



1 SHAWN D. HAGERTY, Bar No. 182435  
shawn.hagerty@bbklaw.com  
2 BEST BEST & KRIEGER LLP  
655 West Broadway  
3 15th Floor  
San Diego, California 92101  
4 Telephone: (619) 525-1300  
Facsimile: (619) 233-6118

5 CHRISTOPHER MARK PISANO, Bar No. 192831  
christopher.pisano@bbklaw.com  
6 BEST BEST & KRIEGER LLP  
300 South Grand Avenue  
7 25th Floor  
8 Los Angeles, California 90071  
Telephone: (213) 617-8100  
9 Facsimile: (213) 617-7480

10 Attorneys for Defendant and Cross-Complainant  
CITY OF SAN BUENAVENTURA

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

14  
15 SANTA BARBARA CHANNELKEEPER, a  
California non-profit corporation,

Case No. 19STCP01176

16 Petitioner,

Judge: Hon. William F. Highberger

17 v.

**JOINT APPLICATION TO SET A  
HEARING DATE FOR AN INTERIM  
ORDER PENDING A PHYSICAL  
SOLUTION AND TO CONTINUE THE  
STAY UNTIL THE HEARING DATE**

18 STATE WATER RESOURCES CONTROL  
19 BOARD, et al,

20 Respondents.

*[Filed concurrently with Ventura's  
Memorandum of Points and Authorities in  
Support of the Joint Application;  
Declaration of Mayor Joe Schroeder;  
Declaration of Jennifer Tribo; [Proposed]  
Order]*

21  
22  
23 CITY OF SAN BUENAVENTURA, et al.,

Date: November 13, 2024

24 Cross-Complainant,

Time: 9:00 a.m.

Dept.: 10

25 v.

Action Filed: Sept. 19, 2014

Trial Date: Not Set

26 DUNCAN ABBOTT, an individual, et al.,

27 Cross-Defendants.  
28

1     **I. INTRODUCTION**

2           Defendant and Cross-Complainant the City of San Buenaventura (**Ventura**), Cross-  
3 Defendants Casitas Municipal Water District (**Casitas**), East Ojai Group,<sup>1</sup> City of Ojai, Ventura  
4 River Water District, Meiners Oaks Water District, Wood-Claeysens Foundation, Rancho Matilija  
5 Mutual Water Company and Ventura County Watershed Protection District (collectively the  
6 **Watershed Parties**), Respondent and Intervenor the State Water Resources Control Board (**State**  
7 **Board**) and Intervenor the California Department of Fish & Wildlife (**CDFW**) (collectively the  
8 **State Agencies**) submit this Joint Application seeking a hearing date for a proposed Interim Order  
9 Pending a Physical Solution (**Interim Order**) and an extension of the current stay to that hearing  
10 date. The Watershed Parties and the State Agencies are sometimes referred to in this Joint  
11 Application as the **Moving Parties**.

12           The Moving Parties have recently made significant progress in the structured mediation,  
13 and have reached agreement on certain interim critical steps to be implemented pending a  
14 permanent Physical Solution, including new provisions regarding flow in the Ventura River. The  
15 Moving Parties view these agreements as an important event in this case, and wish to have the  
16 Court confirm these agreements through the proposed Interim Order, while also providing for more  
17 time to complete the mediation process. Therefore, through this Joint Application and the  
18 concurrently filed supporting papers, the Moving Parties respectfully request that the Court take  
19 the following actions in this case:

- 20                     1.     Set a hearing date to consider the proposed Interim Order for early January  
21                             2025.
- 22                     2.     Set a briefing schedule for the hearing on the proposed Interim Order.
- 23                     3.     Continue the current stay until the hearing date on the proposed Interim  
24                             Order.

25           The Moving Parties have diligently engaged in the structured mediation in this case in order  
26 to develop a permanent Physical Solution for the Court's consideration. The Moving Parties are

27           <sup>1</sup> The East Ojai Group consists of Cross-Defendants The Thacher School; Friend's Ranches, Inc.;  
28 Topa Topa Ranch Company; Finch Farms, LLC; Red Mountain Land & Farming, LLC; Thacher  
Creek Citrus, LLC; James Paul Finch; Robert C. Davis, Jr.; David Robert Hamm, Co-Trustee;  
Ojai Oil Company; Ojai Valley School; Reeves Orchard, LLC; and Ojai Valley Inn.

1 making steady progress in this effort, as reflected in the interim agreements described below. But  
2 the issues are extremely complex, and development of a permanent Physical Solution will require  
3 additional time beyond November 27, 2024 to complete.

4 **Nevertheless, the Moving Parties have now agreed on certain critical flow protocols**  
5 **and other interim measures which they would like to present to the Court for consideration**  
6 **and requested approval.** Much like the Court's Interim Order Confirming an Exempt Cross-  
7 Defendant Class, this proposed Interim Order would be a vital next step in the process toward a  
8 permanent Physical Solution. If approved by the Court, the Interim Order will create an enforceable  
9 framework and obligations within the Ventura River Watershed (**Watershed**) and will provide  
10 benefit to the Watershed until the parties reach a permanent Physical Solution. The Moving Parties  
11 therefore request that the Court set a hearing date to consider the Interim Order, set a briefing  
12 schedule and extend the current stay until the hearing date on the Interim Order.

13 The Watershed Parties wish to emphasize to the Court that although a permanent Physical  
14 Solution has not yet been achieved, significant improvements have occurred and will continue to  
15 occur within the Watershed during the pendency of this case and the structured mediation. These  
16 efforts are more fully documented in the individual papers filed by certain Watershed Parties in  
17 support of this Joint Application.<sup>2</sup> As explained in those papers, major projects have been  
18 constructed or are under construction to diversify the water supply system in order to help reduce  
19 demands on the surface and ground waters in the Watershed. In addition, substantial consumption  
20 reductions have been achieved during this period and will be continued. While more is needed,  
21 these significant achievements demonstrate the value of this continued collaborative mediation  
22 effort. Coupled with the important commitments in the Interim Order, these efforts show that there  
23 is good cause for a continuance of the stay until the hearing date on the Interim Order, and beyond  
24 if the Interim Order is approved by the Court.

## 25 **II. BRIEF UPDATE ON THE STRUCTURED MEDIATION**

26 Since the last Joint Status Report on September 6, 2024, the Moving Parties have  
27

---

28 <sup>2</sup> These individual papers are submitted by those individual parties, and are not submitted by or  
endorsed by the other parties.

1 continued to diligently engage in the structured mediation with Mediator David Ceppos. A report  
 2 from the Mediator is attached to this Joint Application as Exhibit “A”. Among the notable  
 3 actions taken are:

- 4 • The State Agencies met with representatives of Santa Barbara Channelkeeper  
 5 (SBCK) on September 30, 2024.
- 6 • The Watershed Parties held a virtual mediation session on September 9 and an in-  
 7 person mediation session on October 2, 2024.
- 8 • The Watershed Parties and the State Agencies met virtually in a joint mediation  
 9 session on October 11, 2024 and finalized the material terms of the proposed  
 10 Interim Order.
- 11 • Counsel for the State Agencies and counsel for certain Watershed Parties met with  
 12 counsel for SBCK on October 14, 2024 to advise counsel of the interim  
 13 agreements reflected in this Joint Application. At that time, counsel for the  
 14 Watershed Parties agreed to meet again with counsel for SBCK to provide  
 15 additional briefing on the proposed Interim Order.
- 16 • The Watershed Parties met with representatives of SBCK on October 16, 2024.

17 The Moving Parties intend to continue the structured mediation with the goal of  
 18 developing a permanent Physical Solution. In the interim, the Moving Parties request that the  
 19 Court take the critical actions set forth in this Joint Application.

### 20 **III. GOOD CAUSE EXISTS FOR THE MOVING PARTIES’ REQUEST**

#### 21 **A. Good Cause Exists to Set a Hearing Date to Consider the Interim Order** 22 **Regarding the Permanent Physical Solution**

23 [Code of Civil Procedure section 849](#) provides that the Court “shall have the authority and  
 24 the duty to impose a physical solution on the parties in a comprehensive adjudication where  
 25 necessary and consistent with” Article X, Section 2 of the California Constitution. The parties to  
 26 this action have previously submitted significant briefing to the Court regarding the Court’s broad  
 27  
 28

1 powers to adopt a physical solution.<sup>3</sup>

2 The goal of the structured mediation is to develop and present to the Court, consistent  
3 with Section 849, a permanent Physical Solution to govern activities in the Watershed. The  
4 Moving Parties are making good progress toward this goal, but the permanent Physical Solution  
5 will not be ready by November 27, 2024 because the issues are very complex and more technical  
6 information is needed to complete the process. However, the Moving Parties have reached  
7 consensus on certain elements that can be implemented now, without delay, and would like the  
8 Court to approve them through the proposed enforceable Interim Order. The Interim Order would  
9 be a critical next step in the process and would provide benefit to the Watershed while the parties  
10 continue to negotiate the elements of a permanent Physical Solution. The Interim Order would be  
11 another major milestone in the case, akin in significance to the Court's 2021 Order Establishing  
12 Watershed and Basin Boundaries and the Court's 2022 Interim Order Confirming an Exempt  
13 Cross-Defendant Class.

14 The Moving Parties have reached agreement in principle on the key terms of the proposed  
15 Interim Order, and are working diligently to put those key terms into a document that can be  
16 presented to the Court. Those key terms include the following material requirements:

- 17 1. Enhanced flow protocols for Foster Park. Specifically, upon approval of the  
18 Interim Order, Ventura will immediately stop its water extraction at Foster Park  
19 when flow measured at Foster Park is less than 5.0 cubic feet per second (cfs).  
20 This is an increase of 1.0 cfs from Ventura's current Foster Park Protocols. In  
21 addition, Ventura will cease water extraction at Foster Park when flow measured  
22 at Foster Park is less than 7.0 cfs in a moderate month and when flow measured at  
23 Foster Park is less than 9.0 cfs in a wet month, based on water month type  
24 definitions that Ventura and the State Agencies will develop by December 31,  
25 2024. These flow protocols will be subject to the emergency exceptions similar to  
26

27 <sup>3</sup> All briefings related to the physical solution were provided to the Court in a binder on July 28,  
28 2021 in advance of the August 16, 2021 status conference, and can also be found on the Ventura  
River Watershed Adjudication website here -  
<https://www.venturariverwatershedadjudication.com/documents>.

1 the emergency exceptions contained in Paragraph 1.7 and 1.8 of Ventura's  
2 Amendment to Settlement Agreement with SBCK.

- 3 2. New flow protocols for San Antonio Creek. Specifically, upon approval of the  
4 Interim Order, Casitas will assure a minimum flow of 0.5 cfs to exist in San  
5 Antonio Creek, measured at an agreed upon location upstream of Camp Comfort.  
6 Casitas will assure this minimum flow by whatever means it elects, including flow  
7 augmentation from groundwater or other sources, subject to any required  
8 regulatory approvals. This new flow protocol may be suspended in declared  
9 extreme drought conditions. Casitas will consider a minimum flow for  
10 moderate/wet periods as a result of additional technical work to be performed in  
11 accordance with the proposed Interim Order.
- 12 3. Continued implementation of the flow protocols at the Robles Diversion and Fish  
13 Passage Facility in accordance with the existing Biological Opinion.
- 14 4. Implementation of conservation measures. For public agency parties, the  
15 conservation measures shall be no less than those required by existing laws,  
16 ordinances and agreements applicable to them. For agricultural parties, industry  
17 standard agricultural conservation measures shall be implemented.
- 18 5. Habitat and fish passage projects in the Watershed to benefit the Southern  
19 California Steelhead. These will include passage barrier removal at Foster Park,  
20 commencement of planning work for improvements at the Fraser Street Road  
21 Crossing located in San Antonio Creek and the creation of habitat complexity  
22 components to improvement *O. mykiss* rearing and holding opportunities in San  
23 Antonio Creek. This will also include an agreement that the Watershed Parties  
24 and the State Agencies will expedite Arundo removal through the efforts of the  
25 Ojai Valley Land Conservancy (OLVC) or other agreed upon parties.
- 26 6. Commencement of public processes, as necessary and as approved, to potentially  
27 allow the Ojai Basin Groundwater Management Agency and the Upper Ventura  
28 River Groundwater Agency to serve a role as Management Entities as part of the

1 permanent Physical Solution (without prejudice to other parties potentially having  
2 a management role or to a different management structure).

- 3 7. Quarterly reporting to the Court regarding conditions in the Watershed,  
4 implementation of the Interim Order and the status of the structured mediation.  
5 These reports will include publicly available measured flow data at Foster Park  
6 and Camp Comfort and general information about precipitation, the measured  
7 level of Lake Casitas and other publicly reported information, as well as material  
8 updates on action taken to implement the proposed Interim Order.
- 9 8. A specific end date for the structured mediation and the Interim Order of April 1,  
10 2026 and a fixed monthly negotiating schedule to complete the development of  
11 the Physical Solution.
- 12 9. An extension of the stay during the effective period of the Interim Order.

13 The Moving Parties request that the Court schedule a hearing to consider the Interim  
14 Order for early January, 2025, or earlier if the Court wishes. The Moving Parties propose this  
15 January of 2025 date to allow the Mediator time to meet with parties who have not been involved  
16 directly in the mediation to discuss the purpose and scope of the Interim Order, and for the  
17 Moving Parties to meet and brief SBCK in more detail about the elements of the proposed Interim  
18 Order. The Moving Parties also request that the Court set a briefing schedule for the hearing on  
19 the Interim Order. The Moving Parties would submit the full proposed Interim Order, containing  
20 the above provisions, with their moving papers.

21 **B. Good Cause Exists for Extending the Stay Until the Hearing on the Interim**  
22 **Order**

23 [Code of Civil Procedure section 848](#) provides that the Court may grant and extend stays in  
24 a comprehensive adjudication to allow for voluntary mediation to occur. The Moving Parties are  
25 diligently engaged in a structured mediation designed to develop a permanent Physical Solution  
26 to present for the Court's consideration and requested approval, and have conducted and will  
27 continue to conduct (directly or through the Mediator) briefing meetings with SBCK. The  
28 Moving Parties are making good progress toward this goal, but they will not be finished by

1 November 27, 2024 because the issues are very complex and more technical work and negotiation  
2 is needed to complete the process. Therefore, the Moving Parties request that the Court extend  
3 the current stay until the hearing date on the proposed Interim Order. This extension will permit  
4 the Moving Parties to continue the structured mediation while also presenting the proposed  
5 Interim Order for the Court’s consideration as key next steps and provide benefit to the  
6 Watershed until the parties reach a permanent Physical Solution.


7 **IV. CONCLUSION**

8 The Moving Parties are making progress in negotiating a permanent Physical Solution. To  
9 demonstrate their commitment to completing this process, the Moving Parties wish to present to  
10 the Court for approval the proposed Interim Order. The proposed Interim Order will contain  
11 specific and enforceable commitments, including new and enhanced flow protocols. The proposed  
12 Interim Order will also include a specific negotiating schedule, a process for briefing SBCK, and  
13 an end date. The Court would receive quarterly reports on the implementation of the proposed  
14 Interim Order, and would have a key role to play in enforcing it. The Moving Parties therefore  
15 request that the Court set a hearing date for consideration of the proposed Interim Order for early  
16 January of 2025, or earlier if the Court wishes, and establish a briefing schedule. Pending the  
17 Court’s consideration of the proposed Interim Order, the Moving Parties request that the Court  
18 continue the current stay until the hearing date.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: October 17, 2024

BEST BEST & KRIEGER LLP

By:   
SHAWN D. HAGERTY  
CHRISTOPHER M. PISANO  
Attorneys for Defendant and Cross-  
Complainant  
CITY OF SAN BUENAVENTURA



1 Dated: October 17, 2024

RUTAN & TUCKER, LLP

2

By: /s/ Jeremy Jungreis

3

JEREMY N. JUNGREIS  
Attorneys for Cross-Defendant  
CASITAS MUNICIPAL WATER  
DISTRICT

4

5

6 Dated: October 17, 2024

BKS LAW FIRM, PC

7

By: /s/ Holly Jacobson

8

JENNIFER T. BUCKMAN  
HOLLY JACOBSON  
Attorneys for Cross-Defendant  
CITY OF OJAI

9

10

11 Dated: October 17, 2024

MUSICK, PEELER & GARRETT LLP

12

By: /s/ Gregory J. Patterson

13

GREGORY J. PATTERSON  
WILLIAM W. CARTER  
Attorneys for Cross-Defendants  
THE THACHER SCHOOL; FRIEND'S  
RANCHES, INC.; TOPA TOPA RANCH  
COMPANY; FINCH FARMS, LLC; RED  
MOUNTAIN LAND & FARMING, LLC;  
THACHER CREEK CITRUS, LLC; JAMES  
PAUL FINCH; ROBERT C. DAVIS, JR.;  
DAVID ROBERT HAMM, CO-TRUSTEE;  
OJAI OIL COMPANY; OJAI VALLEY  
SCHOOL; REEVES ORCHARD, LLC;  
AND OJAI VALLEY INN (collectively  
"EAST OJAI GROUP")

14

15

16

17

18

19

20

21 Dated: October 17, 2024

HERUM CRABTREE SUNTAG

22

By: /s/ Jeanne Zolezzi

23

JEANNE ZOLEZZI  
Attorneys for Cross-Defendant  
VENTURA RIVER WATER DISTRICT

24

25

26 Dated: October 17, 2024

HERUM CRABTREE SUNTAG

27

By: /s/ Jeanne Zolezzi

28

JEANNE ZOLEZZI  
Attorneys for Cross-Defendant MEINERS  
OAKS WATER DISTRICT  
(listed on the Court's docket as "Meiners  
Oaks County Water District")

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

Dated: October 17, 2024

BROWNSTEIN HYATT FARBER SCHRECK  
LLP

By: /s/ Bradley Herrema  
SCOTT SLATER  
BRADLEY HERREMA  
Attorneys for Cross-Defendant WOOD-  
CLAEYSSSENS FOUNDATION

Dated: October 17, 2024

FERGUSON CASE ORR PATTERSON LLP

By: /s/ Neal P. Maguire  
NEAL P. MAGUIRE  
Attorneys for Cross-Defendant RANCHO  
MATILJA MUTUAL WATER  
COMPANY

Dated: October 17, 2024

HANSON BRIDGETT LLP

By: /s/ Nathan Metcalf  
MICHAEL J. VAN ZANDT  
NATHAN METCALF  
SEAN G. HERMAN  
Attorneys for Cross-Defendant  
VENTURA COUNTY WATERSHED  
PROTECTION DISTRICT

Dated: October 17, 2024

CALIFORNIA DEPARTMENT OF JUSTICE

By: /s/ Marc Melnick  
ROB BONTA  
Attorney General of California  
RUSSELL HILDRETH  
Supervising Deputy Attorney General  
MARC N. MELNICK  
Deputy Attorney General  
Attorneys for Respondent and Intervenor  
STATE WATER RESOURCES  
CONTROL BOARD

Dated: October 17, 2024

CALIFORNIA DEPARTMENT OF JUSTICE

By: /s/ Noah Golden-Krasner  
ERIC M. KATZ  
Supervising Deputy Attorney General  
NOAH GOLDEN-KRASNER  
Deputy Attorney General  
Attorneys for Respondent and Intervenor  
CALIFORNIA DEPARTMENT OF FISH  
AND WILDLIFE

# **EXHIBIT A**



**David M. Ceppos**  
**Public Policy Mediation and Facilitation**

**Date:** October 17, 2024  
**To:** Honorable William F. Highberger. Superior Court of the State of California, County of Los Angeles.  
**From:** David Ceppos, Principal, David M. Ceppos: Public Policy Mediation and Facilitation  
**Subject:** Case No. 19STCP01176. Mediator Status Report

The following is a status report on the Structured Mediation Process (Process) for this Case.

**Mediation Process to Date**

Since the Mediator's September 5, 2024 report to the Court, the following activities have taken place by the Mediator and Mediation Parties.

- Conducted further discussions with legal counsel for, and executive staff of the Ojai Valley Land Conservancy (OVLC), an exempt party that has expressed willingness to be publicly disclosed as having an interest to potentially support future physical solution actions through use of OVLC lands adjacent to tributaries in the Ventura River Watershed (Watershed)
- Continued to meet via phone and online with upper and lower Watershed (Watershed) parties (exempt and non-exempt classes and interested other parties) and their legal counsel to discuss the Process, inform about next steps, and address concerns
- Met individually and in small group discussions with each of the Non-Exempt Watershed Parties (Casitas Municipal Water District, the City of Ojai, the City of San Buenaventura, the East Ojai Group Ventura River Water District, Meiners Oaks Water District, Wood-Claeysens Foundation [aka – Taylor Ranch], Ventura County Watershed Protection District, Rancho Matilija Mutual Water Company) to address mediation factors and options in the Case regarding an interim framework of some type
- Met with State negotiation Principals and legal counsel from the State Attorney General's office representing respectively the California Department of Fish and Wildlife (CDFW) and State Water Resources Control Board (State Board) to address mediation factors and options in the Case regarding a interim framework of some type
- Mediated Watershed Party sessions on September 9 and October 2 to discuss outcomes from prior joint technical team discussions between State and Watershed Party technical representatives, and outcomes from a meeting between State Agency representatives and Santa Barbara Channelkeeper (SBCK) representatives (see below) and possible implications to next steps in the Case.
- Participated in a meeting between representatives of the State Agencies and representatives of SBCK on September 30, 2024.
- Mediated a joint session between the Watershed Parties and the State Agencies on October 11, 2024 and finalized material terms of a proposed Interim Order.
- Coordinated and facilitated a meeting between counsel for the State Agencies and counsel for certain Watershed Parties with counsel for SBCK on October 14, 2024 to advise SBCK of interim agreements reflected in a Joint Application to be submitted to the Court.
- Facilitated a meeting between Watershed Parties and representatives of SBCK on October 16, 2024.

- Continued meeting with legal counsel of potential Management Entities (ME) to discuss complex factors associated with the ME role, and a pending sequence of steps to potentially develop and establish ME governance

### **Current Outcomes and Future Process Steps**

Regarding outcomes of the above, as subject to confidentiality privilege, the Mediator observes significant, substantive progress on the part of the State and Watershed Parties on initial mediated solutions as reflected by the Moving Parties report of and joint Application for action by the Court on an Interim Order. The Mediator believes these current steps are foundational to future continued success by key parties. That said, the steps taken do not and cannot suffice as a Physical Solution or proposed Settlement Agreement as reflects the complexity of this case (technical, physical, political, logistical).

Further, as has been addressed in prior Mediator reports to the Court, and individual discussions with Exempt and Non-Exempt parties throughout the Ventura Watershed, all such parties deserve an opportunity to review, comment on, and provide input to the mediating parties and the Court about a DRAFT future Physical Solution, in advance of the Court taking any action on such a potential document. This is fundamental commitment the Mediator has made to and on behalf of the thousands of parties that are defendants in the Case. Providing that opportunity will take time to coordinate and conduct once a DRAFT Physical Solution is available for public review. It is the Mediator's opinion that the proposed Interim Order is an excellent recent outcome that is important for the Case and the Court's oversight of the Case, but does not and should not conflict with these commitments.

The Mediator believes that the request by the Moving Parties in their Joint Application warrants approval by the Court including and with emphasis on, commitments for consistent progress reporting to the Court, consistent briefing meetings with SBCK and others, and creation and adherence to a detailed critical path of interim and major milestones.