

1 The Loa E. Bliss 2006 Revocable Trust (the “Trust”) brings this Ex Parte Motion
2 for Extension of Time and Disclosure of Experts and Motion for Extension of Time
3 to ensure fairness of process in litigating the contested question of whether the
4 Upper Ojai basin should be adjudicated under the provisions of Code of Civil
5 Procedure Section 830 *et seq.* or otherwise managed or interfered with under any
6 other claim of right by the City of San Buenaventura (the “City”).

7 The sole interest of the Trust is that findings of fact relative to water be based on
8 solid science and facts, and not mere speculation, wishful thinking, conjecture, or
9 skewed analysis to support a particular end. Experts put forth by interested parties,
10 *e.g.*, the City, need to have their findings and conclusions tested and peer-reviewed
11 as any serious scientific paper would be. Peer review should be by multiple
12 reviewers as available, and the review may focus on particular portions of a report
13 that may be subject to dispute or concern. This needs to be a scientific endeavor.

14 The findings and conclusions must be completely neutral and highly accurate,
15 because once “on the books” errors are nigh impossible to remove (any proposed
16 adjustments would be subject to *res judicata* defenses). This is one reason the Trust
17 has long advocated that any expert be one who knows and can focus on the basin in
18 question. Because the Proposed Physical Solution, if adopted, will continue for
19 decades, it is essential that the science and geology be exactly right in the first
20 instance. The legal significance of the science and fact can be meaningfully and
21 fully debated only if all relevant science and fact are presented.

22 This is not a ploy, a tactical gambit, or an attempt at delay by the Trust for no valid
23 reason.

24 The Trust filed the above motions because, although it could identify experts, it
25 could not provide reports by the Court established deadline of October 22, 2021
26 contemplated for minor players. That deadline was set at the July 23, 2021 Status
27 Conference after an exchange with other counsel, where the Court stated: “The
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1 ruling of today can indicate that the Court has not yet fully defined the parameters
2 of the October 24 [later corrected to October 22] but the obligation of September 24
3 is to comply with 843(b) unless the Court hereafter, for good cause shown,
4 modifies that obligation.” (Transcript pp. 18-19). As we have unfortunately come
5 to expect, the City’s rendering of the Court’s ruling skewed the facts in the City’s
6 favor by failing to include the Court’s full comments. In truth, the above-referenced
7 transcript clearly demonstrates that the Court reserved for itself the routine right to
8 modify submittal deadlines.

9 However, the Trust has sought in the first instance to comply with the October 22,
10 2021 date and but requests here that the standard “for good cause shown” be
11 applied by the Court at present to motions for extension of the October 22, 2021
12 date.

13 The Trust’s reasons were set out in the two motions here at issue. In short, it
14 appears at long last it may be possible, with others, to hire an expert and engage an
15 attorney to represent the interests of the Trust, and others similarly situated,
16 concerning the status of the Upper Ojai basin.

17 The City opposes the grant of an extension. As best the Trust can discern, this is
18 because—

19 --the City does not want its own expert reports (or those of any aligned
20 parties) to be potentially challenged in any way, *i.e.*, extra reports are allegedly
21 unnecessary,

22 --the City does not want to be inconvenienced (notwithstanding the fact that
23 the City is relentlessly inconveniencing others),

24 --the City objects to potentially extra expense in conducting depositions, etc.
25 (notwithstanding such would certainly have been anticipated from the very
26 beginning of this multimillion-dollar litigation. And, ironically, but coincidentally
27 revealing the City’s real intent, the cost of such depositions would no doubt be
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1 dwarfed by the cost of the City’ opposition to the motions of the Trust and Casitas.
2 What the City actually seeks is to deny expert reports from the Trust and others in
3 order to provide the City with a free pass to impose its untested narrative), and

4 --the City needs to include the Upper Ojai basin in its effort to “adjudicate”
5 the entire “watershed,” via its Proposed Physical Solution (notwithstanding, the
6 Trust contends, that the Upper Ojai ought not to be part thereof).

7 These concerns of the City pale in comparison to the harm done to the Trust,
8 overlying and riparian landowners, and the integrity of the process.

9 The controlling statute is Code of Civil Procedure Section 843—as already held by
10 the Court—and in particular Section 843 (d), which provides that expert disclosures
11 be made “... at the times and in the sequence as ordered by the Court.” The Trust
12 asks for an extension for good cause shown, as previously stated in the motions and
13 for the following additional reasons.

14 The Trust Exercised Due Diligence in its Effort to Retain Experts

15 The Trust first became a party to this action on October 20, 2020. In a letter to the
16 City dated November 5, 2020, the Trust first raised the point—among many others-
17 - that the Upper Ojai basin was a stand-alone basin, and the City had no claim to
18 groundwater. The letter was discussed at the November 16, 2020 Status
19 Conference, including the following, from the Trust’s letter: The Upper Ojai “...is
20 a collection of individuals with no entity of any sort that is representative of their
21 interests, such as a water district, city, or town. To this end the City should identify
22 for the record owners in the Upper Ojai, as well as parcels by location over the
23 basin, affected by this lawsuit so that persons with common interests can
24 communicate.” For the Trust, two items of note, among others, derived from that
25 Status Conference:

- 26 1) a “meet and confer” would be scheduled by the City to address
27 “connectivity”, and
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1 2) The State Water Resources Control Board would be issuing a study the
2 following year to address the relationship of groundwater to surface water
3 flows.

4 A “meet and confer” was held in December 2020, where it became clear at that
5 point that the City and the Trust would agree to disagree. The hydrology
6 presented was cut short by the City.

7 To effectively resist the City’s claims, the Trust determined that it would be
8 advisable to have the services of a water law attorney and an expert in
9 hydrogeology.

10 Through a contact at a major national firm and following leads, the Trust
11 identified seven attorneys familiar with California water law. Two were already
12 engaged on the other side of the fence, one was too busy, one conflicted out, one
13 was unresponsive, one was already engaged and unlikely to take on another
14 client, and one was identifiably too expensive (exorbitantly so) and most likely
15 comparable to the others had they been available.

16 Through its own research, the Trust identified a scholarly work specifically
17 concerning the Ojai basins and contacted the chair of the geology department at
18 a major California university. This contact was familiar with the basins and, as
19 advisor to the scholar, familiar with the Ojai basins work. Through conversation,
20 he recommended a hydrologist, whom the Trust contacted, and with whom the
21 Trust had several conversations, as well as email exchanges. Pricing was
22 discussed.

23 It was clear the Trust could not reasonably cover either (or both) the cost of the
24 expert or any attorney, if one could be found, for representation throughout the
25 case.

26 Although the family of one of the Trust’s trustees (Loa Bliss’ family) has been
27 continuously present in the Upper Ojai since the early 1870s, the trustees have
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1 only recently relocated permanently to the Upper Ojai. They contacted the few
2 others they knew with property in the Upper Ojai, without success because of
3 the complexity of the matter and, presumably, its costs.

4 Therefore, the Trust was forced to a second plan. The Trust believed, in the
5 absence of its own expert report, it might be possible to identify gaps and even
6 weaknesses or flaws in any City expert report by referring to existing
7 hydrogeology done in Upper Ojai or the “watershed” while waiting for the
8 SWRCB study, and possibly to expand on or explain any such report.

9 On June 25, 2021, the City distributed a “List of Documents Supporting
10 Interconnectivity Submitted at the Request of the Court”. The list consisted of
11 34 documents. The Trust read and/or reviewed every one of these documents for
12 information on the Upper Ojai basin, Lion Creek, or both. Information on the
13 Upper Ojai in the City’s documents was sparse to non-existent and clearly
14 grossly inadequate to repel or shed any light on a contradictory, expert, scientific
15 report on the Upper Ojai, which report, of course had not been received at the
16 time. However, it is clear also that any references would not substitute for an
17 expert report concerning the Upper Ojai. Meanwhile, the City’s failure to
18 identify any serious study of the Upper Ojai basin speaks volumes.

19 The study being developed by SWRCB had not been completed by the date of
20 the August 16, 2021 Status Conference. The Trust had been awaiting this report,
21 since Bulletin 118 was the main source of description of the Upper Ojai basin at
22 the time. At this Status Conference the following exchange took place:

23 Court to Mr. Marc Melnick (Transcript page 22)—

24 THE COURT: SO YOU THINK SOME DRAFT DOES EXIST AT
25 THE MOMENT SO RELEASE IN A COUPLE OF WEEKS IS NOW A
26 VIABLE PROCESS?

27 MR. MELNICK: YES.
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THE COURT: GOOD. OKAY

WELL, THAT’S A HUGELY IMPORTANT PART OF THE PUZZLE, IS IT NOT, MR. HAGERTY?

MR. HAGERTY: YES, YOUR HONOR. IT’S A VITAL PIECE.

The study in draft form was released on September 24, 2021 to all parties according to schedule. Such an admittedly vital piece of evidence should be subject to review by parties’ experts. It is a voluminous report with 82 pages of maps and graphs. The Trust had but 28 days to attempt to have any expert review this vital piece of evidence.

It is important for the Court to have a sense of context for the Upper Ojai valley, an unincorporated area. The number of parcels within the boundaries of the basin – *before a final disposition of what the actual boundaries are, and therefore possibly overcounted* –is 404. This is according to the parcel list by basin on the City’s adjudication website. Some owners have multiple parcels, and other parcels may have multiple dwellings. The City, in response to the Court’s request, stated in the report of the March 15, 2021 Status Conference that the City would post names and assessor parcel numbers of holders of fee title to real property overlying the basins. This may have been done, but the posting was impossible to navigate. In mid-August 2021, the City, by basin map, identified parties who had appeared in this action. The Trust thereafter identified 16 parties (including the Trust) who had appeared, and by cross- referencing to File and Serve Express, found four that had attorneys. By November 8, 2021, 27 parties (including the previous 16) were listed as having appeared. It is unknown whether this is a matter of posting or of new interest. In any event, identification of these parties was too late in the game to be useful.

Conclusion

It is critical that the Upper Ojai basin is designated low priority under SGMA, is

1 not required to have a GSP (Groundwater Sustainability Plan), is stable (not
2 over drafted) and has surface water stream that is seasonal only and is dry for
3 many months. (Note: approximately 1.75 inches of rain fell on October 25-26,
4 2021 in the Upper Ojai but Lion Creek was dry two days later!) Yet, the City
5 wants to include this basin in its grand scheme to cover the entire “watershed” in
6 a management structure that oversees pumping and assesses costs to aid the
7 fishery, regardless of material connection to the fishery.

8 The Court and parties have been flooded with briefs and theories, opposing
9 takes on water law, common law, SGMA, and the Public Trust. And it is still
10 unclear as of this brief, what issues will be tried first in Phase 1.

11 The Trust fully expects that an Upper Ojai report, consistent with and
12 supplementing those of the City of Ojai and the East End group, will factually
13 demonstrate that the Upper Ojai ought not be any part of the adjudication.

14 The City’s opposition to the Trust’s request for a modest extension of time to
15 file a report on the Upper Ojai basin is just one more example of the City’s
16 repeated efforts to bulldoze individual parties who disagree but do not have a
17 taxpayer base or other means to support the expenditure of millions of dollars in
18 this matter. Instead of accommodating such individual parties, inviting the
19 addition of critical scientific facts and fostering collaboration, the City has
20 disingenuously moved to thwart such efforts. It is no wonder that these actions
21 by the City, and its abuse of the legal system in doing so, have left so many
22 cross-defendants incensed.

23 Absent an extension to file a report and the ability to disengage itself from the
24 City’s plans, the Trust and all similarly situated parties in the Upper Ojai will be
25 left at the mercy of the City and its cohorts. The result would be a regimen that
26 subjects the Upper Ojai to the whims of the City, assessments and rules without
27 representation from the Upper Ojai, is fundamentally unfair and, yes, potentially
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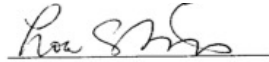
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leaves the Upper Ojai high and dry.

That said, the Trust reiterates the fundamental argument of this brief: **ANY ANALYSIS, FACTUAL FINDINGS, AND LEGAL CONCLUSIONS BEGIN WITH AN UNDERSTANDING OF THE BASINS.** And, that understanding begins with a robust review of expert opinions on the hydrogeology of each basin, and any factors affecting the operation of its groundwater.

Accordingly, the Trust respectfully requests the Court to grant the Trust’s application for an extension of time for the purpose of engaging expert opinion on the hydrogeology of the Upper Ojai basin and producing a supplemental report.

Dated: November 10, 2021

By: 
LOA E. BLISS


DAVID A. GILBERT

Trustees,
The Loa E. Bliss 2006 Revocable Trust