

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT SSC 10

HON. WILLIAM F. HIGHBERGER, JUDGE

4
5 SANTA BARBARA CHANNELKEEPER, a)
California non-profit corporation,)

6)
Petitioner,)

7 vs.)

) SUPERIOR COURT
) CASE NO. 19STCP01176

8)
9 STATE WATER RESOURCES CONTROL)
BOARD, etc. et al.,)

10 Respondents.)
11 _____)

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 WEDNESDAY, JUNE 24, 2020

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1 CASE NUMBER: 19STCP01176
2 CASE NAME: SANTA BARBARA CHANNELKEEPER
3 LOS ANGELES, CALIFORNIA THURSDAY, JUNE 24, 2020
4 DEPARTMENT SSC 10 WILLIAM HIGHBERGER, JUDGE
5 REPORTER: DAVID A. SALYER, CSR 4410
6 TIME: 2:30 P.M.

7 -o0o-

8 THE COURT: Okay. This is Judge Highberger. We're on
9 the record in 19STCP01176, Santa Barbara Channelkeeper versus
10 State Water Resources Control Board.

11 You've been checked in.

12 I am going to ask a couple of names where we don't seem
13 to have a check-in just to see if we have a straggler.

14 Do we have Anthony Francois from Pacific Legal with us
15 today?

16 No response.

17 Do we have Matthew Venezia with Browne George Ross for
18 Petrochem?

19 No response.

20 Otherwise, as to those of you who have already checked
21 in, when you speak the first time, please give your name.

22 I will take appearances from the two lawyers who have
23 come to court in person so the reporter and I can figure out
24 who is who at the podium.

25 MR. HAGERTY: Thank you, your Honor. Shawn Hagerty for
26 the City of San Buenaventura.

27 Your Honor, PetroChem, we worked out a dismissal with
28 them, so I believe that's why they're not here.

1 MR. COSGROVE: Good afternoon, your Honor. David
2 Cosgrove on behalf of the Casitas Municipal Water District.

3 THE COURT: Okay.

4 Amongst the paperwork I have before me is an ex parte.
5 Let me see if the fee has been paid.

6 MR. HAGERTY: It would have been from the City, your
7 Honor.

8 THE COURT: Oh, a fee waiver. Okay. You don't worry
9 about a fee.

10 MR. HAGERTY: I can explain the basis of the request if
11 the Court wishes.

12 THE COURT: I think it's unopposed. I was ready to
13 grant.

14 MR. HAGERTY: I would love that, your Honor.
15 Thank you.

16 THE COURT: Anybody wish to be heard to oppose the
17 City's ex parte for more time to get on with serving the third
18 amended cross-complaint?

19 No objection for the record.

20 Your request is granted.

21 What do you want to be the new service date, sir?

22 MR. HAGERTY: October 1, 2020.

23 THE COURT: So if I fill in box 2 on the order and
24 don't give you a new case management conference, I've done
25 what you want, correct?

26 MR. HAGERTY: Correct. We just need the order checked
27 as granted and then the date inserted, your Honor.

28 THE COURT: Done.

1 The City of Buenaventura, commonly known as the City of
2 Ventura, to give notice.

3 MR. HAGERTY: Yes, your Honor.

4 THE COURT: I trust people will take it as a standing
5 convention going forward that if I refer to the City of
6 Ventura, people will know it to be what is on paper as the
7 City of Buenaventura?

8 MR. HAGERTY: Yes, your Honor.

9 THE COURT: It has a lilt to it with the full name.
10 I'm sort of surprised they don't use the full name more
11 commonly.

12 MR. HAGERTY: In the legal documents, they do use the
13 legal name. But I do think it sometimes gets stuck on the
14 tongue, so Ventura comes out a little easier sometimes.

15 THE COURT: Casitas made a passing reference to the
16 political differences which it's having with the City about
17 service of the action.

18 MR. COSGROVE: Yes, your Honor.

19 THE COURT: Are you willing, Mr. Cosgrove, to elaborate
20 as to whether people are marching up and down state highway 33
21 with their pitchforks or something?

22 Is it a matter of being served? What is going on.

23 MR. COSGROVE: I think some of the folks from the City
24 would say that seems to be the tone of some of the public
25 meetings.

26 Generally, one of the reasons that I showed up here in
27 person, your Honor, was to make myself available for questions
28 just such as that.

1 Obviously, given the scope of this action and given the
2 nature of groundwater adjudications generally, there are
3 political realities involved.

4 There are constituencies among my client that expressed
5 displeasure to my board about both the nature of the service,
6 about the pace of the service. And specifically --

7 THE COURT: Service of process for these purposes?

8 MR. COSGROVE: Correct.

9 THE COURT: Not the delivery of water but the service
10 of legal process.

11 MR. COSGROVE: The service of the litigation. Forgive
12 me for being imprecise on that.

13 More broadly, while the --

14 THE COURT: Generally speaking, nobody likes to be
15 sued.

16 MR. COSGROVE: I think that's very true.

17 But while Casitas was a willing partner for a good bit
18 of time in working on the stipulated judgment and trying to
19 find a consensus that would deal with an allocation of both
20 water and flows for species and measures for species, the
21 question arose as to whether that momentum could be pursued
22 without necessarily having a hammer and the costs of this
23 litigation as the vehicle to serve as the catalyst for it.

24 And that had enough of an impetus with the
25 constituencies and among my board.

26 THE COURT: That did or didn't do what? You made a
27 reference to impetus. Just restate your point.

28 MR. COSGROVE: That was the impetus for the board's

1 direction and a press release they issued to withdraw from the
2 negotiations in the context of the stipulated judgment to see
3 if a similar local consensus and local solution could be
4 crafted but without the context of the litigation and its cost
5 and legal consequences.

6 So that has been probed. We are continuing to probe
7 that.

8 We have requested and initiated conversations with the
9 water professionals at Casitas and at Ventura hoping that we
10 can define with the water professionals areas of common
11 ground, areas of difference.

12 To the extent that those serve as a springboard for
13 political discussion, at least the water professionals will be
14 of one mind about where there's commonality of interest and
15 where we are opposed to each other.

16 So that's the tack we're trying to take right now.

17 THE COURT: So at the risk of asking an ignorant
18 question as one who hasn't managed water litigation before
19 this case, are there practical ways to accomplish the
20 underlying purposes of the non-profit plaintiff and/or the
21 State Fish and Game by hashing out a deal with the major
22 consumptive users that practically speaking leaves enough
23 water in the stream without tying down every last theoretical
24 claimant to the same water, because if you solve how
25 90 percent of the water is used you've sort of solved it all?

26 Or is that rarely, if ever, a model to resolve these
27 disputes?

28 MR. COSGROVE: I think we're dancing a little

1 dangerously on the edge of settlement discussions.

2 But to answer the question, I believe at some point
3 that's going to have to be addressed, either within the
4 context of the litigation or without, because that seems to be
5 the logical way that the physical solution is going to have to
6 emerge.

7 I mean, obviously the major players --

8 THE COURT: Major players use a lot of the water, and
9 you have to get them to do something. And somebody who has
10 taken one-eighth of an acre-foot/year two years out of four
11 isn't really a player in whether that deal works.

12 MR. COSGROVE: I agree with that characterization, your
13 Honor.

14 MR. HAGERTY: Your Honor, if I may, I can jump in
15 because it's a good segue to what really is our main request
16 of you today from the City and then the consumptive users
17 group that remains and is working on the stipulated judgment,
18 the physical solution.

19 We are very close to having something ready that we
20 will share with all the parties. We're not there yet, but
21 that's why we're asking for a further status conference.

22 We would hope it could be in early August.

23 THE COURT: Counsel on the phone, you're requested to
24 mute unless you're actually talking, which is not occurring
25 now. We're getting feedback which would be resolved if
26 everybody on the phone used mute.

27 So please collectively all put yourself in a mute mode.

28 MR. HAGERTY: Thank you, your Honor.

1 We would like to come back in August. At that point in
2 time, after meeting and conferring with the parties, our goal
3 would be to have a very specific schedule to lay out for you.

4 Yes, your Honor.

5 THE COURT: I repeat my point that we need those of you
6 on the phone to put yourselves on mute. We're getting a
7 feedback.

8 I think it's Mr. Hagerty's own words emanating on your
9 speaker being picked up by your microphone coming back as a
10 negative kind of feedback.

11 MR. HAGERTY: Sorry, your Honor. Thank you.

12 THE COURT: Not your fault. It may be your voice, but
13 it's not your fault.

14 MR. HAGERTY: The request is, then, we would come to
15 you and to all the parties with a very specific schedule by
16 which we would present a physical solution similar to the
17 concepts that you've discussed.

18 We would lay out a process by which people could have
19 access to that physical solution to assess whether they can
20 agree or if they want to disagree on it. It would be a
21 process by which people, if need be, subject to taking of the
22 stay off would conduct some discovery.

23 Ultimately our goal would be to present to the Court a
24 solution along the line that you discussed with Mr. Cosgrove.

25 We've talked to you before about we're in this process
26 right now because the Court has both the power and the duty to
27 consider this physical solution. And we believe it is
28 absolutely the right way to go to put in place a long-term

1 enforceable process that is going to address the conditions of
2 the steelhead in the Ventura watershed as well as the needs of
3 all the consumptive users.

4 That is what we're working on. We're very close to
5 having something ready.

6 Our request today is to set that further status
7 conference, and at that time we will come to you with a very
8 specific process to lay out.

9 Mr. Melnick and Mr. Krasner and others have said, well,
10 we need to understand what that process is. And, of course,
11 we will engage in the meet and confer process.

12 We won't come to you and sort of surprise everybody
13 with it.

14 We have a bit of dispute about how long that meet and
15 confer needs to be. It may depend upon exactly when the Court
16 sets the further status conference.

17 Mr. Melnick and Mr. Krasner were asking for four weeks
18 of the meet and confer process. We think three weeks is a
19 more appropriate process.

20 But that's what we're here primarily to accomplish,
21 your Honor, is that we're hopeful that working with Casitas,
22 working with the group that's already part of this process and
23 ultimately all the other parties, we will eventually present
24 something that the majority of people will hopefully agree to.

25 And we will present it to the Court and ask the Court
26 ultimately to consider it under its constitutional duties and
27 we hope grant the request to impose the solution.

28 THE COURT: If this requires you to show your hand

1 prematurely, feel free to say I'd rather not.

2 But, again, as a question showing my naivete, is it
3 likely the anticipated solution will lead to a judgment that
4 current riparian users who do not take and current owners of
5 land on top of the groundwater basin who do not take will as a
6 consequence of your anticipated settlement be forever barred
7 from even de minimis future takes?

8 MR. HAGERTY: I can answer that very generally.

9 It does, obviously, get into some detail.

10 Just in concept the law allows for de minimus
11 categories. So almost certainly there will be a de minimis
12 category that will not be specifically impacted by the
13 judgment. They will be subject to the judgment because that's
14 the whole purpose of the exercise.

15 THE COURT: Does that mean I can dig a well in five
16 years and fill a swimming pool once a year? Is that de
17 minimis?

18 MR. HAGERTY: It will be somewhere likely between two
19 acre-feet/year and five acre-feet/year. That's what the law
20 sets out. There are two separate bases for those numbers, but
21 that's what the law sets out.

22 THE COURT: Whether I do it by well or by sucking off
23 of the --

24 MR. HAGERTY: Most likely, your Honor, it will focus on
25 the wells. That's really the most use.

26 And then obviously to take water from the stream
27 itself, you have to go through a process with the state. So
28 that already exists.

1 THE COURT: If you want to make a new take?

2 MR. HAGERTY: Correct. The taking of water, yeah.

3 THE COURT: But not a well.

4 I can dig a well any day of the week right now.

5 MR. HAGERTY: You can go through the process. There's
6 a County process. You need to get permits. There are other
7 issues that need to be addressed. So it's not like you can
8 just go out and do it on your own, but it certainly --
9 currently it's an easier process than other processes.

10 But, your Honor, I mean, it's hard to talk about it,
11 because, again, I don't want to get into too much detail, but
12 the whole concept is a fully managed system.

13 It may not be completely laid out immediately.

14 We're going to ask the Court to have continuing
15 jurisdiction because that's how these things work.

16 THE COURT: To my understanding this is like a life's
17 work for my successors.

18 MR. HAGERTY: Yes, and my successors and Mr. Cosgrove's
19 successors and everyone's successors.

20 MR. COSGROVE: No. I still plan on being here.

21 MR. HAGERTY: This will be a long-term process. This
22 is how these things work.

23 We will commit to some immediate actions, as we've done
24 already, to address the issues. Then there will be longer
25 term processes that are proposed.

26 That's what we --

27 MR. SLATER: Your Honor, if I might.

28 THE COURT: Who is this?

1 MR. SLATER: This is Scott Slater for Taylor Ranch,
2 which is placed in trust.

3 I would like to represent to your Honor that I am a
4 general counsel to a water master who has been in operation
5 since 1978 and manages the Chino Basin in the Inland Empire.

6 I can represent to your Honor there is a common,
7 customary practice in adjudications to identify minimal
8 producers, as Mr. Hagerty has represented, and that for
9 context, your Honor, whether it is groundwater or surface
10 water, a minimal producer which is using less than five
11 acre-feet is more water than any urban user in virtually most
12 parts of Southern California would ever use.

13 A typical family uses about one and a half to two
14 acre-feet on a full acre of fully irrigated land. So
15 consequently what Mr. Hagerty is suggesting and is pertinent
16 to your inquiry is that there will be a class of people who
17 are informed and have the benefit but virtually no burden from
18 the Court's administration of the decree.

19 And if things change in the future, there will be a
20 process that the Court maintains and supervises under its
21 continuing jurisdiction to enable them, under the change in
22 circumstances, to make the case for whatever it is they want
23 to do.

24 And the last point I would add, which is also part of
25 the Court's inquiry, is are we going to -- is the Court and
26 the judge going to be involved in the minutia of all of the
27 water rights down to intricate detail.

28 And without invading the settlement privilege, I would

1 say custom and practice would be we sure don't want you to
2 have to do that if we can settle the matter at a higher level.

3 THE COURT: Thank you, Mr. Slater.

4 Back to you, Mr. Hagerty.

5 MR. HAGERTY: The only other thing I guess on this
6 point, as far as our fundamental request today, is to set the
7 further status conference.

8 Casitas has raised two issues that were not part of our
9 immediate request. One is related to initial disclosures.
10 And then the other one is to adjust the outside date to
11 respond, which is currently September 8th.

12 We've had discussions with Mr. Cosgrove. We're open to
13 talking about those issues. We think likely some or both of
14 those dates may need to be adjusted.

15 We thought a better approach than scattershoting it
16 would be to come back at the August status conference and
17 include those issues as part of a more comprehensive approach.
18 So that's what we are proposing.

19 THE COURT: So far so good.

20 Let me ask this follow-up question of you as the City's
21 representative, Mr. Hagerty.

22 You're trying to bring before the Court 1,358 riparian
23 owners and some certain number, much larger, of owners of
24 parcels overlaying the groundwater. It looks like it's
25 something on the order of 12,766.

26 Does the law contemplate that you can get the judgment
27 you want if you serve most but not all of them in the sense of
28 getting jurisdiction by having an answer filed or a default

1 taken, or do you theoretically have to have zero defect?

2 MR. HAGERTY: Your Honor, we had some discussion back
3 in February on this point. What I think is the agreement is
4 there are two processes.

5 There is the notice process under the statute. And we
6 are going to complete that process. Does that mean every
7 person is absolutely going to get notice and we're going to be
8 able to document that? No. Are we required to do that? No.

9 We're going to show you that we met the requirements of
10 the statute.

11 Just for the Court's benefit --

12 THE COURT: Remind me, do you believe at that point in
13 rem jurisdiction will attach and that's all you really need?

14 MR. HAGERTY: That's correct, your Honor. And that's
15 specific as to the four basins. That deals with the overlying
16 owners of property that sit on top of the four basins.

17 And then the riparians are different because that is
18 not specifically subject to the statutory scheme.

19 THE COURT: You don't get in rem.

20 MR. HAGERTY: We don't get in rem. We get personal
21 service.

22 THE COURT: So it's as good as everyone you serve. So
23 if you miss somebody without defaulting them, you have a
24 little gap.

25 MR. HAGERTY: Yes. We'd have to deal with that person
26 later.

27 THE COURT: Now, that brings up another point while
28 we're talking about this quasi zero defect challenge.

1 As to riparians, you're theoretically in a zero defect
2 model. At least your client would like you to get there. So
3 that's the modest task of getting 1,358 all before the Court
4 as well as all the listed owners, right?

5 MR. HAGERTY: We've done most of that.

6 We have about 500 more and we're going to engage in a
7 process to do that. We're confident we'll complete that
8 process.

9 THE COURT: Staying with that specific process, if you
10 can't get them to cooperatively sign your U.S. Mail return
11 receipt requested first offer for the riparians, you just go
12 out and do sub service, right?

13 MR. HAGERTY: That's right.

14 THE COURT: And if somebody owns a parcel but doesn't
15 live on the parcel -- say by way of example it's agricultural
16 land with no shelter or commercial property not intended for
17 human shelter -- you may find that the address of record for
18 that landowner is somewhere else. Maybe it's somebody living
19 on the beach in Santa Barbara or Cote d'Azur, France, for all
20 we know. But that's where the registered owner lives,
21 correct?

22 MR. HAGERTY: Correct.

23 If we're speaking specifically as to the notice issue,
24 then that's why we have --

25 THE COURT: I'm talking about the service of summons
26 and complaint on the riparian cross-defendants.

27 MR. HAGERTY: Okay. I think we've had one party we've
28 identified that lives in Switzerland.

1 THE COURT: Well, then you may have to do the Hague
2 Convention.

3 MR. HAGERTY: We will have some outliers that will take
4 some time to work through, but for the majority of the
5 situations we know where they are. They've evaded service.
6 We're going to complete the process as the law allows us to
7 complete the process.

8 THE COURT: Now, staying, again, with the named
9 riparian cross-defendants, there was reference that you might
10 want to try to serve via publication.

11 MR. HAGERTY: Ultimately if we can't complete all the
12 service in the way possible, then that might be a request we
13 make to the Court.

14 THE COURT: I just have to be honest with you. I have,
15 from time to time, had occasion to contemplate requests for
16 publication in civil cases and have from time to time approved
17 requests for publication in civil cases.

18 Fortunately we have a staff attorney who specializes in
19 reviewing requests for publication, a job I don't envy.

20 It's going to be a very picky review by that law clerk
21 and me, because it's one thing to try to just serve somebody
22 by publication who hits you in a crosswalk or got involved in
23 a bar fight or otherwise where you have maybe a name and not
24 much else, but each of these cross-defendants is presumptively
25 owner or partial owner of a fee simple in Ventura County,
26 correct?

27 MR. HAGERTY: Right. They have ownership of riparian
28 property that is in the watershed in the County.

1 THE COURT: And more than just a leasehold. It's a fee
2 simple ownership, right?

3 MR. HAGERTY: Yes. That's right.

4 THE COURT: So unless it is some postage stamp oddity
5 of land subdivision, a fee simple in Ventura County is going
6 to be worth thousands of dollars, if not tens of thousands of
7 dollars or hundreds of thousands of dollars in the ordinary
8 course.

9 MR. HAGERTY: Yes. I get where the Court is going.

10 THE COURT: And your tax assessor, which is a different
11 bureaucracy than the City, but the County tax assessor
12 maintains a role of where to send the tax bills, and I think
13 still does it by U.S. Mail, correct?

14 MR. HAGERTY: Your Honor, we've gone through all of
15 these issues and we will -- we won't come to you unless we've
16 made our absolute best effort.

17 THE COURT: I don't know whether that means the tax
18 assessor will be graced with information on what Social
19 Security number goes with a particular landowner or where they
20 bank, but they might based on how the tax payments come in
21 know where they bank.

22 MR. HAGERTY: We've had some difficulty with getting
23 some information, your Honor.

24 We don't think that that is going to be ultimately the
25 problem.

26 There will definitely be some people we won't be able
27 to serve. We'll have to make a decision about those parties.

28 THE COURT: Now, if you can validly sub serve them,

1 then you can take their default. And I don't really have to
2 judge an application for a publication. You take their
3 default, and unless they get it set aside later as being sewer
4 service, you'll get to the target you need to get to because
5 you will have them defaulted, right?

6 MR. HAGERTY: That's right. Yes, your Honor.

7 THE COURT: And you don't have to worry about
8 publishing beyond whatever the statute requires generally for
9 the unnamed owners of land over top the groundwater basin
10 because they're not named parties, and so default is not the
11 issue.

12 MR. HAGERTY: That's correct. I would like to update
13 the Court on what we will be doing.

14 So we have -- basically 75 percent of the 12,766
15 notices that went out we have completed. We got the return
16 receipts on that. So we made significant process. We have a
17 lot to go.

18 THE COURT: But now as to a quarter of --

19 MR. HAGERTY: It's about 2,500 parcels left.

20 THE COURT: So the lucky sheriff gets to go out and do
21 postings on all of them?

22 MR. HAGERTY: Well, your Honor, what we're going to do
23 and we think is permitted under the law is before we do
24 posting we'll try another round of noticing.

25 We don't think given the current condition it's
26 appropriate to have to send the sheriff out there, to do
27 whatever process to post. And so we're going to try as best
28 as possible through a couple correspondence to encourage

1 people to accept and return.

2 We're going to make that effort.

3 Then and only then will we go through the required
4 posting process, but that process we will complete.

5 THE COURT: So far so good.

6 Now, I did look at my records. It looks that through
7 your cooperation with our management and the provision of an
8 Excel spreadsheet with the party names that our records appear
9 to reflect the 1,200 plus new cross-defendants, because I've
10 seen that there is a very long list of such entries.

11 I spoke to Mr. Thrall, our court administrator in
12 charge of this building and the clerical operations of this
13 building, and he had no crises or problems that he wanted to
14 share with me, or me to share with you.

15 Do you all have any hiccups of any type
16 administratively you want to share with me that you want me to
17 take up with court management about the clerical processes of
18 keeping this case moving forward?

19 MR. HAGERTY: No, your Honor.

20 The only one we did encounter was the inability of the
21 pro per parties to use File & Serve Express, but the order
22 that you signed nunc pro tunc in March should address that.

23 In the interim any of the pro per answers that we have
24 received, which we are required to receive, we have just taken
25 it upon ourselves to get those into File & ServeXpress.

26 THE COURT: Thank you.

27 How many of the ground owners are walking forward and
28 joining the lawsuit? I saw what looked like a short list. Is

1 that the totality of people who decided to come and join the
2 fight?

3 MR. HAGERTY: Yes, your Honor.

4 There is a large number of parties that have joined,
5 but not thousands.

6 Again, it's our hope that people will -- a lot of
7 people are monitoring the action and the situation.

8 One of the reasons why we asked for the Court to give
9 us the extension to respond, and we may need to continue that
10 again, is to allow people to see where this process is going,
11 see what the proposed physical solution looks like.

12 Maybe they make a decision they don't need to
13 participate. So I believe that's why there isn't as large a
14 number of parties that have answered.

15 For many parties who get water from Casitas or get
16 water from Meiners Oaks or other service, it just may not be
17 that relevant to them, but that's obviously for them to
18 decide.

19 I do think as this process moves forward in August and
20 people start seeing the details, it would be our hope that
21 they would concur with where we're heading and may not need to
22 participate at all.

23 THE COURT: Sad but true, virtually all the new
24 cross-defendants -- excuse me. Virtually all of the owners of
25 fee simples on top of the groundwater only who wish to join
26 the exercise by filing an answer then have to pay \$435 maybe
27 even twice or three times for the honor of filing papers.

28 MR. HAGERTY: That's correct.

1 THE COURT: That will slow some people down.

2 MR. HAGERTY: Well, I mean, at least one should
3 exercise their rights as they see fit.

4 We've definitely been through the discussions with
5 attorneys who have those clients about whether they actually
6 need to be apart or whether there is a way to address their
7 concerns or demonstrate that the process that's in the
8 physical solution will be sufficiently protective of their
9 interests.

10 That's a conversation that we're willing and able to
11 have with anyone who is on the phone.

12 THE COURT: So I have another administrative question
13 to raise.

14 I noticed, you know, there are a lot of fact gathering
15 going on about how much water is being taken by the
16 cross-defendants, in particular, and presumably others who
17 wish to share this information. Your disclosure document has
18 a particular name. An initial disclosure it's called.

19 It sounds like you have a massive database you're
20 building of necessity. And you may have your own way of doing
21 it which you think is working wonderfully.

22 I would on just share the observation that in another
23 case that touches upon many of Ventura residents, my
24 coordinated proceeding involving the Woolsey Fire from the
25 fall of 2018, that the lawyers and the parties there have been
26 working with apparent satisfaction with an outside vendor
27 known as BrownGreer, named for two human beings, which creates
28 a platform that for purposes of those mass tort plaintiffs

1 allows quite a bit of data specific to each docket number and
2 then to each household and each person to be put together in a
3 coherent fashion that makes it readily available to all
4 interested parties and as circumstances warrant to the Court.

5 I have no idea -- they have a competitor or two,
6 although I think one of them went out of business. I don't
7 own stock in the business. I'm just pointing out if you need
8 a way to organize this massive pile of data, you might talk to
9 some of the people involved in the Woolsey Fire, which have
10 some overlap with present company. If not, you can find the
11 lawyers and see if they would recommend it for your needs.

12 MR. HAGERTY: Thank you, your Honor. We'll definitely
13 look at that.

14 The hope would be, again, if we go down the path we're
15 hoping to go down, we may not need to get to that, at least
16 initially. That may be a longer term effort, but thank for
17 you that information.

18 THE COURT: Now I'm going to turn to the ninth page of
19 the report that has a sequence of things to do.

20 With reference to the order after status conference
21 submitted back on March 4, do we think that that has now been
22 done since this report was generated or is that still a loose
23 end?

24 MR. HAGERTY: At least from your posting, your Honor,
25 it appeared that that was completed.

26 The indication was that was the nunc pro tunc decision
27 that the Court made, which we appreciate and thank the Court
28 for.

1 THE COURT: Okay.

2 Bullet number 2, you've got your October 1 deadline for
3 filing the proofs.

4 MR. HAGERTY: Yes, your Honor.

5 THE COURT: Bullet number 3, Channelkeeper wants a
6 hearing in August and the City doesn't want a hearing in
7 August.

8 So let me hear from Channelkeeper first, but you can
9 stay at the podium, Mr. Hagerty.

10 MR. COOPER: Thank you, your Honor. This is Daniel
11 Cooper for Channelkeeper.

12 And I think you've heard that -- let's try that. Maybe
13 that is better. I think you've heard that the City is now
14 requesting a status conference in August and that they will be
15 proposing the beginning of the physical solution negotiation
16 at that point.

17 The problem with that is August, September, October are
18 critical months where the river dries out, where the flows go
19 down. The City continues to pump at the same sustained level
20 as during other months and the river dries.

21 So it's a critical time for fish passage and for fish
22 to hang out -- trying to find cool pools to hang out in that
23 area.

24 So it's our position reasonable use will require, trust
25 would require some interim pumping restrictions in those
26 months to ensure that we don't have fish kills, continued fish
27 kills.

28 We would like to negotiate with the City on the

1 question and see if we can't figure out a minimum flow
2 standard after which the City would turn off its pumps or
3 moderate its pumping to make sure the flow can continue in the
4 river at some level, something approaching -- you know, enough
5 to maintain fish populations. Let's say that.

6 In the absence of that, we're going to need motion
7 practice because we just haven't had any serious engagement
8 with the City around this question up to now.

9 We've had a long debate over what a science day would
10 consist of and we were unable to reach an agreement. Then
11 COVID intervened, and we just have not had a meaningful
12 conversation about the interim flow standard.

13 The City has committed to continue the flow regime that
14 was the basis of our settlement, but with all due respect to
15 the City, that was negotiated in a very, very wet year, so the
16 actual flow regime that Channelkeeper agreed to is not
17 sufficient to maintain fish this year.

18 That's what we're looking for, is briefing in July for
19 a hearing in August so that we can get some sort of an order
20 from the Court on interim flows while the parties, you know,
21 receive that physical solution and begin the negotiation,
22 which in all likelihood isn't going to be anywhere near
23 completion until the next cycle, you know, '20, '21, around
24 the time as we're looking at now.

25 THE COURT: You want an interim negotiation as well as
26 a long-term negotiation, if I hear you right, Mr. Cooper?

27 MR. COOPER: That's right. We need flows this year.
28 And we need it either through negotiation or we need it

1 through a court order.

2 We just want to have a hearing date set as a backstop
3 to inform the negotiations and, if necessary, to allow us to
4 seek relief from the Court.

5 THE COURT: Which human beings negotiated the prior
6 settlement? Present company or somebody else?

7 MR. HAGERTY: Present company.

8 MR. COOPER: Myself, Mr. Hagerty and the other attorney
9 for the City.

10 THE COURT: So why don't I order you and Mr. Hagerty to
11 have a conference on this subject before the 4th of July and
12 report back to the Court as to whether you've made any
13 progress.

14 At that time I'll determine if I need to reserve on
15 hearing date.

16 MR. HAGERTY: That would be fine, your Honor.

17 MR. COOPER: That would be great, your Honor.

18 MR. HAGERTY: I'm happy to address some of the issues
19 if the Court wishes to hear from me now, but I'm happy just to
20 talk to Mr. Cooper.

21 I'm going to go in with absolute good faith and
22 hopefully we can work something out.

23 From the city's position, we have an arrangement, and
24 we're abiding we that arrangement. We're always happy to talk
25 and see if we can work something out.

26 We would certainly -- this is going to be a significant
27 motion if it does come, your Honor. So we will need to have
28 sufficient briefing time.

1 THE COURT: Off the record.

2 MR. COOPER: Your Honor, sorry to interrupt. But I'm
3 having a hard time hearing Mr. Hagerty. Someone is typing and
4 they're not on mute.

5 THE COURT: Hold on. I agree with you about that.
6 Off the record.

7 (Discussion held off the record.)

8 THE COURT: Back on the record.

9 If I understand correct, Cooper and Hagerty are
10 agreeable to be told to try to negotiate between now and the
11 4th of July and post a message as to whether you want to have
12 a hearing date set or not and post that message by July 7?

13 MR. HAGERTY: Yes, your Honor.

14 MR. COOPER: Yes, your Honor.

15 THE COURT: Okay. Is that good enough for your
16 purposes, Mr. Cooper?

17 MR. COOPER: Yes, your Honor.

18 THE COURT: I have, fortunately, good availability to
19 hear motions, conduct evidentiary hearings in July and August.

20 There have been a lot of things continued, of course,
21 due to COVID, but particularly starting the week of August 10
22 through August 21 I have oodles of availability.

23 The week of August 24 and August 31 aren't quite as
24 loose.

25 The week of September 7 I've got oodles of
26 availability.

27 Likewise, most of the week of September 14.

28 So you're not going to find yourself frozen out of

1 court, Mr. Cooper, if you don't get a hearing date reserved
2 today.

3 Now, the next bullet point has to do with just bringing
4 in a routine status conference.

5 How early, middle or late in August do you propose it
6 to be, Mr. Hagerty?

7 MR. HAGERTY: We were hoping, your Honor, for somewhere
8 in the week of August 10th or the following week.

9 It sound like the week has availability.

10 I know one counsel of our team has some conflicts
11 earlier in that week. I think it's the 14th that he would be
12 available. It's the Friday the 14th. That would work for the
13 parties, your Honor, at least our parties.

14 THE COURT: So the Court would propose to set a further
15 status conference in this case on 10:00 a.m. on Friday,
16 August 14th with a joint report due on August 7.

17 Are there any major players who find that date
18 impossible?

19 MR. MELNICK: Your Honor, this is Mark Melnick from the
20 Attorney General's Office.

21 I have another hearing on August 14th, so that doesn't
22 work for me.

23 THE COURT: You've got a lousy telephone connection. I
24 barely hear you, but I did hear you don't like the 14th.

25 Are you available the afternoon of the 14th,
26 Mr. Melnick, or not at all that day?

27 MR. MELNICK: Not at all that day, your Honor. I'm
28 sorry about that connection.

1 THE COURT: Would the players on your team be available
2 on the 13th or 12th, Mr. Hagerty?

3 MR. HAGERTY: I don't -- I would be available on the
4 13th. I think Mr. Slater is not available on the 13th.

5 So what about the following Monday, which would be the
6 17th, maybe?

7 THE COURT: I'd be glad to set that for you in the
8 afternoon.

9 Anybody object to Monday, August 17 at 1:30 p.m.?

10 Hearing no objection, the next status conference in
11 this case will be August 17 at 1:30 p.m. with a joint report
12 due on August 10.

13 I'll have City of Ventura give notice.

14 I've touched on everything that seemed to be of concern
15 to me. Are there other issues you think I ought to address
16 today, Mr. Hagerty?

17 MR. HAGERTY: Your Honor, you've covered everything
18 we've identified as an issue, so thank you very much.

19 THE COURT: Mr. Cosgrove?

20 MR. COSGROVE: Just to close the loop, we agree with
21 the City's proposal to talk about the answer deadline and the
22 initial disclosures as part of that status conference.

23 THE COURT: Fine.

24 Are there any stays or deadlines I've otherwise set
25 that need to be modified so you don't bump into some problem
26 between now and August 17?

27 MR. HAGERTY: Not at this time, your Honor.

28 THE COURT: Okay. Mr. Cooper, anything else you want

1 to take up with the Court for the plaintiffs?

2 MR. COOPER: No, your Honor. That's everything.

3 THE COURT: For the Attorney General, anything further
4 that Mr. Golden-Krasner wants to take up with the Court?

5 MR. GOLDEN-KRASNER: No, your Honor. We look forward
6 to getting whatever information we can get from Mr. Hagerty
7 about what they intend to do and how they intend to proceed
8 with all the people who haven't been served, you know, how to
9 do any kind of judgment without them even being served.

10 We look forward to hearing.

11 THE COURT: That's my zero defect concern.

12 I don't envy Mr. Hagerty the procedural challenge of
13 serving that many people, particularly the ones who really
14 have to be served that are named cross-defendants where you
15 don't have in rem.

16 Mr. Melnick, anything else you want to take up with the
17 Court?

18 MR. MELNICK: No, thank you, your Honor.

19 THE COURT: Mr. Cosgrove?

20 MR. COSGROVE: No, thank you.

21 THE COURT: Anybody else on the phone call today who
22 hasn't yet talked who wishes to be heard? Speak up, give me
23 your name and present your issue.

24 Hearing nothing, the Court is in recess.

25 And you'll give notice, Mr. Hagerty.

26 MR. HAGERTY: Yes, your Honor.

27 THE COURT: Safe driving.

28 (End of proceedings.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT SSC 10

HON. WILLIAM F. HIGHBERGER, JUDGE

4
5 SANTA BARBARA CHANNELKEEPER, a)
California non-profit corporation,)

6)
Petitioner,)

7 vs.)

) SUPERIOR COURT
) CASE NO. 19STCP01176

8)
9 STATE WATER RESOURCES CONTROL)
BOARD, etc. et al.,)

10 Respondents.)
11 _____)

12
13 I, DAVID A. SALYER, Official Pro Tem Reporter of the
14 Superior Court of the State of California, for the County of
15 Los Angeles, do hereby certify that the foregoing pages, 1
16 through 28, inclusive, comprise a true and correct transcript
17 of the proceedings taken in the above-entitled matter reported
18 by me on June 24, 2020.

19 DATED June 25, 2020.

20
21
22
23 _____
24 DAVID A. SALYER, CSR, RMR, CRR
25 Official Pro Tem Court Reporter
26 CSR No. 4410
27
28