
Judge: Hon. William F. Highberger
RESPONDENT AND CROSS-
COMPLAINANT CITY OF SAN
BUENAVENTURA'S BRIEF
REGARDING DISCOVERY SCHEDULE
Date: July 19, 2021
Time: 3:00 p.m.
Dept: SS10
Action Filed: Sept. 19, 2014
Trial Date: Feb. 14, 2022

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BRIEF REGARDING DISCOVERY SCHEDULE

I. INTRODUCTION

At the July 6, 2021 status conference, the Court ordered a briefing on a proposed discovery schedule that addresses two issues: (1) whether the exchange of expert witness information should be simultaneous, or whether the City of San Buenaventura (“City”) should be compelled to disclose its expert witness information before any other party is required to disclose his/her/its information, and (2) when the expert witness disclosures should occur. The City was ordered to provide an initial briefing, to which others may respond. As is discussed herein, the City contends as follows: (1) the exchange of expert witness information for Phase 1 of trial must be simultaneous, and (2) the initial exchange should occur on September 24, 2021, or a date in late August, 2021, or at another date within that range. The City has proffered September 24th as the initial exchange date, but it can be ready in late August should the Court so order.

On the first issue, by statute, the initial exchange of expert witness information must be simultaneous, and as a matter of fairness, it should be simultaneous for those parties that, like the City, have retained experts to analyze the issues to be resolved in Phase 1 of trial. Code of Civil Procedure Section 2034.010 *et seq.* applies in this case, and it is clear; all parties appearing in the action are required to disclose expert witness information simultaneously. (Code Civ. Proc. § 2034.260.) Chapter 18 of the Civil Discovery Act, which is the statutory scheme applicable to expert disclosures, is in fact titled: “Simultaneous Exchange of Expert Witness Information.” By the statute’s plain language, the exchange must be simultaneous.

At the July 6th hearing, it was noted that the Comprehensive Groundwater Adjudication statute, Code of Civil Procedure Section 830 *et seq.*, applies to this case, and that this statutory scheme includes a specific procedure for the exchange of expert information. It was suggested that the specific statute, Code of Civil Procedure Section 843, governs the exchange of experts in this case, and not the more general Civil Discovery Act. As is discussed herein, this argument is flawed for three reasons: (1) the Civil Discovery Act’s provisions for the exchange of experts apply broadly to civil actions, including this action, (2) the Comprehensive Groundwater Adjudication statute does not conflict with the Civil Discovery Act’s process for a simultaneous

1 exchange, rather Code of Civil Procedure Section 843 itself suggests that the exchange of expert
2 witness information be simultaneous, and (3) even if the Civil Discovery Act and Comprehensive
3 Groundwater Adjudication statutes were inconsistent, which they are not, this case is not solely a
4 groundwater adjudication, rather it is an adjudication of an entire watershed, including the
5 Ventura River and its tributaries, and the four groundwater basins that the watershed overlies.
6 Code of Civil Procedure Section 843 is not the only applicable statute.

7 On the second issue, the City has proposed to the Court that the mutual exchange of expert
8 witness information should occur on September 24, 2021. Other parties have suggested that this
9 date is too late in the process, and that the exchange should occur in late August, 2021. The City
10 proffered late September because that was a date proposed by the State Agencies, and the City is
11 trying to accommodate those parties it knows currently have experts who are analyzing the Phase
12 1 issues. However, the City can be prepared to exchange in late August should the Court deem
13 that a more appropriate date for a simultaneous exchange.

14 **II. THE EXCHANGE OF EXPERT WITNESS INFORMATION SHOULD BE**
15 **SIMULTANEOUS; THERE IS NO AUTHORITY SUGGESTING OTHERWISE**

16 **A. The Civil Discovery Act Applies to this Case, And the Statute Provides for a**
17 **Simultaneous Exchange of Expert Witness Information**

18 As stated above, Chapter 18 of the Civil Discovery Act, entitled “Simultaneous Exchange
19 of Expert Witness Information,” governs the exchange of expert witness disclosures in civil
20 actions. (Code Civ. Proc. § 2034.010 *et seq.*) Chapter 18 provides that in any “action,” which is
21 broadly defined to include “a civil action and a special proceeding of a civil nature” (Code. Civ.
22 Proc. § 2016.020, subd. (a)),¹ a party may demand that all parties “simultaneously” exchange
23 information concerning the parties’ expert trial witnesses. (Code Civ. Proc. § 2034.210.) The
24 statute further provides that, “[a]ny party may demand a mutual and simultaneous exchange by all

25 ¹ The term “action” is likewise broadly defined in the “Preliminary Provisions” of the Code of
26 Civil Procedure to mean “an ordinary proceeding in a court of justice by which one party
27 prosecutes another for the declaration, enforcement, or protection of a right, the redress or
28 prevention of a wrong, or the punishment of a public offense.” (Code Civ. Proc. § 22.) The term
special proceeding is defined as follows: “Every other remedy is a special proceeding.” (Code
Civ. Proc. § 23.) A “civil action” is prosecuted by one party against another for the declaration,
enforcement or protection of a right, or the redress or prevention of a wrong. (Code. Civ. Proc. §
30.)

1 parties of a list containing the name and address of any natural person...whose ... testimony in
2 the form of an expert opinion any party expects to offer in evidence at trial.” (Code Civ. Proc. §
3 2034.210, subd. (a).)

4 On its face, the Civil Discovery Act leaves no doubt that the exchange of expert witness
5 information must be simultaneous. This clear rule for a simultaneous exchange among all parties
6 has been reaffirmed by case law. (*See Fairfax v. Lords* (2006) 138 Cal.App.4th 1019.) In
7 *Fairfax*, the court addressed the issue of whether a defendant in a civil action was required to
8 participate in a simultaneous exchange, even though the plaintiff ultimately bears the burden of
9 proof at trial. In *Fairfax*, the defendant did not designate any retained experts on the date for the
10 simultaneous exchange, rather he exchanged a document indicating that he was not designating
11 any retained experts, but that he “expressly reserves the right to designate experts in rebuttal to
12 [Fairfax’s] designation.” (*Id.* at 1022.) Defendant subsequently designated a retained expert, and
13 in his designation he stated that “[s]ince plaintiff has the burden of proof as to all issues,
14 defendant reserves the right...to provide a supplemental designation of experts regarding all
15 issues for which plaintiff designates an expert.” (*Id.* at 1023.) The court denied plaintiff’s motion
16 to strike the designation and permitted defendant’s retained expert to testify. Following a trial in
17 which defendant prevailed, plaintiff appealed, and the court of appeal reversed. The appellate
18 court found that the statute was clear on its face in requiring a “simultaneous” exchange of
19 experts, which applied to all parties to the action. The court noted that “[i]f [defendant] Lords
20 would like to see that requirement changed, his remedy is with the Legislature, not the courts.”
21 (*Id.* at 1027.) This case confirms that the expert exchange must be simultaneous, and that all
22 parties (plaintiffs and defendants alike) must participate in the exchange in order to call expert
23 witnesses at trial.

24 **B. The Comprehensive Groundwater Adjudication Statute is Consistent with the**
25 **Civil Discovery Act’s Provisions for a Simultaneous Exchange of Expert**
26 **Information**

27 The Comprehensive Groundwater Adjudication statute is found in Chapter 7 of Title 10 of
28 the Code of Civil Procedure, and it is entitled “Actions Relating to Groundwater Rights.” (Code
Civ. Proc. § 830 *et seq.*) The statute establishes “methods and procedures” for a comprehensive

1 adjudication (Code Civ. Proc. § 830, subd. (a)), but it is important to note that the statute requires
2 that it be applied and interpreted consistently with the following: “Providing notice and due
3 process sufficient to enable a court in a comprehensive adjudication conducted pursuant to this
4 chapter to determine and establish the priority for unexercised water rights. The court may
5 consider applying the principles established in *In re Waters of Long Valley Creek Stream System*
6 (1979) 25 Cal.3d 339. ***Except as provided in this paragraph, this chapter shall not alter***
7 ***groundwater rights or the law concerning groundwater rights.***” (Code Civ. Proc. § 830, subd.
8 (b)(7) (emphasis added).) In short, this statute provides procedural structure to comprehensive
9 groundwater adjudications, but it does not alter or replace existing common law regarding
10 groundwater rights. (*Ibid.*) The chapter must be applied and interpreted in a manner that
11 “promotes efficiency, reduces unnecessary delays, and provides due process” (*id.* at subd. (b)(2)),
12 which requires a simultaneous expert exchange.

13 The Comprehensive Groundwater Adjudication statute also provides that “[t]he other
14 provisions of the ‘code’ [i.e. the Code of Civil Procedure]² apply to procedures in a
15 comprehensive adjudication to the extent they do not conflict with the provisions of this chapter.”
16 (Code Civ. Proc. § 830, subd. (c).) In other words, the provisions of the Code of Civil Procedure,
17 which include the Civil Discovery Act, apply to the Comprehensive Groundwater Adjudication
18 statute as long as they are not in conflict. As is discussed herein, the Civil Discovery Act’s
19 procedure for simultaneously exchanging expert witness information is entirely consistent with
20 the procedure in the Comprehensive Groundwater Adjudication statute, and thus the Civil
21 Discovery Act applies.

22 Code of Civil Procedure Section 843 sets forth the procedure for disclosing expert witness
23 information in the Comprehensive Groundwater Adjudication statute. This section provides in
24 part: “In addition to all other disclosures required by this chapter [e.g. initial disclosures under
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26 ² The word “code” is not defined in the Comprehensive Groundwater Adjudication statute.
27 However, the word “code” is generally used in the Code of Civil Procedure in reference to the
28 Code of Civil Procedure itself. (*See e.g.* Code Civ. Proc. §§ 2 [“When this code takes effect”],
4 [“Rule of construction of this code”], 17 subd. (a) [“Definitions” – “Words used in this code in
the present tense include the future as well as the present.”], and 18 [“Statutes, etc., inconsistent
with code repealed.”]).

1 Section 842], a party shall disclose to the other parties the identity of any expert witness it may
2 use at trial to present evidence.” (Code Civ. Proc. § 843, subd. (a).) Section 843 goes on to state
3 that unless the parties stipulate or the court orders otherwise, a party must submit written reports
4 with its expert disclosure in a format that is similar to Rule 26 of the Federal Rules of Civil
5 Procedure. (Code Civ. Proc. § 843, subds. (b) and (c).) Section 843 then provides for the timing
6 of expert disclosures, stating that unless stipulated by the parties, the parties are to disclose expert
7 witness information at the times and in the sequence as ordered by the court, and if there is no
8 court order, then the disclosures must be made at least 30 days after the court enters an order
9 setting a particular phase of the trial. (Code Civ. Proc. § 843, subd. (d).) Finally, Section 843
10 discusses a disclosure procedure for rebuttal experts, as well as the parties’ ongoing obligation to
11 supplement and correct expert witness reports. (Code Civ. Proc. § 843, subds. (e) and (f)).

12 There is nothing in this statute that conflicts with the Civil Discovery Act regarding the
13 simultaneous nature of the disclosure. While Section 843 imposes the requirement that disclosing
14 parties exchange expert witness reports, which is perhaps somewhat in conflict with the Civil
15 Discovery Act’s lack of such a requirement (*see* Code Civ. Proc. § 2034.260),³ there is nothing in
16 Section 843 that states that the exchange of information is not intended to be simultaneous.
17 Instead, Section 843 must be read as requiring simultaneous disclosures, as the statutory default
18 position (i.e. if there is no stipulation or court order saying otherwise) provides for only one
19 exchange date, namely 30 days after the phased trial is set, for the disclosures to occur. (Code
20 Civ. Proc. § 843, subd. (d)(1).) In other words, Section 843 provides that unless the parties
21 stipulate to something different, or the court orders otherwise,⁴ the disclosures must be on a single
22

23 ³ Section 843’s requirement to disclose expert witness reports is not entirely inconsistent with the
24 Civil Discovery Act to the extent that the Civil Discovery Act mandates that discoverable reports
25 and writings be produced at the time of the simultaneous disclosure to the extent such reports and
26 writings exist, provided the demand for exchange specifies that such writings and reports must be
27 produced. (Code Civ. Proc. § 2034.270.)

28 ⁴ The City reminds the Court here that while the City strongly contends that expert disclosures be
simultaneous, the City is willing to accept a second-tier initial disclosure date for smaller parties
who have not yet retained an expert to analyze the Phase 1 trial issues and who do not presently
know whether they need an expert. This should only apply to smaller parties, many of whom are
self-represented. For the larger parties, like the City of Ojai, and the Thacher School and other
large water users who have already retained experts and who are likely to challenge connectivity
with expert witness testimony, the expert disclosures should be simultaneous. It would be

1 date, i.e. a simultaneous exchange. This is consistent with the Civil Discovery Act.

2 The City anticipates that objecting parties may point to the Legislature’s use of the
3 singular word “party” in Section 843(a), rather than the plural form, “parties.” This does not
4 show an intent for anything other than a simultaneous exchange. Stated another way, Section 843
5 provides that it is the obligation of each “party” who wishes to present expert testimony at trial to
6 make his/her/its disclosure pursuant to Section 843, just as it is the obligation of each “party” to
7 make his/her/its initial disclosures under Section 842. The use of the word “party” as opposed to
8 “parties” in Section 843(a) does not suggest that expert disclosures are not to be simultaneous.

9 The City also notes here that if the Legislature had intended for Section 843 to provide for
10 unilateral expert disclosures by one party, rather than a simultaneous exchange, it would have
11 said so in in the statutory language. It did not. The Legislature likewise could have amended
12 Chapter 18 of the Civil Discovery Act, which it also did not do. Chapter 18 of the Civil
13 Discovery Act, which was last amended in 2005, specifically exempts eminent domain cases from
14 its provisions regarding expert disclosures. (Code Civ. Proc. § 2034.010.) If the Legislature had
15 intended for Chapter 18 of the Civil Discovery Act not to apply in comprehensive groundwater
16 adjudication cases, it would have amended Section 2034.010 to enumerate both eminent domain
17 and groundwater adjudication cases when it enacted the Comprehensive Groundwater
18 Adjudication statute in 2015. The Legislature did not do so, which shows its intent that the Civil
19 Discovery Act’s procedure for expert disclosures would apply to groundwater adjudication cases.
20 (*See Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd.* (2015) 233
21 Cal.App.4th 505, 514 [The Legislature is presumed to know existing law when it enacts a new
22 statute.].) Section 843 does not conflict with the Civil Discovery Act on the simultaneous
23 exchange of experts, and the Civil Discovery Act therefore applies.

24 C. **The Civil Discovery Act Applies to this Case Regardless Because this Case is**
25 **not Solely a Comprehensive Groundwater Adjudication**

26 Finally, even if Chapter 18 of the Civil Discovery Act and Comprehensive Groundwater
27 Adjudication were in conflict, which they are not, this case is not solely one to adjudicate basin

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patently unfair to give these parties and their experts the opportunity to review and analyze the
City’s expert disclosures and reports before submitting their own disclosures and reports.

1 groundwater rights. The City’s operative Third Amended Cross-Complaint contains many causes
2 of action, including one for a comprehensive adjudication of groundwater rights. The Court’s
3 order of bifurcation of a Phase 1 trial on the issues of interconnectivity and the basin boundaries
4 is not limited to any one cause of action, and it is not solely limited to the City’s request for a
5 comprehensive groundwater adjudication. The City and other proposing parties seek to impose a
6 physical solution for the entire Ventura River Watershed, including the Ventura River and all of
7 its tributaries (which constitute legally distinct surface water), as well as the Watershed’s four
8 groundwater basins. In short, there is more at issue in this lawsuit, and in this Phase 1 trial, than
9 solely a groundwater adjudication under Code of Civil Procedure Section 830 *et seq.* Thus, even
10 if there were a conflict among the statutes, which again there is not, the Civil Discovery Act
11 would still necessarily apply to this action.

12 **III. THE SIMULTANEOUS EXPERT EXCHANGE SHOULD OCCUR ON**
13 **SEPTEMBER 24, 2021, BUT THE CITY DOES NOT OBJECT TO AN EARLIER**
14 **SIMULTANEOUS DATE IN LATE AUGUST, IF THE COURT DEEMS THAT**
15 **MORE APPROPRIATE**

16 The City proposes that the mutual exchange of expert witness information should occur on
17 September 24, 2021. The City has proposed this date because other parties who have indicated
18 that they intend to designate experts for Phase 1 of trial suggested it, and City would like to
19 accommodate those parties. However, the City recognizes that other parties to this action have
20 requested an exchange in late August. The City can be prepared to exchange its expert witness
21 information, including the expert reports under Section 843, in late August, or at some other date
22 within that range – i.e. mid-September, if the Court feels that it is a more appropriate deadline.
23 The City will accept whatever date the Court deems appropriate between late August and
24 September 24, 2021 for the simultaneous initial exchange.


25 **IV. CONCLUSION**

26 For the reasons stated, the City requests that the Court set a discovery schedule that
27 provides for a simultaneous exchange of expert witness information, and that it set the initial
28 expert witness disclosure date of September 24, 2021, or an earlier date between late August and
September 24th, as the Court may deem appropriate.

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Dated: July 9, 2021

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