



JENNIFER T. BUCKMAN, State Bar No. 179143
HOLLY J. JACOBSON, State Bar No. 281839
BARTKIEWICZ, KRONICK & SHANAHAN
A PROFESSIONAL CORPORATION
1011 Twenty-Second Street
Sacramento, California 95816-4907
Telephone: (916) 446-4254
Facsimile: (916) 446-4018
E-Mail: jtb@bkslawfirm.com
hjj@bkslawfirm.com

Attorneys for Cross-Defendants City of Ojai

Exempt from Filing Fees
Gov. Code, § 6103

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SANTA BARBARA CHANNELKEEPER,
a California non-profit corporation,

Petitioner,

v.

STATE WATER RESOURCES CONTROL
BOARD, a California State Agency;
CITY OF SAN BUENA VENTURA, a
California municipal corporation, incorrectly
named as CITY OF BUENA VENTURA,

Respondents.

Case No. 19STCP01176

Judge: Honorable William F. Highberger

**LEGAL BRIEF REGARDING SCOPE OF
ISSUES FOR RESOLUTION IN PHASE 1**

Date:

Time:

Dept: 10

**310 North Spring Street
Los Angeles, CA 90012**

Action Filed: September 19, 2014

First Amended Complaint Filed:
September 7, 2018

CITY OF SAN BUENA VENTURA, a
California municipal corporation,

Cross-Complainant,

v.

DUNCAN ABBOTT;
AGR BREEDING, INC; et al.

1 **I. INTRODUCTION**

2 At the October 18, 2021 Status Conference, this Court asked the parties to submit a legal
3 brief summarizing: (1) what issues of fact and law should be a part of the Phase one trial, (2) the
4 significance of the interconnectivity of surface water sources and the groundwater basins, and
5 (3) the proposed sequence of trial of the issues.

6 The City of Ojai sets forth its understanding of the salient questions and facts, and the
7 supporting law, in Section II, below. Section III addresses Ojai's response to the proposed
8 sequence of trial of the issues.

9 **II. PERTINENT ISSUES OF LAW AND FACT, INCLUDING**
10 **INTERCONNECTIVITY**

11 **1. Can the Court Combine Four Separate Groundwater Basins and Adjudicate**
12 **Them All at Once?**

13 **No.**

14 For as long as California has had groundwater law, the rights to extract water have been
15 defined with reference to the relevant groundwater basin. Thus, the starting point for a
16 groundwater adjudication is always the identification of the groundwater basin that will be
17 adjudicated.

18 Dating back to *Katz v. Walkinshaw*, (1903) 141 Cal. 116, 135, the California Supreme
19 Court has recognized the need for groundwater adjudications to resolve "disputes between
20 persons or corporations claiming rights to take such waters from the same strata or source for
21 use. . . ." *Katz* and its progeny, including *Newport v. Temescal W. Co.* (1906) 149 Cal. 535, *Burr*
22 *v. Maclay etc. Water Co.* (1908) 154 Cal. 428, and other cases, established that the respective
23 rights of each owner of land overlying the same general supply of water of percolating
24 groundwater are reciprocal and correlative as to each other. (*San Bernardino v. Riverside* (1921)
25 186 Cal. 7, 15 (1921).) Thus, the starting point for every groundwater adjudication is necessarily
26 the determination of the boundaries of the basin. Because the overlying rights are correlative for
27 all landowners *within one groundwater supply source*, the scope of the basin defines who is a
28 proper party to the case.

1 For the same reason, basins cannot be combined into one adjudication. The rights of the
2 overlying owners are correlative to those of other overlying owners *from the same groundwater*
3 *source*, which both the caselaw and the statutes define as the groundwater basin. "Disputes
4 between overlying landowners, . . . to which they have an equal right, in cases where the supply
5 is insufficient for all, are to be settled by giving to each a fair and just proportion." (*Katz*, 141
6 Cal. at 136.) A court cannot combine multiple groundwater basins and then purport to determine
7 the correlative rights of pumpers in one basin to other pumpers in other basins; this concept is
8 fundamentally at odds with the well-established correlative rights doctrine. Furthermore, to the
9 extent there is surplus groundwater available in a basin, it may be pumped and used on non-
10 overlying properties, but the rule of prior appropriation applies and the "first taker who with
11 diligence puts the water in use will have the better right." (*Katz*, 141 Cal. at 135-36.) But the
12 starting point for determining whether appropriative rights can be exercised depends on the
13 amount of water available *in that particular groundwater basin*. These appropriative rights,
14 obviously, cannot be determined with reference to multiple basins; appropriative groundwater
15 rights, just like overlying groundwater rights, are all derived from and tied to the basin that serves
16 as their source.

17 Because groundwater rights are correlative amongst the overlying users of a basin, and
18 because appropriative rights to pump groundwater depend on the availability of surplus supplies
19 *in that basin*, multiple basins cannot be combined into one adjudication. The purpose of a
20 groundwater adjudication is to define the rights of the water users in that basin *relative to each*
21 *other*. One groundwater user cannot secure a judgment against another groundwater user unless
22 the latter is using an excessive portion of the waters of the basin, resulting in actual damage to
23 the plaintiff. (*Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 555, citing *Katz v.*
24 *Walkinshaw*, 141 Cal. 116.) The standard for obtaining judicial relief cannot be met when
25 multiple groundwater basins are combined, because the priority of water uses over multiple
26 basins cannot be established; the court cannot impose limitations on multiple rights across
27 multiple basins.

28

1 **2. Is the Ojai Groundwater Basin Separate from the Upper Ojai Groundwater**
2 **Basin, the Lower Ventura River Groundwater Basin, and the Upper Ventura**
3 **River Groundwater Basin?**

4 **Yes.**

5 The formation of a groundwater basin is largely a function of geology. Generally
6 speaking, a groundwater basin is an area of land bounded by geological features (such as granite
7 or impermeable clay layers) which allow large quantities of rainfall and stream flows to percolate
8 into and be stored underground, such that water within the basin can be extracted by wells or
9 other means. (*See, e.g., Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, 79.) Due to the
10 geography of California, particularly the mountain ranges that stretch for hundreds of miles, a
11 basin can be so very large that treating it as one as legal unit would be impractical. As a matter
12 of convenience, then, some geologic basins have been divided up into *smaller*, legal groundwater
13 basins for ease of administration.

14 For example, in 2014's Sustainable Groundwater Management Act ("SGMA"), when the
15 Legislature set up a comprehensive system to manage groundwater levels and adjudicate
16 groundwater rights, it specifically included provisions: (1) adopting the defined groundwater
17 basin boundaries established in Bulletin 118 (Water Code § 10722), and (2) establishing a process
18 for modifying these basin boundaries based on, among other things, scientific criteria or political
19 arrangements or agreements. (Water Code, § 10722.2.) Thus, Bulletin 118, the California
20 Department of Water Resources' "official publication on the occurrence and nature of
21 groundwater in California,"¹ defines the recognized boundaries of all the groundwater basins in
22 the state. (*See* Water Code §10721(c).) Bulletin 118 also provides information regarding the
23 water supply conditions in those groundwater basins, including critical conditions of overdraft,
24 and basin priority. Under Bulletin 118, the Department of Water Resources has determined that
25 the Ojai Basin, the Upper Ojai Basin, the Lower Ventura River Basin, and the Upper Ventura
26 River Basin constitute four separate groundwater basins.²

27 ¹ <https://water.ca.gov/programs/groundwater-management/bulletin-118>

28 ² As part of the review process, basin boundary modification requests were required
shortly after SGMA's implementation. (*See* Wat. Code, § 10722.2(b).) An initial round of
{00258683.3}

1 Because Ventura has pled its Third Amended Cross-Complaint under the comprehensive
2 groundwater adjudication statute, Code of Civil Procedure sections 830, et seq., it cannot
3 combine the adjudication of four separate Bulletin 118-defined groundwater basins into one. An
4 adjudication brought under this statutory framework is confined to a singular groundwater basin.
5 (See Code Civ. Proc., § 832(c) (defining "comprehensive adjudication" as "an action filed in
6 superior court to comprehensively determine rights to extract groundwater in *a basin*" (emphasis
7 added); Code Civ. Proc, § 830(b)(5) (court will make "comprehensive determinations of all rights
8 and priorities to groundwater in *a basin*")(emphasis added); see also Code Civ. Proc., § 847(a)
9 (defining injunctive relief that can be imposed on "the basin" being adjudicated).)

10 The boundaries of the groundwater basins that can be adjudicated under this statutory
11 framework are established by Bulletin 118. Code of Civil Procedure section 832(a) defines basin
12 to have "the same meaning as defined in Section 10721 of the Water Code," which states, in
13 relevant part:

- 14 (b) "Basin" means a groundwater basin or subbasin identified and defined in
15 Bulletin 118...
- 16 (c) "Bulletin 118" means the department's report entitled "California's
17 Groundwater: Bulletin 118" updated in 2003, as it may be subsequently
18 updated or revised in accordance with Section 12924.

18 It is undisputed that Bulletin 118 identifies the Ojai Basin, the Upper Ojai Basin, the
19 Lower Ventura River Basin, and the Upper Ventura River Basin as *four separate groundwater*
20 *basins*. Consequently, the statutory framework does not permit these four basins to be combined
21 into one adjudication. "When a statute conferring jurisdiction specifies the procedure to be
22 followed, the procedural requirements are themselves jurisdictional." (*Franczak v. Liberty Mut.*
23 *Ins. Co.*, (1977) 19 Cal.3d 481, 489.) Thus, if a court acts beyond the statutorily defined

24 _____
25 modifications occurred in 2016, which were adopted in the 2016 Bulletin 118 Interim Update.
26 However, DWR released the Final 2018 Basin Boundary Modifications on February 11, 2019,
27 which were developed after an extensive technical review of the basin boundary modification
28 requests and consideration of public comment. See Department of Water Resources, Basin Boundary
Modifications, available at <https://water.ca.gov/Programs/Groundwater-Management/Basin-Boundary-Modifications>. During the modification proceedings, Ventura did not make any claim to combine the four basins it now asks the court to join.

1 procedure, it exceeds its jurisdiction. (*Safer v. Superior Court* (1975) 15 Cal.3d 230, 242 (citing
2 *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 290).)

3 The comprehensive groundwater adjudication statutory framework (Code of Civil
4 Procedures §§ 832 et seq.) authorizes the superior court to determine the rights of parties to
5 extract groundwater from a single basin. This statute incorporates provisions of the Sustainable
6 Groundwater Management Act. The plain text of these statutes and the undisputed findings of
7 Bulletin 118 confirm that Ventura's attempt to adjudicate the groundwater rights of four separate
8 basins in one proceeding violates the statutory framework.

9 **3. Has Any Case Authorized Combining Multiple Bulletin 118-Defined**
10 **Groundwater Basins into One Statutory Adjudication?**

11 **No.**

12 *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224 ("Mojave"), *City of*
13 *Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, and *Antelope Valley Groundwater Cases*
14 (2021) 63 Cal. App. 5th 17, are all distinguishable because *none* of these cases was brought under
15 the comprehensive groundwater adjudication statutes that Ventura has invoked in this case.
16 Thus, none of these cases interpreted or applied Code of Civil Procedure sections 830, et seq. –
17 the statutes that establish the framework for, and control, this action. *Mojave*, *Santa Maria*, and
18 *Antelope Valley* were not constrained by Code of Civil Procedure sections 830 and 832, which
19 limit an adjudication brought under that statute to the boundaries of a single Bulletin 118 basin.
20 But Ventura's case is so restricted, and its attempt to circumvent the portions of the statutory
21 scheme that it finds inconvenient must be rejected.

22 Furthermore, *Mojave*, *Santa Maria*, and *Antelope Valley* themselves did not combine
23 multiple basins for adjudication under the common law procedures that preceded the
24 comprehensive statutory adjudication framework. Rather, each of these cases involved *a single*
25 *basin*, though the facts of the cases established that there were separate *subbasins* within the
26 basin. For example, in *Mojave*, the single basin was "divided into five hydrologic subareas: The
27 Helendale Fault separates the Alto and Centro Basin subareas; the Waterman Fault separates the
28 Centro and Baja Basin subareas; the Oeste Basin subarea is west of the Alto Basin subarea; and

1 the Este Basin subarea is east of the Alto Basin subarea and south of the Centro Basin subarea."
2 (*Id.* at 1233-34.) Of course the court found that the subbasins were interconnected with each
3 other (*id.*): this is obvious from the fact that they were all part of *a single basin*. It does not stand
4 for the proposition, however, that multiple, separate Bulletin 118 basins can be combined.

5 Likewise, *Santa Maria* adjudicated the rights to the use of water in a single basin, the
6 Santa Maria Valley Groundwater Basin. (*See Santa Maria*, 211 Cal.App.4th at 276 (litigation
7 was commenced, by the same firm that represents Ventura in this case, " to identify and prioritize
8 the water rights held by the many users of Basin groundwater").) *Santa Maria* holds that a
9 physical solution may be imposed on the water users in a basin in appropriate circumstances even
10 if there is no evidence of a present water shortage (*id.* at 288), but it does not approve combining
11 multiple basins and adjudicating all of the water users' rights in one proceeding.

12 The *Antelope Valley* Court also made a factual finding that the proceedings involved only
13 one groundwater basin, holding that the evidence had established sufficient "hydraulic
14 connectivity within the AVAA basin as a whole" to obviate any claim that certain sections should
15 be treated as separate basins. (*Antelope Valley*, 63 Cal.App.5th at 32.) Indeed, after taking
16 extensive evidence from the parties, the court determined that the "'basic' jurisdictional
17 boundaries for the AVAA" were "largely coextensive with the boundaries of the alluvial basin
18 as defined by the Department of Water Resources' Bulletin 118." (*Id.*) It appears as if the expert
19 hydrogeologists at DWR know what they are doing. Thus, none of the cases cited by Ventura
20 approves the concept of combining four separate Bulletin 118 groundwater basins into one
21 adjudication.

22 **4. Is Any Amount of Connectivity Between an Ephemeral Tributary to a**
23 **Surface Water and Any One of the Aquifers in a Groundwater Basin**
24 **Sufficient to Require That the Water Rights to Each Source Be Adjudicated**
25 **Together?**

26 **No.**

27 Under well-established California law, the presumption is that groundwaters "are *not* part
28 of a stream or watercourse." (*Los Angeles v. Pomeroy* (1899) 124 Cal. 597, 628, emphasis

1 added.)³ To show connectivity between a groundwater basin and a surface water, the plaintiff
2 must demonstrate that the defendant's pumping interferes with the natural flow of the surface
3 water. It is plaintiff's burden to prove the pumping reduces the streamflow. (*See Monolith*
4 *Portland Cement Co. v. Mojave Public Utility Dist.* (1970) 4 Cal.App.3d 840, 847 ("The burden
5 was upon Monolith to prove that the District's pumping in Monroe Meadows Basin lowered the
6 water level below the barrier and thus interfered with the natural flow of Cache Creek. The trial
7 court found that it did not, and properly denied an injunction.").)

8 Applying this presumption, California courts have long held that there is no connectivity
9 when pumping from an aquifer does not impact streamflow, even if the stream is connected to
10 another aquifer in the same groundwater basin. In other words, it is not sufficient to show that a
11 stream is connected to *an* aquifer within the groundwater basin. Rather, the plaintiff must
12 establish that the pumping they seek to curtail is causing substantial impacts on the stream.
13 (*Hudson v. Dailey* (1909) 156 Cal. 617, 630 (To justify equitable relief, "it is necessary for the
14 plaintiff to show substantial injury" caused by the defendant's pumping.).)

15 In *Montecito Valley Water Co.*, the defendants had dug tunnels underground to capture
16 groundwater that the stream had previously deposited in an aquifer other than the one that they
17 pumped from. The tunnels drilled into the aquifer where the streamflow was deposited, resulting
18 in water from the stream above being drawn downward as defendants pumped. Connectivity was
19 established because the defendants' pumping, after the tunnels were dug, reduced the water that
20 was previously available as surface flows. (*Montecito Valley Water Co. v. Santa Barbara* (1904)
21 144 Cal. 578, 585.) Absent these tunnels, however, the aquifer the defendants pumped from
22 would *not* have been deemed connected to the stream, as the pumping that occurred before the
23 tunnels were dug had no noticeable impact on streamflow.

24 As can be gleaned from the cases discussed above, whether a surface water source and a
25 groundwater basin are substantially "connected" is a matter of hydrogeologic fact and evidence.

26 ³ Ventura has suggested that the court can "apply common sense" and find all
27 groundwaters are connected to the streams in the watershed because of "gravity." In doing so,
28 Ventura has invited the court to commit reversible error by disregarding a fundamental principle
of California water law, which holds that groundwater is presumed *not* to be connected to surface
water absent specific credible evidence showing that one source substantially impacts the other.

1 To determine whether water use in one source depletes flow in the other, courts have examined
2 the relationship between the sources of water, or lack thereof. This necessarily requires taking
3 evidence of relevant geologic and hydrogeologic factors demonstrating a nexus between the
4 waters at issue.

5 The terms of the comprehensive groundwater adjudication statute and SGMA confirm
6 that a similar finding is required to establish "connectivity" in this statutory adjudication. In
7 cases brought under the groundwater adjudication statute, connectivity is relevant only to the
8 degree that the court may find inclusion of an "interconnected surface water body...is necessary
9 for the fair and effective determination of the groundwater rights in a basin." (Code Civ. Proc.,
10 § 833(c).) Although the groundwater adjudication statute does not define "interconnected surface
11 water body," its companion statute, SGMA, does provide definitions to elucidate this term:
12 SGMA commands that groundwater be managed in a way that avoids "[d]epletions of
13 interconnected surface water that have significant and unreasonable adverse impacts on
14 beneficial uses of the surface water." (Wat. Code, § 10721(x)(6); *see also* 23 C.C.R., § 351(o).)
15 In turn, SGMA defines "significant depletions of interconnected surface waters" as "reductions
16 in flow or levels of surface water that is hydrologically connected to the basin *such that the*
17 *reduced surface water flow or levels have a significant and unreasonable adverse impact on*
18 *beneficial uses of the surface water.*" (Wat. Code, § 10735(d), *emphasis added.*) In other words,
19 not only must there be a nexus between the groundwater basin subject to the adjudication and the
20 surface water, the evidence must show that the groundwater pumping: (1) reduces the surface
21 water flow, and (2) has a "significant and unreasonable adverse impact" on the beneficial uses of
22 the surface water.

23 This case was brought under the comprehensive groundwater adjudication statute. Unless
24 Ventura can show that pumping from the Ojai Basin aquifer causes these impacts to a surface
25 water supply, it cannot legally establish connectivity sufficient to include the surface water within
26 the adjudication of the groundwater basin.

1 **5. Does the "Common Source" or "Common Supply" Doctrine Justify**
2 **Combining Four Groundwater Basins and Adjudicating Them All Together?**

3 **No.**

4 The "common supply" or "common source" doctrine is a subset of the rule of connectivity
5 that applies to those limited circumstances where a stream is very closely connected with an
6 underground water supply. The common supply doctrine applies only when the surface stream
7 is so close in proximity to the subsurface waters that extraction from them necessarily reduces
8 the water available in the stream, thereby making the subsurface waters "in law part of the stream
9 itself." (*Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 555; *Larsen v. Apollonio*, 5
10 Cal.2d 440, 444 (1936).) In contrast, when the aquifer is composed of "percolating waters alone,"
11 the common supply doctrine has no bearing. (*Larsen v. Apollonio*, 5 Cal. 2d 440, 444 (1936).)

12 Here, DWR has determined, in Bulletin 118, that each of the four groundwater basins is
13 a groundwater basin fed by percolating waters.⁴ Assuming this is true – and Ventura has
14 produced no evidence to contradict this conclusion – the common source doctrine does not apply.

15 **6. Does Importation of Surface Water to Recharge a Groundwater Basin**
16 **Establish "Connectivity" Between the Surface Water and that Basin?**

17 **No.**

18 As a matter of law, importation of surface water to recharge a groundwater basin does not
19 establish connectivity between the surface water source and the groundwater basin to which it is
20 applied. Water Code section 7075 allows an appropriator to retain an interest in appropriated
21 water that the appropriator brings from one stream or basin and adds to another. "As described
22 by our Supreme Court, the right to return flows of imported water 'is an undivided right to a
23 quantity of water in the ground reservoir equal to the net amount by which the reservoir is
24

25 ⁴ The common source doctrine is a corollary to long-established principles of California
26 water law which allow a subterranean stream flowing through known and definite channels, such
27 as the Mojave River, to be treated under the same rules that apply surface water. (See Water
28 Code §2500; see also Water Code §1200.) The Water Code carefully distinguishes between the
rules that apply to subterranean streams and the rules that govern percolating groundwater. Each
of the four groundwater basins at issue in this case has been determined (by their designation as
groundwater basins in Bulletin 118) to be formed by percolating groundwater.

1 augmented by such deliveries.'" (*Los Angeles v. San Fernando*, (1975) 14 Cal.3d 199, 262.) The
2 rule codified by Water Code section 7075 applies to the addition and withdrawal of water in an
3 underground basin. (*Orange Cty. Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14
4 Cal.App.5th 343, 411.) The rule "allow[s] an appropriator to retain an interest in appropriated
5 water that the appropriator brings from one stream or basin and adds to another." (*Orange*
6 *County*, 14 Cal.App.5th at 411, citing *City of Santa Maria*, 211 Cal.App.4th at 302.) Thus, the
7 importers of water "retain a right to the volume of water made available through their efforts"
8 that is wholly "separate from others' usufructuary rights in the Basin's native supply." (*City of*
9 *Santa Maria v. Adam*, 211 Cal.App.4th at 301-02.)

10 Since surface water deliberately used for recharge is legally recognized as being separate
11 from the groundwater that is native to a basin, that recharge cannot, as a matter of law, establish
12 connectivity between the surface water source and the groundwater basin. Ventura's effort to
13 claim that connectivity is established merely because waters of the Ventura River are
14 appropriated and used to recharge some of the four groundwater basins at issue in this case
15 therefore fails as a matter of law.⁵

16 **7. Can One Judgment and One Physical Solution Be Imposed Over Water**
17 **Rights Holders in Four Separate Groundwater Basins?**

18 **No.**

19 A physical solution imposed under the comprehensive groundwater adjudication statute
20 is confined to the boundaries of the Code of Civil Procedure and the Water Code. The physical
21 solution may only be imposed on groundwater rights holders pursuant to the specific
22 requirements of the groundwater adjudication statute. As discussed above, then, the physical
23 solution and the judgment that imposes it must necessarily be limited to determining the rights
24 of the users of a *single* groundwater basin.

25 Ventura has not cited any case that authorizes commingling four separate groundwater
26 basins and imposing one judgment and one physical solution across them – nor could it possibly

27
28 ⁵ For this reason, Ojai has objected that Ventura's expert testimony regarding recharge is not relevant to the issues to be resolved by the court in Phase 1.

1 do so, since the comprehensive groundwater adjudication statute limits each adjudication to one
2 Bulletin 118-defined groundwater basin, and the remedy imposed after trial cannot exceed the
3 scope of the issues properly tried.

4 Nor does the *Mojave* case authorize conflating four separate groundwater basins and
5 imposing one judgment purporting to address the rights of all parties to each source. To the
6 contrary, in *Mojave*, the Supreme Court commanded that the courts adhere to the water right
7 priority that has long been a central tenet of California water law, and focus their analysis on the
8 actual groundwater rights in the basin: "[A]n equitable physical solution must preserve water
9 right priorities to the extent those priorities do not lead to unreasonable use. In the case of an
10 overdraft, riparian and overlying use is paramount, and the rights of the appropriator must yield
11 to the rights of the riparian or overlying owner." (*City of Barstow v. Mojave Water Agency*, 23
12 Cal.4th at 1243, citing *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428, 435; *Katz v.*
13 *Walkinshaw* (1903) 141 Cal. 116, 135.) The Court expressly rejected the concept that the court
14 could properly impose a "physical solution" that relies on the equitable apportionment doctrine
15 but does not consider the affected owners' legal water rights in the basin. (*Id.* at 1233) Yet that
16 is precisely what Ventura invites the court to do here – combine four separate groundwater basins
17 with separate water rights into one physical solution and apply equitable apportionment across
18 all four basins.

19 Ventura's proposal directly conflicts with *Mojave*, which specifically instructs courts not
20 to go beyond the underlying water rights in an attempt to impose "creative solutions," even if
21 they think those solutions would be more "equitable." *Mojave* directs that the groundwater rights
22 in the underlying basin must be the starting and ending point of the court's analysis. Since the
23 groundwater rights are defined *relative to other overlying and appropriative users in that specific*
24 *basin*, *Mojave* shows it would be wholly improper for the court to combine four basins together
25 to create a superbasin and then impose a physical solution that "equitably apportions"
26 responsibility across all the water rights holders of each separate basin.

1 **8. Can a Physical Solution Adopted by the Court Override the Legislature's**
2 **Specific Statute Vesting the Ojai Basin Groundwater Management Agency**
3 **with Exclusive Authority to Regulate the Exercise of Groundwater Rights**
4 **within the Defined Ojai Basin?**

5 **No.**

6 In 1991, in recognition of the unique and special groundwater issues in the Ojai Basin,
7 the California Legislature passed the Ojai Basin Groundwater Management Agency Act. (Ojai
8 Basin Groundwater Management Act, Chapter 750 of the Statutes of 1991.) This Act formed the
9 Ojai Basin Groundwater Management Agency (OBGMA) as special district and vested it with
10 authority to manage the groundwater within the statutorily-defined Ojai Basin. (*Id.* at Sections
11 101-102.) Groundwater within that defined basin was expressly made subject to OBGMA's
12 management and authority.⁶ (*Id.* at Sections 201-202)

13 The Act invests OBGMA with broad legislative authority to manage groundwater in the
14 Ojai Basin (*id.* at Sections 701-708), including the authority to determine what activities are
15 necessary to improve or protect the groundwater supplies in the basin (*id.* at Section 701), to
16 commence and prosecute legal actions to enjoin unreasonable uses of water (Section 702), and
17 to regulate, limit or suspend extractions in the basin (Section 706).

18 This special act provides OBGMA specific and exclusive jurisdiction to manage and
19 regulate groundwater in the Ojai Basin. Nonetheless, Ventura is inviting the court to adopt a
20 physical solution that would apply within the Ojai Basin, which would effectively supplant
21 OBGMA's legislative authority to manage the groundwater within the Ojai Basin. The court
22 should decline Ventura's invitation to rewrite this law.

23 **III. PROPOSED ORDER OF THE PHASE I TRIAL**

24 Ojai believes that the first two issues of watershed boundaries and groundwater basins
25 may be disposed of by stipulation among the parties. To the extent it cannot, those two issues
26 should be tried first. Ojai agrees with the court's prior comment that it would make the most

27 ⁶See the map of the Ojai Basin Boundary from OBGMA's website:
28 <http://obgma.com/wp-content/uploads/2015/06/Ojai-Basin-aerial.jpg>

1 sense to determine whether the Court may, as a matter of law, proceed with the adjudication of
2 the separate groundwater basins and that this issue be dealt with after the boundary issues are
3 decided.

4 If the court decides, as a matter of law, that Ventura may proceed with its claims against
5 the groundwater rights of parties in separate groundwater basins, Ojai believes the next issue for
6 the court would be to determine whether sufficient evidence exists in this case to adjudicate the
7 groundwater rights of the parties in the basin with the surface water of the Ventura River. In other
8 words, the court would have to determine that Ventura may adjudicate the groundwater rights in
9 a basin in which Ventura has no water rights because there is a factual showing that the inclusion
10 of surface water is necessary for the fair and effective determination of the groundwater rights in
11 the separate basins because there is a sufficient nexus between the groundwater that is pumped
12 and a reduction in the flows that are present in the surface water at issue in the underlying
13 pleadings that negatively impact the fishery.

14 Ojai therefore proposes that the order of the issues to be tried in Phase 1 proceed
15 in the following order:

- 16 1. Determine the boundaries of the Watershed
- 17 2. Determine the boundaries of the groundwater basins
- 18 3. Determine whether, as a matter of law, the court may comprehensively determine rights
19 to extract groundwater among all rights holders across four separate basins in one legal
20 proceeding pursuant to Code of Civil Procedure section 830, et seq.
- 21 4. If the determination of number 3 above permits Ventura to move forward with the
22 statutory adjudication of four separate groundwater basins as a matter of law, the next
23 determination would be whether there is sufficient evidence to support the inclusion of
24 the four separate groundwater basins in adjudication of the Ventura River pursuant to
25 Code of Civil Procedure section 833(c) or any other authority
- 26 5. If there is a determination of number 4 above that there is sufficient evidence under Code
27 of Code of Civil Procedure section 833(c) or any other authority, the next determination
28 would be the extent of any hydraulic connection, or nexus, between the sources of water


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

subject to the Cross-Defendants rights and the “transaction” at issue in the underlying complaint, i.e. whether any hydraulic connection between water sources is sufficient enough that the extraction of groundwater from one source results in less surface water flow in the Ventura River.

- 6. Thereafter, parties may use the findings from the determinations above to file dispositive motions before or after Phase 2 begins. Phase 2 can examine related claims of whether particular uses of groundwater are reasonable or otherwise result in harm to the fish and other issues. Additionally, the consideration of the fishery is only relevant where the court has made a finding of connectivity, as admitted by Ventura on November 2, 2021. Therefore, the issue of reasonable and beneficial use, and the related issue of the public trust doctrine should be reserved for the next phase of trial. As such, all expert opinions related to the fishery, including the designated biologists by Ventura and California Department of Fish and Wildlife are unnecessary to this phase.

Dated: November 8, 2021

Respectfully submitted,
Bartkiewicz, Kronick & Shanahan, PC

By: 
JENNIFER T. BUCKMAN
HOLLY J. JACOBSON
Attorneys for CITY OF OJAI