UPPER VENTURA RIVER GROUNDWATER AGENCY

NOTICE OF REGULAR MEETING

NOTICE IS HEREBY GIVEN that the Upper Ventura River Groundwater Agency ("Agency") Board of Directors ("Board") will hold a **Regular Board Meeting at 1 P.M. on Thursday, October 8, 2020 via**

ON-LINE OR TELECONFERENCE:
DIAL-IN (US TOLL FREE) 1-669-900-6833
JOIN BY COMPUTER, TABLET OR SMARTPHONE:
https://zoom.us/j/92604873346?pwd=SFFrNGpZUlI5UnVBSG5DeTlYK3Y2dz09
Meeting ID: 926 0487 3346 Passcode: 122104
New to Zoom, go to: https://support.zoom.us/hc/en-us/articles/206175806

PER CALIFORNIA EXECUTIVE ORDER N-29-20, SECTION 3: A local legislative body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. A physical location accessible for the public to participate in the teleconference is not required.

UPPER VENTURA RIVER GROUNDWATER AGENCY BOARD OF DIRECTORS REGULAR MEETING AGENDA

October 8, 2020

1. **MEETING CALL TO ORDER**

2. **ROLL CALL**

3. **APPROVAL OF AGENDA**

4. **PUBLIC COMMENT FOR ITEMS NOT APPEARING ON THE AGENDA**

   The Board will receive public comments on items not appearing on the agenda and within the subject matter jurisdiction of the Agency. The Board will not enter into a detailed discussion or take any action on any items presented during public comments. Such items may only be referred to the Executive Director or other staff for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on specific agenda items should do so at the time specified for those items. In accordance with Government Code § 54954.3(b)(1), public comment will be limited to three (3) minutes per speaker.

5. **CONSENT CALENDAR**

   All matters listed under the Consent Calendar are considered routine by the Board and will be enacted by one motion. There will be no separate discussion of these items unless a Board member pulls an item from the Calendar. Pulled items will be discussed and acted on separately by the Board. Members of the public who want to comment on a Consent Calendar item should do so under Public Comments.

a. **Approve Minutes from September 10, 2020 Regular Board Meeting**
b. **Approve Financial Report for September 2020**

6. DIRECTOR ANNOUNCEMENTS

a. **Directors may provide oral reports on items not appearing on the agenda.**
b. **Directors shall report time spent on cost-share eligible activities for the 2017 Proposition 1 Sustainable Groundwater Management Planning (SGWP) Grant.**

7. EXECUTIVE DIRECTOR'S REPORT

The Board will receive an update from the Executive Director concerning miscellaneous matters and Agency correspondence. The Board may provide feedback to staff.

8. ADMINISTRATIVE ITEMS

a. **Fiscal Year 2019/2020 Year End Budget Report**
The Board will consider receiving and filing the year-end budget report.

b. **Physical Solution Comments**
The Board will consider directing staff to provide the comments on the physical solution as indicated in the staff report attachment or as otherwise directed by the Board.

9. GSP ITEMS

a. **Groundwater Sustainability Plan Update (Grant Category (d); Task 11: GSP Development and Preparation)**
The Board will receive an update from the Executive Director concerning groundwater sustainability plan development and consider providing feedback.

b. **Rincon Consultants Work Order No. 2 for Groundwater Level Monitoring (Grant Category (b); Task 1: Establish Well Monitoring Network)**
The Board will consider authorizing the Executive Director to execute Work Order No. 2 for Rincon Consultants for an amount not to exceed $11,250 to perform groundwater level monitoring and approving up to $8,750 in contingency for additional transducer installations or unanticipated costs, to be authorized at the discretion of the Executive Director.

10. COMMITTEE REPORTS

a. **Ad Hoc Stakeholder Engagement Committee**
The committee will provide an update on Stakeholder Engagement Plan implementation activities since the last Board meeting and receive feedback from the Board.

11. FUTURE AGENDA ITEMS

This is an opportunity for the Directors to request items for future Board meeting agendas.

12. ADJOURNMENT

The next scheduled Regular Board meeting is November 12, 2020.

DRAFT UPPER VENTURA RIVER GROUNDWATER AGENCY
MINUTES OF REGULAR MEETING SEPTEMBER 10, 2020

The Board meeting was held via teleconference, in accordance with California Executive Order N-25-20. Directors present were: Bruce Kuebler, Diana Engle, Larry Rose, Emily Ayala, Susan Rungren, Angelo Spandrio. Directors absent: Glenn Shephard. Also present: Executive Director Bryan Bondy and Agency Counsel Keith Lemieux.

DIAL-IN: 1-669-900-6833 ACCESS CODE: 468390
https://zoom.us/j/91520434975?pwd=THMvV2x3MlFYdjBVUUNEVUN2SDN1UT09

1) CALL TO ORDER

Chair Engle called the meeting to order at 1:02 pm.

2) ROLL CALL

Executive Director Bondy called the roll.

Directors present: Bruce Kuebler, Diana Engle, Larry Rose, Emily Ayala, Susan Rungren, Angelo Spandrio.

Directors absent: Glenn Shephard.

3) APPROVAL OF AGENDA

Chair Engle asked if any changes are proposed. No changes were requested.

Director Rungren motioned to approve the agenda. Director Ayala seconded the motion.

Roll Call Vote: B. Kuebler – Y L. Rose – Y E. Ayala – Y
S. Rungren – Y D. Engle – Y A. Spandrio – Y

Absent: G. Shephard

Noes: None.

4) PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

Chair Engle called for public comments in items not appearing on the agenda. None were offered.

Chair Engle called for public comments on the closed session items. None were offered.

Chair Engle adjourned the open session and asked the Directors to log into the closed session meeting.

5) CLOSED SESSION ITEMS

The Board met in closed session to discuss the following items:

a. Conference with Legal Counsel – Pending Litigation
Government Code § 54956.9, subdivision (a), (c) and (d)(1):
Upper Ventura River Groundwater Agency v. Casitas Municipal Water District
(VCSC Case No. 56-2020-00544348-CU-WM-VTA)

b. Conference with Legal Counsel – Anticipated Litigation
Consideration of initiation of litigation pursuant to Paragraph (4) of Subdivision (d) of Government Code § 54956.9: One case.

SECOND OPEN SESSION

6) ROLL CALL

Executive Director Bondy called the roll.

Directors present: Bruce Kuebler, Diana Engle, Larry Rose, Emily Ayala, Susan Rungren, Angelo Spandrio.

Directors absent: Glenn Shephard.

7) ORAL REPORT REGARDING CLOSED SESSION

Agency Counsel Lemieux reported that the Board met in closed session to discuss the two items listed on the agenda. Director Spandrio did not participate in the closed session at the request of counsel to avoid conflict of interest. Director Shephard was also absent from the closed session.

Agency Counsel explained that, after discussion with Counsel, the Board decided to vote on the closed session matters in open session to provide transparency.

Conference with Legal Counsel – Pending Litigation: Upper Ventura River Groundwater Agency v. Casitas Municipal Water District:

Agency Counsel recommended directing Agency Counsel to dismiss this matter without prejudice.

Director Kuebler moved the recommended action. Seconded by Director Rose.

Roll Call Vote: B. Kuebler – Y L. Rose – Y E. Ayala – Y
S. Rungren – Y D. Engle – Y

Absent: G. Shephard

Noes: None.

Director Spandrio did not participate.

Conference with Legal Counsel – Anticipated Litigation Consideration of initiation of litigation pursuant to Paragraph (4) of Subdivision (d) of Government Code § 54956.9: One case.

Agency Counsel recommended directing Agency counsel to file a new action against Casitas Municipal Water District to enforce the Public Records Act.

Director Kuebler moved the recommended action. Seconded by Director Rose.

Roll Call Vote: B. Kuebler – Y L. Rose – Y E. Ayala – Y
S. Rungren – Y D. Engle – Y

Absent: G. Shephard

Noes: None.

Director Spandrio did not participate.

As these actions were undertaken to cure an alleged Brown Act violation claimed in a letter by Casitas Municipal Water District dated Sept 1, 2020, the board further directed District Counsel to send notice of this cure action to Casitas Pursuant Govt 54960.1.

Counsel also mentioned that Board direction was given during closed session to publish information in the local newspaper concerning the litigation.

8) CONSENT CALENDAR

a. Approve Minutes from August 13, 2020 Regular Board Meeting
b. Approve Financial Report for August 2020
c. Approve Revised Fiscal Audit Agreement with Ventura River Water District

Chair Engle asked if any Directors would like to pull any consent items for discussion.

Executive Director Bondy stated that the financial report had been revised to correct a $0.03 error. He displayed the revised report on the web meeting screen. He said that the revised report would also be attached to the meeting minutes.

Director Rungren motioned to approve the consent calendar. Director Rose seconded the motion.

Roll Call Vote: B. Kuebler – Y L. Rose – Y E. Ayala – Y
S. Rungren – Y D. Engle – Y A. Spandrio – Y

Absent: G. Shephard

Noes: None.

9) DIRECTORS ANNOUNCEMENTS

a. Directors may provide oral reports on items not appearing on the agenda.

b. Directors shall report time spent on cost-share eligibility activities for the 2017 Proposition 1 Sustainable Groundwater Management Planning (SGWP) Grant.

Director Kuebler: No report and no time.

Director Spandrio: No report and no time.

Director Rungren: No report and no time.

Director Ayala: Spent 1 hour on stakeholder outreach.

Director Rose: No report and no time.

Director Engle: No report and no time.

Chair Engle said Item 11a should be handled before Item 10 because Agency Counsel needs to logoff at 2pm. No objections.

10) EXECUTIVE DIRECTOR'S REPORT

Note: Item 10 was heard after Items 11a and b.

Executive Director Bondy reviewed the written staff report with the Board and provided the additional oral updates discussed below.

Regarding past due extraction fees, Executive Director Bondy asked if Director Keubler could follow-up with one of the entities as they are now past due on two invoices. Director Kuebler did not recall speaking with the entity. Executive Director Bondy said he would follow-up with Director Kuebler after the meeting.

Regarding groundwater and surface water monitoring, Executive Director Bondy asked if the Board had any concerns about the proposed changes outlined in the staff report. No concerns were expressed.

Regarding the SGMA Watershed Coordinator Grant, Executive Director Bondy explained that Fillmore-Piru GSA voted against supporting the grant application by the Resource Conservation District. He explained that the Board would need to decide on supporting the grant at its next meeting, but that he did not believe there would be unanimous support. He does not want to spend any further time and budget on this matter if there is not going to be support, but did not want to leave it off the next agenda if there are directors who would like to vote on it. He asked if Chair Engle had anything to add. Chair Engle supported Executive Director Engle's recommendation. Directors Keubler and Rungren supported the recommendation.

Regarding the Wildlife Conservation Board Grant, Executive Director Bondy explained that the application deadline was postponed to October 1 due to the wildfires. He stated that he met with Ojai Valley Land Conservancy staff in the field early in the day to look at

monitoring well sites. Director Rungren asked about the scope of the grant application. Executive Director Bondy explained that it includes the feasibility study, monitoring well and stream gauges, and baseline monitoring components discussed with the Board. Director Rungren asked if the Board will approve the grant. Executive Director Bondy stated that the application will be submitted before the next Board meeting, but that the Board would need to approve a grant agreement if awarded. Changes to the scope could be requested prior to entering into a grant agreement, if necessary, in light of the GSP or water rights litigation.

Chair Engle thanked the Executive Director for preparing the comment letter on the State Water Resources Control Board's draft Data Report.

Chair Engle asked if there were any public comments. No were offered.

Recommended Action:

Receive an update from the Executive Director concerning miscellaneous matters and Agency correspondence. Provide feedback to staff.

No motion.

11) ADMINISTRATIVE ITEMS

a. Approve Addendum No. 1 to Attorney Retainer Agreement

Executive Director Bondy explained the Agency Administrator will no longer be assisting the Agency because she no longer has time due to her kids distance learning at home as a result of COVID-19. He explained that Agency Counsel's firm is willing to provide administrative support at a rate of $75/hour, which is a very competitive rate for administrative services when provided by a professional firm. He explained that the addendum to the retainer agreement sets forth the scope of administrative services and the proposed hourly rate. He explained that this is an interim solution for administrative services, but could be longer term. He noted that the hourly rate is higher than budgeted and an amendment to the adopted fiscal year budget may be required at a later date.

Director Kuebler thanked Executive Director Bondy for finding a solution quickly and thanked Agency Counsel for the willingness to provide administrative support.

Chair Engle noted that website updates is not listed in the scope and asked if the person could do that work. Executive Director Bondy explained that website updates can be assigned if the person has that skill.

Chair Engle asked if there were any public comments. No were offered.

Recommended Action: Approve Addendum No. 1 to the retainer agreement with Agency Counsel.

Director Rose motioned to approve the recommended action. Director Ayala seconded the motion.

Roll Call Vote: B. Kuebler – Y L. Rose – Y E. Ayala – Y
S. Rungren – Y D. Engle – Y

Absent: G. Shephard

Noes: None.

Chair Engle suggested handling Item 11b next because it is related. No objections.

b. Approve Resolution 2020-2 to Change Agency Principal Address

Executive Director Bondy stated that the purpose of the resolution is to change the Agency's address to that of Agency Counsel so the administrative support person can handle the Agency's mail.

Agency Counsel noted that the law firm is moving next month, so the address listed in the resolution should be updated.

Director Ayala expressed concerns about using the law firm's mailing address in Westlake Village and expressed a preference for having a local mailing address, such as a P.O. Box.

Executive Director Bondy wondered if Ventura River Water District could receive the mail. He added that the simplest approach would be to keep the Meiners Oaks Water District mailing address if they are willing to receive mail for the Agency.

Chair Engle volunteered to inquire with Meiners Oaks Water District about continued mail service.

No public comments.

Recommended Action:

Adopt draft Resolution 2020-2 to change the Agency's principal address.

No motion.

12) GSP ITEMS

a. Groundwater Sustainability Plan Update (Grant Category (d); Task 11: GSP Development and Preparation)

Executive Director Bondy reviewed the written staff report with the Board and provided additional details concerning his presentation during the disadvantaged community involvement (DACI) webinar event for Casitas Springs.

Chair Engle asked if there were any public comments. No were offered.

Recommended Action:

Receive an update from the Executive Director concerning groundwater sustainability plan development and consider providing feedback.

No motion.

b. Stakeholder Engagement Plan Annual Review (Grant Category (c): Task 10: Stakeholder Outreach and Engagement)

Director Rose explained that the Stakeholder Engagement Plan should be updated to reflect remote meetings due to COVID-19. He added that the contact information for the Agency Administrator needs to be changed.

Chair Engle asked if there were any public comments. No were offered.

Recommended Action:

Approve amendments to the Stakeholder Engagement Plan recommended by the Ad Hoc Stakeholder Engagement Committee.

Director Keubler motioned to approve changes described by Director Rose. Director Rose seconded the motion.

Roll Call Vote: B. Kuebler – Y L. Rose – Y E. Ayala – Y
S. Rungren – Y D. Engle – Y

Absent: G. Shephard

Noes: None.

13) **ADJOURNMENT** – The meeting was adjourned at 3:28 pm.

Action: _____

Motion: _____ Second: _____

B.Kuebler____ D.Engle____ A.Spandrio____ S.Rungren____ G.Shephard____ E.Ayala____ L.Rose___

ATTACHMENT TO THE SEPTEMBER 10, 2020 MINTUES - REVISED STAFF REPORT FOR ITEM 5B DISPLAYED DURING THE BOARD MEETING

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 5(b)

DATE: September 3, 2020
TO: Board of Directors
FROM: Carrie Troup C.P.A., Treasurer
SUBJECT: Approve Financial Report for August 2020

July 2020 UVRGA Balance			$	147,467.07
August 2020 Activity:				
Revenues:				
Groundwater Extraction Fees- August			$	39,001.34
July Expenditures Paid:				
Checks Pending Signature:				
2133	Bondy Groundwater Consulting, Inc.	August services	$	17,598.75
2134	Intera Incorporated	August services	$	16,359.00
2135	Carrie Troup, C.P.A.	August services	$	1,443.75
Total Expenditures Paid & To Be Paid - August			$	35,401.50
August 2020 UVRGA Ending Balance:			**$**	**151,066.91**

Action: _____

Motion: _____ Second: _____

B. Kuebler___ G. Shephard___ D. Engle___ A. Spandrio___ S. Rungren___ L. Rose___ E. Ayala___

The financial report omits substantially all disclosures required by accounting principles generally accepted in the United States of America; no assurance is provided on them.

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 5(b)

DATE: October 6, 2020
TO: Board of Directors
FROM: Carrie Troup C.P.A., Treasurer
SUBJECT: Approve Financial Report for September 2020

August 2020 UVRGA Balance			$	151,066.91
September 2020 Activity:				
Revenues:				
	Groundwater Extraction Fees- September		$	102,363.38
August Expenditures Paid:				
Debit Card	Ojai Valley News		$	335.00
Checks Pending Signature:				
2136	Ojai Digital	September services	$	146.25
2137	Olivarez, Madruga, Lemieux, O'Neill, LLP	July services	$	7,200.00
2138	Olivarez, Madruga, Lemieux, O'Neill, LLP	August services	$	3,387.05
2139	Rincon Consultants, Inc.	Aug. & Sept. services	$	12,876.00
2140	Carrie Troup, C.P.A.	September services	$	1,489.50
2141	Mitec Consultants	September services	$	47.50
2142	Intera Incorporated	September services	$	20,907.50
2143	Bondy Groundwater Consulting, Inc.	September services	$	24,228.75
Total Expenditures Paid & To Be Paid - September			$	70,282.55
September 2020 UVRGA Ending Balance:			**$**	**182,812.74**

Action: _____

Motion: _____ Second: _____

B. Kuebler___ G. Shephard___ D. Engle___ A. Spandrio___ S. Rungren___ L. Rose___ E. Ayala___

The financial report omits substantially all disclosures required by accounting principles generally accepted in the United States of America; no assurance is provided on them.

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 7

DATE: October 8, 2020

TO: Board of Directors

FROM: Executive Director

SUBJECT: Executive Director's Report

SUMMARY

The following are updates on Agency matters since the last Board meeting:

1. Administrative:

    a. Agency Administrator: ***The Executive Director had a knowledge transfer call with the former Agency Administrator. Kickoff with the new admin support person has not yet occurred due the Agency Counsel office move and vacation.***

2. Financial:

    a. Groundwater Extraction Fees:

        i. The third round of extraction fee invoices was mailed on July 16. Payments were due August 16. ***Two entities remain unpaid, totaling $1,781.***

        ii. One unpaid invoice totaling $857 remains from the second round of groundwater extraction fees. A penalty and interest statement was included with the third round invoice.

    b. GSP Grant:

        i. Grant Progress Report and Invoice No. 5 were submitted to DWR on July 13. ***DWR approval was received in September.*** Payment in the amount of $132,625 is expected in 1-2 months.

3. Legal:

    a. Counsel prepared a summary of AB 992, which creates new Brown Act provisions related to social media use. The summary is attached hereto (Attachment A).

    b. ***Counsel worked on privileged and confidential matters.***

    c. ***Counsel and the Executive Director participated in weekly calls concerning the physical solution.***

    d. Legal review and recommendations for addressing Endangered Species Act and Public Trust Doctrine issues in the GSP is ongoing.

4. Sustainable Groundwater Management:

    a. Groundwater Sustainability Plan Development: ***See Item 9a.***

    b. Groundwater and Surface Water Monitoring: ***Groundwater level data are scheduled to be downloaded from deployed transducers in October.***

    c. Camino Cielo Crossing Surface Water Flow Gauge: ***Staff recommends deferring gauge installation until next spring because the current dry season is almost over.***

    d. DWR Surface Water Flow Gauge: ***DWR obtained an encroachment permit for the gauge that will be installed a short distance upstream of Santa Ana Blvd. DWR is working on CEQA compliance.*** The gauge will be installed and maintained at no cost to UVRGA.

    e. Wildlife Conservation Board 2020 Stream Flow Enhancement Program Grant: ***Staff submitted the grant application on October 1.***

5. SWRCB / CDFW Instream Flow Enhancement Coordination:

    a. ***No change in status.*** The Executive Director participated in the monthly coordination call with SWRCB and CDFW. SWRCB is continuing to work on its next two deliverables. The first will be a memorandum describing the modeling sensitivity analysis approach. The next will be a memorandum describing the modeling scenarios. Eight scenarios are planned. Four are prescribed in the study plan and four will be developed based on TAC and public feedback. A TAC meeting will be held to discuss the scenarios. In order to remain on schedule for model and report completion by summer 2021, the above-described deliverables need to be released by in summer 2020. CDFW is currently working to develop draft instream flow recommendations for the Ventura River below San Antonio Creek using flow criteria from the Watershed Criteria Report along with other information. The recommendations are anticipated later this year.

6. Ventura River Watershed Instream Flow & Water Resilience Framework (VRIF): ***A VRIF meeting is scheduled for October 7.***

RECOMMENDED ACTIONS

Receive an update from the Executive Director concerning miscellaneous matters and Agency correspondence. Provide feedback to staff.

BACKGROUND

Not applicable

FISCAL SUMMARY

Not applicable

ATTACHEMENTS

A. AB 992 Summary

Action: _____

Motion:_____ Second: _____

B. Kuebler___ D. Engle___ A. Spandrio___ S. Rungren___ G. Shephard___ E. Ayala___ L. Rose___

OLIVAREZ MADRUGA LEMIEUX O'NEILL, LLP
ATTORNEYS AT LAW
LOS ANGELES | WESTLAKE VILLAGE
4165 E THOUSAND OAKS BLVD, SUITE 350, WESTLAKE VILLAGE, CA 91362 | **TEL:** 805.495.4770 | **FAX:** 805.495.2787 | WWW.OMLOLAW.COM

BY U.S. MAIL & EMAIL
bbondy@uvrgroundwater.org

September 24, 2020

Bryan Bondy, Executive Director
Upper Ventura River Groundwater Agency
202 W. El Roblar Drive.
Ojai, CA 93023

Re: Summary of AB 992

On September 18, 2020, Governor Gavin Newsom approved Assembly Bill No. 992, which amends Government Code section 54952.2. Under Assembly Bill 992 (AB 992), public officials may now violate the Brown Act if they communicate with other legislative board members of the same body on social media platforms.

Generally, the Brown Act requires that a legislative body's meetings be open and public. The Act prohibits a majority of the members of a legislative body from using a series of communications of any kind to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. AB 992 now clarifies what kinds of communication a public official may and may not have via social media and what kind of communications are prohibited as follows:

1. A public official may communicate on internet-based social media platforms to answer questions, provide information to the public or to solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction.

    a. Examples:
        i. Director A responds to a constituent's question on Facebook about a public project.

        ii. Director B provides COVID-19 information to her constituents on her social media platforms.

        iii. Director C asks his constituents for their opinion on a public project being proposed in a certain area. This is permissible so long as a majority of the board members are not using this platform to "***discuss among themselves***" the public project.

            1. "**Discuss among themselves**" is defined to include making posts, commenting and using digital icons that express reactions to communications, e.g., emojis, made by other members of the board.

2. A majority of the members of the legislative body may not use social media platforms to discuss among themselves official business.

    a. Examples:

        i. Director A posts on his Facebook account about a public project that is proposed to be built in a particular area of the City. Directors B and C post comments on Director A's post and engage in a discussion among themselves about the public project. This is prohibited.

3. A public official must not directly respond to any communication on social media regarding official business that is made, posted, or shared by any other member of the legislative body. In this case, a Brown Act violation could arise if, for example, one public official comments on another public official's post about a public agency's issue on social media.

    a. Examples:

        i. Director A posts on her Facebook account that District staff did a great job responding to a water line break. In this case, no other director should respond to Director A's post.
        ii. Director B tweets about a proposal to phase out certain types of meters. Director C likes the tweet and retweets Director B's tweet. This is prohibited.

AB 992 defines "internet-based social media platform" as an "online service that is open and accessible to the public, and therefore, would encompass activity on a variety of social media platforms, such as Facebook, Twitter, Instagram, Snapchat, Reddit, blogs, and so on. Because many public officials have taken to social media to communicate with their constituents and the general public, it is imperative that public officials are cognizant of their activities, comments, and even "likes" on another public official's social media posts, comments, etc.

Please review and/or circulate this letter with members of your legislative board. If any questions arise or further information is required, please do not hesitate to contact our office.

Thank you for your time and attention.

Very truly yours,

Keith Lemieux

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 8(a)

DATE: October 8, 2020

TO: Board of Directors

FROM: Staff

SUBJECT: Fiscal Year 2019/2020 Year End Budget Report

SUMMARY:

The Ad Hoc Budget Committee reviewed an income statement prepared by staff through June 30, 2020. It is noted that DWR approval of grant invoice no. 5 was received after committee review. Thus, the income statement attached hereto includes $146,714.69 of additional revenue compared to the report version reviewed by the committee (Attachment A).

The following is a description of key budget performance items:

- Revenue:
    - Extraction Fee Revenue was in-line with budget projections.
    - Grant Revenue was 231% of budget. The difference is the result of three factors. First, the original budget relied on incorrect revenue accrual rules, which affected the timing of estimated accruals. This has been remedied going forward by hiring a CPA to serve as Treasurer. Second, more grant eligible work was performed during FY 19/20 than was assumed in the budget. Lastly, $35,904.77 of grant revenue from prior years was incorrectly booked in FY 19/20 by the former Treasurer.
- Expenses:
    - Administrative Expenses were 86% of budget. Due to COVID-19, the agency phone and workshop / meeting supplies were not procured.
    - Accounting and Agency Administrator Expenses were 109% of budget. It is noted that this calculation is not shown on the income statement. This is because

accounts and expense tracking were reorganized by the new Treasurer to comply with accounting rules. Expenses for the new Treasurer and Agency Administrator are now tracked in professional services accounts; however, the budget for these items remains in the Personnel Expenses account where it was originally budgeted. The $4,979 budget exceedance was the result of inefficient work by the former Treasurer. Staff analyzed Treasurer expenses and is pleased to report that new Treasurer (CPA) expenses to date are roughly 40% less than that prior Treasurer (bookkeeper), despite the new Treasurer being a CPA, having a significantly higher hourly rate, and the extra effort necessary to cleanup legacy issues created by the former Treasurer.

- Other Professional Fees were 106% of budget. The $25,217.55 budget exceedance was the result of more effort by the Executive Director than anticipated during FY 19/20 as a result of data request issues, re-writing of the Kear Groundwater hydrogeologic conceptual model work product, grant agreement amendment, and more GSP team coordination than estimated.

- Net Income was $137,839 higher than budget. This is mostly related to the grant revenue, as previously discussed.

- Cash Position: Cash increased during the fiscal year by $86,426. Then year-end cash balance on June 30 was $166,493, which compares favorably with the $74,000 reserve target. It is noted that the accounts receivable balance on June 30 was $168,352; however, $35,452 is grant retention, which will not be received until mid-2022. It is also important to remember that the agency has a $90,000 liability (member agency loans). Please see the balance sheet for further information (Attachment B).

RECOMMENDED ACTION

It is recommended that the Board approve receiving and filing the year-end budget report.

BACKGROUND

The Fiscal Year 2019/2020 budget was last updated on February 13, 2020.

FISCAL SUMMARY

Please see Summary and Attachments A and B.

ATTACHMENTS

A. Year End Income Statement
B. Year End Balance Sheet

Action: _____

Motion:_____ Second: _____

B. Kuebler___ D. Engle___ A. Spandrio___ S. Rungren___ G. Shephard___ E. Ayala___ L. Rose___

Upper Ventura River Groundwater Agency
FY 20 Budget v Actual Q1 - Q 4
July 2019 through June 2020

	Total ADMIN				Total GRANT				TOTAL				
	Jul '19 - Jun 20	Budget	$ Over Budget	% of Budget	Jul '19 - Jun 20	Budget	$ Over Budget	% of Budget	Jul '19 - Jun 20	Budget	$ Over Budget	% of Budget	Comments
Ordinary Income/Expense													
Income													
Misc. Income	378.97				0.00				378.97	0.00	378.97	100.0%	Sale of desktop computer to OBGMA
41000 · Grant Income													
41100 · DWR GSP Grant Income	288,654.64	125,000.00	163,654.64	230.92%	0.00				288,654.64	125,000.00	163,654.64	230.92%	
Total 41000 · Grant Income	288,654.64	125,000.00	163,654.64	230.92%	0.00				288,654.64	125,000.00	163,654.64	230.92%	
43000 · Groundwater Extraction Fee	338,104.95	336,957.00	1,147.95	100.34%	0.00				338,104.95	336,957.00	1,147.95	100.34%	
Total Income	627,138.56	461,957.00	165,181.56	135.76%	0.00				627,138.56	461,957.00	165,181.56	135.76%	
Expense													
50001 · Personnel Expenses													
50100 · Salaries Expense	20,572.50	40,000.00	-19,427.50	51.43%	0.00				20,572.50	40,000.00	-19,427.50	51.43%	Expenses are for former Treasurer Karen Palm only. Budget includes expenses for Agency Admin and Treasurer. Note that Agency Admin and current Treasurer Carrie Troup expenses are booked in 58030 and 58020, respectively because they are contractors, not employees.
50200 · Payroll Taxes	1,749.78	1,700.00	49.78	102.93%	0.00				1,749.78	1,700.00	49.78	102.93%	
50400 · Worker's Comp Insurance	1,045.00	1,045.00	0.00	100.0%	0.00				1,045.00	1,045.00	0.00	100.0%	
Total 50001 · Personnel Expenses	23,367.28	42,745.00	-19,377.72	54.67%	0.00				23,367.28	42,745.00	-19,377.72	54.67%	
55000 · Administrative Exp													
55005 · Rent Expense	650.00	600.00	50.00	108.33%	0.00				650.00	600.00	50.00	108.33%	One month of MOWD fee from FY 18/19 was booked in FY 19/20
55010 · Telephone Expense	0.00	515.00	-515.00	0.0%	0.00				0.00	515.00	-515.00	0.0%	Telephone was not procurred.
55011 · Computer Maintenance	3,906.70	4,500.00	-593.30	86.82%	0.00				3,906.70	4,500.00	-593.30	86.82%	
55015 · Postage & Shipping	23.30	100.00	-76.70	23.3%	0.00				23.30	100.00	-76.70	23.3%	
55020 · Office Supplies & Software	628.88	618.00	10.88	101.76%	0.00				628.88	618.00	10.88	101.76%	
55025 · Minor Equipment	1,396.19	2,500.00	-1,103.81	55.85%	0.00				1,396.19	2,500.00	-1,103.81	55.85%	
55035 · Advertising and Promotion	741.20	741.00	0.20	100.03%	0.00				741.20	741.00	0.20	100.03%	
55055 · Insurance Expense-SDRMA	3,668.17	3,621.00	47.17	101.3%	0.00				3,668.17	3,621.00	47.17	101.3%	
55060 · Memberships-CSDA	1,529.38	1,446.00	83.38	105.77%	0.00				1,529.38	1,446.00	83.38	105.77%	
Total 55000 · Administrative Exp	12,543.82	14,641.00	-2,097.18	85.68%	0.00				12,543.82	14,641.00	-2,097.18	85.68%	
58000 · Professional Fees													
58005 · Executive Director /GSP Manager	50,396.53	52,821.00	-2,424.47	95.41%	80,769.90	54,365.00	26,404.90	148.57%	131,166.43	107,186.00	23,980.43	122.37%	More effort in FY 19/20 than anticipated, primarily related to data request issues, more GSP team coordination than estimated, re-writing of KG HCM work product, and grant agreement amendment.
58010 · Legal Fees	26,479.12	49,000.00	-22,520.88	54.04%	0.00	1,000.00	-1,000.00	0.0%	26,479.12	50,000.00	-23,520.88	52.96%	
58015 · Website	0.00	1,030.00	-1,030.00	0.0%	0.00				0.00	1,030.00	-1,030.00	0.0%	
58020 · Accounting	22,506.25	15,000.00	7,506.25	150.04%	0.00				22,506.25	15,000.00	7,506.25	150.04%	Expenses are for auditor and current Treasurer Carrie Troup, CPA. Budget for Treasurer is included in 50100 Salaries Expense because the Treasurer changed mid-year and the prior treasurer was an employee, so that is where the Treasurer expenses were budgeted. Carrie Troup, CPA expenses are tracked here in accordance with accounting rules.
58030 · Agency Administrator	16,900.21	0.00	16,900.21	100.0%	0.00				16,900.21	0.00	16,900.21	100.0%	Budget for Agency Admin. is included in 50100 Salaries Expense by accident because Agency Admin during prior budget year was an employee. This account was created mid-year by Treasurer because Agency Admin is not an employee and expenses need to be tracked here instead per accounting rules.
58050 · Other Professional Services	1,795.82	7,500.00	-5,704.18	23.94%	265,992.18	234,500.00	31,492.18	113.43%	267,788.00	242,000.00	25,788.00	110.66%	More effort in FY 19/20 than anticipated, primarily related to more GSP team coordination than estimated and re-writing of KG HCM work product.
Total 58000 · Professional Fees	118,077.93	125,351.00	-7,273.07	94.2%	346,762.08	289,865.00	56,897.08	119.63%	464,840.01	415,216.00	49,624.01	111.95%	
Total Expense	153,989.03	182,737.00	-28,747.97	84.27%	346,762.08	289,865.00	56,897.08	119.63%	500,751.11	472,602.00	28,149.11	105.96%	
Net Ordinary Income	473,149.53	279,220.00	193,929.53	169.45%	-346,762.08	-289,865.00	-56,897.08	119.63%	126,387.45	-10,645.00	137,032.45	-1,187.29%	
Other Income/Expense													
Prior Period Adjustment	-806.38				0.00				-806.38	0.00	-806.38	100.0%	Adjustment for pre-paid CSDA membership.
Total Other Expense	-806.38				0.00				-806.38	0.00	-806.38	100.0%	
Net Other Income	806.38	0.00	806.38	100.0%	0.00	0.00	0.00	0.0%	806.38	0.00	806.38	100.0%	
Net Income	**473,955.91**	**279,220.00**	**194,735.91**	**169.74%**	**-346,762.08**	**-289,865.00**	**-56,897.08**	**119.63%**	**127,193.83**	**-10,645.00**	**137,838.83**	**-1,194.87%**	

Cash-on-hand July 1, 2019	$ 80,067.74
Cash-on-hand June 30, 2020	$ 166,493.37
Net Change in Cash	$ 86,425.63

Upper Ventura River Groundwater Agency
Balance Sheet Prev Year Comparison
As of June 30, 2020

	Jun 30, 20	Jun 30, 19	$ Change	% Change
ASSETS				
Current Assets				
Checking/Savings				
Bank of the Sierra	166,493.37	80,067.74	86,425.63	107.9%
Total Checking/Savings	166,493.37	80,067.74	86,425.63	107.9%
Accounts Receivable				
11000 · Accounts Receivable				
11001 · DWR Grant Retention 10%	35,452.36	0.00	35,452.36	100.0%
11002 · DWR Grant	0.00	65,869.00	-65,869.00	-100.0%
11000 · Accounts Receivable - Other	132,900.01	0.00	132,900.01	100.0%
Total 11000 · Accounts Receivable	168,352.37	65,869.00	102,483.37	155.6%
Total Accounts Receivable	168,352.37	65,869.00	102,483.37	155.6%
Other Current Assets				
13000 · Prepaid Expenses	6,906.18	0.00	6,906.18	100.0%
Total Other Current Assets	6,906.18	0.00	6,906.18	100.0%
Total Current Assets	341,751.92	145,936.74	195,815.18	134.2%
TOTAL ASSETS	**341,751.92**	**145,936.74**	**195,815.18**	**134.2%**
LIABILITIES & EQUITY				
Liabilities				
Current Liabilities				
Accounts Payable				
20000 · Accounts Payable	0.00	19,404.64	-19,404.64	-100.0%
Total Accounts Payable	0.00	19,404.64	-19,404.64	-100.0%
Other Current Liabilities				
24000 · Payroll Liabilities	0.00	1,974.01	-1,974.01	-100.0%
Total Other Current Liabilities	0.00	1,974.01	-1,974.01	-100.0%
Total Current Liabilities	0.00	21,378.65	-21,378.65	-100.0%
Long Term Liabilities				
28000 · Notes Payable				
28100 · Member Agency Zero-Int Loan	90,000.00	0.00	90,000.00	100.0%
Total 28000 · Notes Payable	90,000.00	0.00	90,000.00	100.0%
Total Long Term Liabilities	90,000.00	0.00	90,000.00	100.0%
Total Liabilities	90,000.00	21,378.65	68,621.35	321.0%
Equity				
32000 · Retained Earnings	124,558.09	62,419.56	62,138.53	99.6%
Net Income	127,193.83	62,138.53	65,055.30	104.7%
Total Equity	251,751.92	124,558.09	127,193.83	102.1%
TOTAL LIABILITIES & EQUITY	**341,751.92**	**145,936.74**	**195,815.18**	**134.2%**

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 8b

DATE: October 8, 2020

TO: Board of Directors

FROM: Agency Counsel and Executive Director

SUBJECT: Physical Solution Comments

SUMMARY

We are in receipt of a proposed Physical Solution that is intended to serve as a stipulated judgment in the matter known as Santa Barbara Channelkeeper v. State Water Resources Control Board, LASC Case No. 19STCP01176. The Physical Solution has been circulated so as to receive comments by October 31, 2020. Following the receipt of comments, the Physical Solution will be submitted to the Court for approval. Although the UVRGA is not a party to the Channelkeeper matter, the City of Ventura has provided us with a copy of the Physical Solution and requested that we provide comments. Agency counsel and staff have developed proposed comments in redline form on the physical solution attached hereto (Attachment A).

The Background Section of this staff report describes the contents of the Physical Solution as well staff's proposed comments.

RECOMMENDED ACTIONS

Direct staff to provide the comments as indicated in the redline version of the Physical Solution that is attached to this Memorandum or as otherwise directed by the Board.

BACKGROUND

The Physical Solution

In groundwater adjudications, the Court has the unique power of imposing a "Physical Solution." The Physical Solution uses the equity powers of the Court to fashion a remedy in a case involving water rights designed to ensure that waters of the state are put to reasonable and beneficial uses and not wasted. Where, as here, parties to litigation reach a settlement in a water rights adjudication, they may put forth this settlement in the form of a proposed Physical Solution for signature by the Court. If all parties to the matter agree with the proposed Physical Solution and it is supported by substantial evidence, the Court will enter the Physical Solution and then retain continuing jurisdiction to enforce the Physical Solution indefinitely.

If all parties to the case do not agree with the Physical Solution, it may form a partial settlement among the settling parties. These parties will in turn litigate the remaining issues against the non-settling parties. Ultimately, following resolution of these disputes, the Court will enter a Physical Solution that incorporates the stipulated Physical Solution as well as any supplemental decision reached by the Court as a result of the litigation.

The Physical Solution presented by the City of Ventura is unique in that it does not attempt to resolve all the disputes between all the parties. Most significantly, the Physical Solution does not attempt to resolve the competing claims to groundwater or surface water. Instead, the Physical Solution is narrowly directed to resolving the dispute involving the Steelhead trout.

Specifically, the Physical Solution presumes that there is enough water available to support the trout (which the Physical Solution calls "historical flows'). The Physical Solution directs that the current uses of water continue as and that water flow is monitored to make sure that it is not significantly altered in the future. Instead of attempting to limit groundwater pumping or surface water diversion, the Physical Solution generally describes a process for creating and improving habitat for the trout to promote their health and safety. As a result of this limited focus, the Physical Solution should generally be expected to avoid conflicting with the authority of the GSA (provided the language of the Physical Solution is slightly modified).

The Physical Solution describes its purposes as follows:

> "This Physical Solution does not determine water rights or directly limit water Production. Instead it creates a specific plan to manage the watershed to protect existing reasonable and beneficial uses of water within the watershed …
>
> …the Physical Solution establishes a long term management plan that accounts for: the specific needs of the Fishery, variable hydrology of the region, periods of low and very low precipitation, and the condition and quality of the habitat during the life cycle of the Fishery, including the specific reach habitat requirements pertinent to that lifecycle, and thereby ensures the viability of the Fishery through a series of coordinated management actions under a Management Plan." (Physical Solution pages 2-4).

The Physical Solution divides the Ventura River into seven reaches based on habitat requirements and hydrological conditions. These reaches are defined based on the habitat requirements of the watershed and the specific life cycle needs with the Steelhead (note: the Upper Ventura River Basin (UVRB) is located in reaches V3 through V5). The Physical Solution uses the health of the Southern California Steelhead trout population in these reaches as a proxy for the overall health of the instream uses in the Ventura River watershed ("Fishery"). The Physical Solution then describes the primary constituent elements for which the Steelhead trout for the critical habitat needed to conserve the species. The primary purpose of the Physical Solution is to move the conditions of the Fishery in the watershed from the current "baseline condition" to "good conditions." The Steelhead will be considered in "good condition" if the population of Steelhead shows evidence of rebounding following adverse environmental conditions, evidence of life stage diversity, the fish appear to be in healthy and good shape, and there is a relative low abundance of predators and non-native species.

In order to achieve this, the Physical Solution proposes three phases. In the first phase the parties to the Physical Solution will establish the governance structure and adopt a Management

Plan. In the second phase, the parties will implement the Management Plan for a ten-year period. During the third phase, the parties will continue to implement the Management Plan during ten-year periods as well as update the Management Plan until good conditions are achieved.

The core concept of the Physical Solution is the creation of a Management Plan. The Physical Solution indicates that current water flow within the area is consistent with historical flows and enough to move the Fishery from baseline conditions to good conditions. The plan will include Management objectives to move the condition of the Fishery to good condition, provide a detailed assessment of the baseline conditions and establish detailed criteria to be used to define what constitutes a healthy Fishery.

The Physical Solution requires that this plan include a list of seven specific projects and directs the parties to consider additional projects for further consideration. These projects focus on habitat improvement such as: (1) removing Steelhead access barriers at Foster Park and in San Antonio Creek; (2) creating places for the Steelhead to spawn, rear and develop before they leave for the ocean; (2) creating safe harbors to provide safe pooling areas in which the population can safely congregate; and (3) creating programs that reduce non-native species and fish populations.

In addition, the Physical Solution seeks to maintain historical flows in critical areas of concern, by continuing to implement a flow regime that Ventura has negotiated with Channelkeeper. Specifically, the City will use less water at Foster Park when flows reach 4 cubic feet per second (CFS) and stop all production when flows reach 3 CFS. Other areas of the Watershed will seek to maintain historical flows through voluntary efforts or future management activities.

The Physical Solution creates a Management Committee who is charged with developing an annual budget for the purposes of implementing the Physical Solution. The Management Committee is charged with the power to select a technical adviser, adopt rules and regulations, adopt a Management Plan and execute those agreements necessary for carrying out these powers and purposes. In this way, the Management Committee functions like a "Watermaster" of an adjudicated basin and in many ways is similar to a joint powers authority. As currently proposed, the Board has five members with a permanent member from Ventura and Casitas and rotating members representing special districts, agricultural user, and the two GSAs in the watershed.

The Management Committee is charged with adopting an annual assessment to pay for the costs of developing and implementing the Management Plan as well as other administrative costs. The assessment is calculated and imposed on each producer in an amount equal to the producers share of total Watershed water production above a de minimis level.

<u>Interaction with UVRGA</u>

The GSA is not a party to the underlying action and is not intended to be a signatory to the

Physical Solution. Therefore, the GSA is not required to take any position regarding the advisability of adopting the Physical Solution. However, SGMA provides that the Physical Solution must "minimize interference with the timely completion and implementation of" the GSP and avoid "redundancy and unnecessary costs in the development of technical information and a physical solution (Water Code Section 10737.2). The Physical Solution must also be "consistent with the attainment of sustainable groundwater management within the timeframes established by [SGMA]." (Id.) Further, staff anticipates that portions of the Physical Solution may be helpful to the GSA in adopting the GSP. Therefore, in furtherance of these objectives staff is proposing certain changes to the language of the Physical Solution.

The purpose of the Physical Solution is to improve the habitat of the steelhead trout in a manner that is consistent with any eventual Groundwater Sustainability Plan adopted by the GSA. At various points in the Physical Solution, the parties indicate that the management solutions developed by the Management Plan as well as the Physical Solution itself can optionally be used to meet certain components of the GSP. Further, the Physical Solution promotes this continuity by appointing members of the GSA to the management committee. We have had the opportunity to speak with attorneys for the City of Ventura and they have confirmed this understanding.

However, because of the timing of the adoption of the Physical Solution, Management Plan and GSP, we are concerned that the precise language of the existing Physical Solution could be construed in the manner that would create conflicts between it and the SGMA process for the UVRB. The Physical Solution is drafted in a manner that suggests that the Physical Solution will be adopted first, then the Management Plan and then the GSP. However, this order of events seems unlikely. After consulting with Ventura's attorneys, they anticipate that the Physical Solution will be approved by the Court in the second quarter of next year. Based on this timeline, it is unreasonable to conclude that any Management Plan would be adopted prior to our adoption of the GSP. Furthermore, given the potential for delay caused by the litigation, it is quite possible that the Physical Solution will not be signed by the court until after the GSP is adopted. Accordingly, we have proposed revisions to account for these outcomes such as language that the Management Plan may wish to incorporate portions of the GSP rather than the other way around.

Even if you assume that the Physical Solution will be adopted before the adoption of our GSP, language in the current Physical Solution appears to be inconstant with our statutory process. The Physical Solution in its current form requires that the Court make a finding that the Physical Solution addresses "undesirable results" under SGMA related to the depletion of interconnected surface water. This finding is currently impossible to make because "undesirable results" must first be defined through the SGMA process, which includes consideration of stakeholder and public input, balancing of various interests, consideration of all beneficial uses, and the SGMA requirement for numerical modeling (or other equally effective tools). Furthermore, the depletion of interconnected surface water has not yet been characterized to the extent required

under SGMA along the entirety of the Ventura River within UVRB. [1] Finally, the Physical Solution does not include required SGMA elements such as specification of minimum thresholds, measurable objectives, and interim milestones.[2] In sum, several SGMA-required elements would be needed before the court could reasonably conclude that the SGMA requirements for this sustainability indicator are met by the Physical Solution. Those elements can only exist after the GSP is adopted.

After speaking with attorneys for the City of Ventura we have learned that the Physical Solution was not intended to replace the SGMA development process. Rather the purpose of the problematic language is to ensure that the Physical Solution is consistent with the GSP. The City is open to revisions that meet this objective while making it clear that the GSP process will be respected.

Accordingly, we have suggested revisions that give the GSA the option of including portions of the Physical Solution or Management Plan where appropriate while eliminating the suggestion that the Physical Solution is intended to be adopted wholesale into the GSP. We have retained language that the Physical Solution and Management Plan must be consistent with the GSP. We believe that these changes will maintain the statutory authority of the GSA to adopt and implement SGMA.

We also have some concerns about the governance structure. As proposed, there would be a five-member board with one chair split between the two existing GSAs in the watershed. This would create a situation where one GSA would be required to make decisions regarding actions that involve the other GSAs basin. We think this shared authority could create unnecessary problems. Instead, we propose that each GSA has its own.

Finally, we have concerns about the inconsistent definition and treatment of *de minimis* groundwater users between the Physical Solution and SGMA. The Physical Solution would establish a 5 acre-feet per year (AFY) threshold for *de minimis* production as compared with 2 AFY under SGMA. This would create a gap in reporting between 2 AFY (*de minimis* under SGMA) and 5 AFY (*de minimis* proposed in the Physical Solution). Staff would like to rely on production reporting to the Management Committee for SGMA purposes, but would have to figure out who falls between 2 and 5 AFY and implement a duplicative extraction reporting program for those pumpers. This would be confusing and frustrating for small pumpers and would add unnecessary cost. Staff and Counsel will explore potential solutions with Physical Solution proponents.

[1] While there are likely sufficient data in the proximity of Foster Park and perhaps Casitas Springs, the location and timing of interconnection and whether there is significant and unreasonable depletion of surface water cannot be demonstrated in the northern two-thirds of the UVRB with available data to the extent required under SGMA. Once data gaps are filled, UVRGA may find other areas of transient interconnection that require management under SGMA.

[2] Related to this is the monitoring network. It is unclear whether the monitoring network proposed in the Physical Solution would meet SGMA requirements.

We also recommend other clarifying changes, as shown in the attached redline of the Physical Solution.

FISCAL SUMMARY
Not Applicable.

ATTACHEMENTS

A. Physical Solution Redline

Action: _____

Motion:_____ Second: _____

B. Kuebler___ D. Engle___ A. Spandrio___ S. Rungren___ G. Shephard___ E. Ayala___ L. Rose___

SUPERIOR COURT OF 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; et al., Respondents.	Case No. 19STCP01176 Judge: The Honorable William F. Highberger [PROPOSED] STIPULATED PHYSICAL SOLUTION AND JUDGMENT
CITY OF SAN BUENAVENTURA, a California municipal corporation, Cross-Complainant, v. DUNCAN ABBOTT, an individual; et al. Cross-Defendants.	Action Filed: September 19, 2014 Trial Date: Not Set

[PROPOSED] STIPULATED PHYSICAL SOLUTION AND JUDGMENT

Certain **Parties**[1] to this **Action** have stipulated to entry of this **Physical Solution** and **Judgment** ("Physical Solution"). The stipulation of the Parties is conditioned on further proceedings that will result in the Physical Solution becoming binding on all **Bound Parties** in this Action. The Court, having exercised its constitutional duty to evaluate a physical solution, considered the pleadings, the stipulation of the Parties, the evidence presented, and based on the findings of fact and conclusions of law set forth below, approves the Physical Solution[2] and enters this Judgment that imposes the Physical Solution in furtherance of the requirements of Article X, section 2 of the California Constitution. In imposing the Physical Solution, the Court has determined that the Physical Solution optimizes the reasonable and beneficial use of water in the Ventura River Watershed and avoids substantial injury, material expense, and unnecessary waste of precious water resources in a manner protective of public trust resources, that it is consistent with Code of Civil Procedure sections 830-852, as applicable, and that it conforms with California water law and policy, including because it preserves the continuing jurisdiction of the Court to enforce the Physical Solution and to address future disputes, if necessary. This Physical Solution does not determine water rights or directly limit water **Production**. Instead, it creates a specific plan to manage the Watershed to protect existing reasonable and beneficial uses

[1] A list of defined terms used herein is attached hereto as Exhibit A. For ease of reference, defined terms are placed in initial capitals, and bolded when defined.

[2] A "physical solution" describes an agreed upon or judicially-imposed resolution of conflicting claims in a manner that advances the constitutional rule of reasonable and beneficial use of the state's water supply. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288.) It is defined as both a defense to the issuance of an injunction (*Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 574, 579; *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 556) and as "an equitable remedy designed to alleviate overdrafts and the consequential depletion of water resources in a particular area, consistent with the constitutional mandate to prevent waste and unreasonable water use and to maximize the beneficial use of this state's limited resource." (*California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.) Physical solutions need not allocate water rights if a dispute as to water right priorities is mooted by the implementation of practical measures, such as ensuring downstream water users are not adversely affected by upstream use, raising money to improve the watershed or import water, and encouraging local water conservation. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1235.) A physical solution is thus a practical remedy that does not change vested rights. (*Id.* at p. 1250.) The "established practice" of reserving continuing jurisdiction enables the Court to address water rights issues, if and when required. (*Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 199 Cal.App.4th 658, 671.

of the water within the Watershed. The Physical Solution is hereby entered as binding on all Parties to the Action, on certain parcels within the Watershed identified herein, and on all **Persons** appearing in this Action, including, without limitation, being binding on all Parties who have stipulated to this Physical Solution, on all Parties who are subject to prior settlement(s) or judgment(s) of the Court, on all real property overlying the **Groundwater** basins in the Ventura River Watershed, on all Parties who have defaulted, and on all Persons who hereafter stipulate or otherwise become Parties to this Physical Solution. The Physical Solution is also binding on all named **Cross-Defendants** owning real property adjoining or abutting the waters of the Ventura River or its tributaries, whether flowing on the surface or underground in a known and defined channel and their successors and on all real property overlying one or more of the following four Groundwater basins that are subject to the Physical Solution: the **Lower Ventura River Basin**, the **Upper Ventura River Basin**, the **Ojai Valley Basin**, and the **Upper Ojai Valley Basin** (collectively, "**Basins**"). The Physical Solution is also an in rem judgment binding all real property overlying the Basins. All Parties, Persons, and properties listed above as bound by this Physical Solution are referred to herein as "Bound Parties."

Based on the findings of fact and conclusions of law contained in this Physical Solution, the Court determines that the imposition of the Physical Solution is required to implement the mandate of Article X, section 2 of the California Constitution in a manner that does not cause substantial injury to water right holders, is consistent with the public trust doctrine, and Code of Civil Procedure section 849 because it preserves and protects all reasonable and beneficial uses of water of the Ventura River Watershed and reasonably balances the needs of public trust resources with the consumptive use needs of people, agriculture, and industry while establishing and implementing actions to maintain the **Fishery** in **Good Condition**. The Physical Solution establishes a long-term management plan that accounts for: the specific needs of the Fishery, variable hydrology of the region, periods of low and very low precipitation, and the condition and quality of the habitat during the lifecycle of the Fishery, including the specific reach habitat requirements pertinent to that lifecycle, and thereby ensures the viability of the Fishery through a

series of coordinated management actions under a ~~**Management Plan**~~**Fisheries Management Plan**. Collectively, these management actions undertaken by the Parties will concurrently preserve public trust resources and provide a continued water supply for the thousands of people, farms, and businesses that rely on the Ventura River Watershed for water.

1. DESCRIPTION OF LITIGATION

1.1 Initiation of Litigation

In September of 2014, Plaintiff Santa Barbara Channelkeeper ("**Channelkeeper**") filed a Complaint and Petition for Declaratory Relief and a Writ of Mandate ("**Complaint**") pursuant to Code of Civil Procedure section 1085 in the County of San Francisco Superior Court (Case No. CPF-14-513875) against Defendant and Cross-Complainant City of San Buenaventura ("**City**") and Respondent State Water Resources Control Board ("**State Board**"). Channelkeeper asked the Court to declare that the City's extraction of water from Reach 4 of the Ventura River from April through October is unreasonable, in violation of Article X, section 2 of the California Constitution and to direct the State Board to perform alleged mandatory duties under Article X, section 2, Water Code section 275, and the public trust doctrine, to prevent that alleged unreasonable use by the City.

In response to the Complaint, the City filed a Cross-Complaint, and later a First Amended Cross-Complaint, against other surface water and Groundwater users in the Ventura River Watershed who it alleged affect the flow of water in the Ventura River. As used herein, the **Ventura River Watershed** or **Watershed** includes the entire Ventura River and its tributaries, as well as the Basins. Channelkeeper moved to strike the City's First Amended Cross-Complaint, and the San Francisco Superior Court granted the motion.

1.2 Appeal and Court of Appeal Decision

The City appealed the decision to strike its First Amended Cross-Complaint. On January 30, 2018, the Court of Appeal, First Appellate District, Division Two, reversed the San Francisco Superior Court's decision and remanded the matter in *Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176.

1.3 Amended Pleadings and Transfer of Venue

Following the Court of Appeal's decision, Channelkeeper filed a First Amended Complaint and Petition ("**Amended Complaint**"), and the City filed a Second Amended Cross-Complaint. The Amended Complaint alleges one claim for relief against the City for declaratory relief and four claims for relief against the State Board for writ of mandate. On January 2, 2020, the City filed a Third Amended Cross-Complaint ("**Amended Cross-Complaint**"). The Amended Complaint and the Amended Cross-Complaint are the operative pleadings in this litigation and are collectively referred to in this Physical Solution as the "**Action**."

In the Amended Cross-Complaint, the City named approximately 2,300 Cross-Defendants who beneficially use or who have potential rights to waters of the Ventura River flowing in a known and defined channel or Groundwater in the Ventura River Watershed, including surface water from the Ventura River and its tributaries and Groundwater from the Basins. The Amended Cross-Complaint also alleged that the Court has in rem jurisdiction over all property overlying the Basins. The Amended Cross-Complaint alleges nine separate claims for relief, which are two claims for injunctive relief (first and second claims for relief), one claim for entry of a physical solution (sixth claim for relief), and declaratory relief claims for pueblo and/or treaty water rights, prescriptive water rights, appropriative water rights, municipal priority, the human right to water, and reasonable and beneficial use (third, fourth, fifth, seventh, eighth, and ninth claims for relief), and asserts the City's relative priority rights to water, including, without limitation, a request for a comprehensive adjudication of the Ventura River Watershed and the imposition of a physical solution.

By stipulation, venue for the Action was transferred from the San Francisco County Superior Court to the Los Angeles County Superior Court because venue in San Francisco imposed an unnecessary burden on the numerous Parties and Persons who reside or own property in Ventura County. The Action was assigned to this Court.

1.4 Service of Parties and Default

On or about November 21, 2019, the Court granted the City's motion to approve a notice of adjudication and form answer pursuant to Code of Civil Procedure section 836. In accordance with the Court's order and pursuant to the Amended Cross-Complaint, the City has served or provided notice to: (1) all property owners overlying the Basins; (2) all property owners whose property is contiguous to the Ventura River or its tributaries, other than the federal government; and (3) all known holders of appropriative water rights, other than the federal government. Pursuant to the Court's November 21, 2019 order, the City has served a summons on approximately 2,300 Cross-Defendants owning approximately 1,750 riparian parcels and provided 12,766 notices to the owners of approximately 10,000 parcels overlying the Basins. A complete list of all Cross-Defendants is contained in Exhibit B to this Physical Solution. A complete list of all parcels that (1) are owned by Cross-Defendants and/or (2) were provided notice of the Action, and which are thus bound by the Physical Solution, is contained in Exhibit C to this Physical Solution.

Certain Cross-Defendants, Producers, ***De Minimis* Producers**, **Non-Producers**, and overlying landowners stipulated to this Physical Solution with the understanding that the Physical Solution is not a determination of their water rights; they accordingly do not object to the Physical Solution and plan to comply with the requirement to file their water Production information as specified in Section 7.7.4.4 or *De Minimis* Production information as specified in Section 7.7.4.6. Stipulation to the Physical Solution constitutes a response to the Amended Cross-Complaint, and no default shall be taken against such stipulating Parties.

Numerous Cross-Defendants have failed to stipulate to the Physical Solution, have not responded timely, or at all, to the Amended Cross-Complaint, and their defaults have been entered. Notice of this Physical Solution and Judgment has been given to the defaulted Cross-Defendants, together with the opportunity to be heard regarding this Physical Solution, and the Court hereby enters default judgment against all defaulted Cross-Defendants and incorporates those default judgments into this Physical Solution. All defaulted Cross-Defendants, and their successors and assigns, are subject to the terms of the Physical Solution and Judgment, and this Court's continuing jurisdiction as set forth herein. All defaulted Cross-Defendants are identified in Exhibit D to this Physical Solution.[3]

In addition, in accordance with Code of Civil Procedure section 836, the City provided notice of this Action to all property owners who were not otherwise named Parties to this Action and who own property overlying the Basins. Property owners who elected to become Parties to this Action are bound by this Physical Solution as Parties. Consistent with Code of Civil Procedure section 836(k), property owners who did not elect to become Parties are also bound by this Physical Solution. Consistent with Code of Civil Procedure section 836(j), the common law of stream adjudications, and Article X, section 2 of the California Constitution, the Court has in rem jurisdiction over the real property of the Watershed, identified herein, inclusive of usufructuary rights to the waters of the Ventura River and its tributaries, whether flowing on the surface or underground within a known and defined channel, and within the Basins, and this Physical Solution applies to those properties. Therefore, all Persons holding fee title to real property overlying one or more of the Basins, whether or not they chose to become a Party in this Action, are subject to the terms of this Physical Solution.

[3] No defaults have been taken as of September 15, 2020. No defaults will be taken without notice and opportunity to be heard. Exhibit D will be completed after the Court enters defaults, if any.

1.5 Answers, Cross-Complaints, and Intervention

The Court approved two form answers for use in this action, (1) "Form Answer" for overlying landowners who received mailed notice of the Action and (2) "Court-Approved Answer for Cross-Defendants Named in the City of San Buenaventura's Third Amended Cross-Complaint." Certain Cross-Defendants answered the Amended Cross-Complaint by filing the "Court-Approved Answer for Cross-Defendants Named in the City of San Buenaventura's Third Amended Cross-Complaint" or by filing some other answer thereto. Certain other property owners in the Watershed, including but not limited to those to whom City provided required notice in accordance with Code of Civil Procedure section 836, elected to become Parties in this action by filing the "Form Answer."

On or about December 6, 2019, the Court granted the unopposed motions of the State Board and the California Department of Fish & Wildlife ("**Department**") to intervene in the Action, specifically in the Amended Cross-Complaint. The State Board and the Department, with Court approval, elected not to file a complaint in intervention, but instead filed notices of appearance in connection with the Amended Cross-Complaint, subjecting themselves to the Court's jurisdiction and in the absence of their tendering an affirmative pleading, limiting themselves to the issues raised in the existing pleadings in the Action.

1.6 City Settlement

On or about September 30, 2019, Channelkeeper and the City entered into a settlement agreement that resulted in the partial dismissal of Channelkeeper's cause of action against the City, pending entry of this Physical Solution ("**City Settlement**"). On or about August 20, 2020, Channelkeeper and the City agreed to amend the City Settlement. This Physical Solution and Judgment implements the terms of the City Settlement, as amended, including the Foster Park Flow Protocols described in Section 7.3.5, results in the full dismissal of Channelkeeper's cause of action against the City, and resolves all issues between Channelkeeper and the City as set forth and alleged in the Amended Complaint.

2. JURISDICTION AND BASIS FOR PHYSICAL SOLUTION

This Action is a comprehensive adjudication that adopts and imposes a Physical Solution concerning the reasonable and beneficial uses of the waters of the Ventura River Watershed, including both surface water and Groundwater, without causing waste of precious water resources. The Court has original jurisdiction[4] over the subject matter of the Action and the Bound Parties sufficient to enter the Physical Solution pursuant to Article X, section 2 of the California Constitution, the public trust doctrine, Code of Civil Procedure sections 830-852 (collectively, the "**Comprehensive Adjudication Statutes**"), as applicable, and California water law and policy.

On or about March 8, 2019, the State Board submitted a letter to the Honorable Kevin C. Brazile, Presiding Judge of the Los Angeles Superior Court, regarding the judicial assignment of this Action and specifically requesting coordination with the Judicial Council. The Court finds that pursuant to Code of Civil Procedure section 838(a)(1), assignment by the Judicial Council is not required because the Action was not filed and is not being heard in a county that overlies the Basins or any portion of the Basins. In addition, the Court has conferred with the Judicial Council and has determined that no action by the Judicial Council is required. No Party challenged this determination.

The Court and the Comprehensive Adjudication Statutes require that all Persons having or claiming any right, title, or interest to Groundwater within the Basins be notified of the Action. Notice has been given pursuant to the Court's order and the Comprehensive Adjudication Statutes. All Persons having or claiming any right, title, or interest to Groundwater within the Basins have been given an opportunity to become Parties to the Action in accordance with the Code of Civil Procedure. All named Parties who have not been dismissed or defaulted have appeared or have been given adequate opportunity to appear. The Court therefore has personal

[4] *Nat'l Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 451.

jurisdiction over those Parties. In addition, the Court has in rem jurisdiction pursuant to Code of Civil Procedure section 836(j) over the real property, inclusive of usufructuary rights to the waters within the Basins, and this Physical Solution applies to those properties overlying the Basins. All known Parties having or claiming any right, title, or interest to surface waters within the Watershed have been named and served.

The Court finds and concludes that the imposition of the Physical Solution: (1) optimizes the reasonable and beneficial use of waters in the Ventura River Watershed and avoids waste in accordance with Article X, section 2 of the California Constitution; (2) avoids unreasonable injury to any water right holder and will avoid the present need for a specific allocation of water among competing water right claims; (3) fairly and reasonably ensures native waters are made available for beneficial use among all water right holders; (4) establishes a comprehensive approach to maintaining the **Southern California Steelhead** Fishery population in the Ventura River Watershed in Good Condition, consistent with the Constitutional mandate of reasonable and beneficial use and the public trust doctrine; (5) establishes a management structure to ensure implementation of the Physical Solution emphasizing local involvement (Water Code section 113); (6) facilitates water resource planning and sustainable water use and reduces uncertainty; (7) furthers the mandates of the State Constitution and State water policy; and (8) as is customary in comprehensive adjudications, maintains continuing jurisdiction of the Court to oversee the implementation of the Physical Solution and to resolve conflicts as they may arise among the Parties to and Persons bound by the Physical Solution. As such, the Physical Solution will provide for the long-term, comprehensive, and efficient management of water in the Watershed in a manner not otherwise available under applicable law.

In addition, and as applicable, the Court finds pursuant to Code of Civil Procedure section 850(a) that the Physical Solution: (1) is consistent with Article X, section 2 of the California Constitution; (2) is consistent with the water right priorities of all Parties and any Persons who have claims that are exempted pursuant to Code of Civil Procedure section 833 as no water rights

or beneficial uses will incur substantial injury by the imposition of the Physical Solution; and (3) treats all objecting Parties and any Persons who have claims that are exempted pursuant to Code of Civil Procedure section 833 equitably as compared to the stipulating Parties.

Following its complete evaluation and investigation of the Physical Solution, and based on these findings, the Court enters this Physical Solution on all Bound Parties, including any objecting Party, to this Action. Additionally, this Physical Solution binds all Persons holding fee title to real property in the Basins pursuant to Code of Civil Procedure section 836.

3. SCOPE OF PHYSICAL SOLUTION AND JUDGMENT

3.1 Resolution of all Claims

As is discussed herein, all claims in the Action, Amended Complaint, and Amended Cross-Complaint are hereby resolved, either finally or conditionally, by this Physical Solution and Judgment, and this Physical Solution and Judgment shall constitute a final judgment pursuant to Code of Civil Procedure section 577.

In the Complaint, Channelkeeper asked the Court to declare that the City's extraction of water from the Ventura River from April through October is unreasonable, in violation of Article X, section 2 of the California Constitution, and to direct the State Board to perform alleged mandatory duties under Article X, section 2, Water Code section 275, and the public trust doctrine to prevent that alleged unreasonable use by the City. Channelkeeper's claims as against the City in the Amended Complaint have been resolved by the City Settlement, as amended and through this Physical Solution. Channelkeeper's claims as against the State Board are deemed moot based upon entry of the Physical Solution and the Court's ongoing jurisdiction over the subject matter of those claims.

The Amended Cross-Complaint alleges nine separate claims for relief and asserts the City's relative priority rights to water, including, without limitation, a request for a

comprehensive adjudication of the Ventura River Watershed and the imposition of a physical solution. This Physical Solution is intended to serve as a stipulated judgment, resolving the City's sixth claim for relief for the imposition of a physical solution. All other claims in the Amended Cross-Complaint are conditionally reserved as is discussed in section 3.2 herein.

3.2 Reservation of Claims

The Parties stipulate and the Court finds that this Physical Solution and Judgment sufficiently resolves the current competing claims among the Bound Parties, and that it is not necessary at this time for the Court to determine the relative priority rights to water in the Watershed pursuant to other causes of action in the Amended Cross-Complaint or at this time to establish a comprehensive adjudication of water rights in the Watershed. The Judgment entered herein is conditioned upon the successful implementation of the Physical Solution. The Court specifically retains post-Judgment jurisdiction to determine the relative priority rights to all water rights in the Watershed and/or to establish a comprehensive adjudication of water rights in the Watershed, if it becomes necessary to do so in the future. As to the City's Amended Cross-Complaint, the Court specifically retains jurisdiction to determine the City's first, second, third, fourth, fifth, seventh, eighth, and ninth claims for relief, if it becomes necessary to do so in the future. Any such determination shall be made pursuant to this Court's continuing jurisdiction pursuant to and in accordance with Section 9.2 herein.

Nothing in this Physical Solution shall be construed as limiting or otherwise affecting prior judicial or administrative decisions regarding water rights in the Watershed, including but not limited to:

a. Decree in Santa Ana Water Company vs. Ramon G. De La Riva, et al., 1st Judic. Dist. of CA, County of Ventura, rendered 3/10/1874;
b. Santa Ana Water Co. v. Town of San Buenaventura, 56 F. 339 (1893);
c. Rice v. Meiners (Sup. Ct. of the County of Ventura, October 22, 1902); and

d. Ventura Water, Light and Power v. Meiners and Rice (Sup. Ct. of the County of Ventura, Court, March 12, 1904).

3.3 Role of the State Board and the Department

The State Board and the Department have intervened in this Action due to their respective administrative interests related to the Watershed and have become Parties. California's Water Action Plan ("**WAP**"), Action 4, identifies the Watershed as one of five priority stream systems in which the State has an interest in protecting the Fishery in Good Condition. Consistent with this goal, the Department has prepared Instream Flow Regime Criteria on a Watershed Scale for the Ventura River dated March 2020 (Watershed Criteria Report No. 2020-01) ("**Report**"). As stated in the Report:

> The Department provides this document as a tool for consideration in water management planning. It presents an analytical approach that can be implemented, if appropriate, under the specific circumstances of a watershed, stream or information need. This report and the Overview [of Analysis for Instream Flow Regime Criteria on a Watershed Scale], in and of themselves, should not be considered to provide binding guidelines, establish legal compliance, or ensure project success.

Accordingly, this Report is "a tool for consideration in the management planning" in the Watershed, and is considered as part of the broader goal of this Physical Solution, which considers and balances consumptive uses, Fishery needs, and other needs within the Watershed. As stated in the Overview Analysis for Instream Flow Regime Criteria on a Watershed Scale (March 2020), the Report presents "a range of different flow regime criteria that can be adapted to the specific needs of each selected stream and watershed." Report at p. 7. Pursuant to Water Code section 1257.5, the State Board must consider the Report and any other recommendations from the Department when acting on applications to appropriate water, and, subject to judicial review, may seek to establish flow criteria for the Watershed that balance all needs of the Watershed, which may thereafter be implemented as part of future regulatory decisions. This Physical Solution and Judgment is consistent with and achieves the goal of protection of the

Fishery in Good Condition in a manner consistent with WAP, Action 4, by considering the criteria set forth in the Report and balancing them against all needs of the Watershed. In approving this Physical Solution and Judgment, the Court has considered the Report, exercises its Constitutional responsibilities within its original and concurrent jurisdiction with the State Board in the areas of public trust and Constitutional reasonable use, and finds this Physical Solution and Judgment to be consistent with those recommendations and goals.

4. VENTURA RIVER WATERSHED, VENTURA RIVER AND THE BASINS

4.1 The Ventura River Watershed

The Ventura River Watershed is a coastal watershed located in southern California, with an approximate catchment area of 226 square miles. The majority of the Watershed is located in southwest Ventura County, with a small portion (approximately 4%) located in east Santa Barbara County. The Watershed is fan-shaped and measures eighteen miles north to south and is seventeen miles at its widest point. A depiction of the Watershed is included in Exhibit E to this Physical Solution at pages E-1 through E-4.

The upper reaches of the Watershed lie within the Topa Topa Mountains, Santa Ynez Mountains, and the greater Transverse Ranges, with ridges in these ranges delineating the upper extent of the Watershed. The altitude of the Watershed varies from approximately 6,000 feet to sea level at the coastal estuary. The total length from the furthest headwaters to the Pacific Ocean is over thirty-three miles.

Steep mountains and foothills comprise most of the land area in the Watershed, covering most of its north half and framing it on three sides, with a large portion of this area being U.S. Forest Service land or other conserved lands. Land use in the Watershed is divided between National Forest, open space, urban or industrial, and agricultural or rural designations. The largest portion, approximately 75%, is designated as U.S. Forest Service land (55%), and open space lands (20%), which includes both land set aside for conservation and land currently leased

for oil and gas exploration and production. Agricultural or rural areas comprise 20.5% of the Watershed and are used for grazing, orchards, or row crops. Urban or industrial land use comprises approximately 4.5% of the Watershed and is divided among the municipalities of the City of Ojai, the western portion of the City of Ventura, and the communities of Meiners Oaks, Mira Monte, Oak View, Live Oak Acres, and Casitas Springs. Most of these developed areas are located on the valley floor near to or within the Ventura River's floodplain.

Precipitation in the Watershed is highly variable both spatially and temporally. Spatially, the upper portion of the Watershed receives, on average, double the annual volume of rainfall received in the lower portion of the Watershed. Seasonally, most of rain occurs between November and April, with minimal rain occurring between May and September. Based on historical records, the Watershed experiences large differences in annual rainfall volume, with regular cycles of wet and dry years at least partially caused by El Nino and La Nina cycles. Long periods of drought are a common occurrence in the Watershed. Periodic high flow events and flooding also occur.

The Watershed is home to many species, including the Southern California Steelhead, a species listed as endangered under the federal **Endangered Species Act**, as described in more detail below. The regular periods of drought experienced in the Watershed, coupled with the historical development within the Watershed, create challenges to the survival of the steelhead population. Natural precipitation does not occur in sufficient magnitude in certain years and/or in drought condition years to enable the successful migration of the steelhead to and from the Pacific Ocean for the completion of its lifecycle. Consequently, habitat that enables the Fishery to survive during several years of low precipitation is required to maintain the steelhead population within the Watershed.

The Ventura River Watershed consists of both surface waters, including the Ventura River and its tributaries, and the Basins. These various components of the Watershed are described below.

4.2 The Ventura River

The Ventura River flows through the center of the Watershed, draining tributaries along an approximately thirty-three mile course from its headwaters to the Pacific Ocean. The main tributaries of the Ventura River include Matilija Creek, North Fork Matilija Creek, San Antonio Creek, Coyote Creek, and Cañada Larga Creek.

The Ventura River has traditionally been divided into five reaches. For the reasons set forth below, the Physical Solution does not use this historical division of the River, but those historical reaches are: Reach 1, including the Ventura River lagoon and estuary; Reach 2, extending from the top end of the estuary to a point upstream of where treated wastewater from the Ojai Valley Sanitation District's Wastewater Treatment Plant is discharged to the River; Reach 3, located downstream of Foster Park and extending from Weldon Canyon to the confluence of Coyote Creek; Reach 4, located between Coyote Creek and the confluence with the North Fork Matilija Creek and including Foster Park; and Reach 5, including North Fork Matilija Creek.

The upper portions of the Ventura River and its primary headwater Matilija Creek and North Fork Matilija Creek typically have perennial flow from the higher moisture in the mountainous climate and high rainfall volumes in the upper catchment. The River in this portion flows through narrow canyon formations with a steep bed slope resulting in high energy flows.

The middle section of the Ventura River, from the Robles Diversion to San Antonio Creek confluence, consists of lower-gradient braided channels incised into a wider floodplain. Due to

the high infiltration potential of the bed material and the usually deep Groundwater table for this reach, the middle reach is often dry.

The lower section of the Ventura River, from its confluence with San Antonio Creek to the estuary, is fed by contributions from San Antonio Creek, the Ojai Valley Sanitation District's wastewater facility, and small discharges from a number of small side canyons and tributaries.

Because the historical division of the River is not linked directly to the lifecycle and needs of the Southern California Steelhead in the Watershed, this Physical Solution differs from the historical division and does divide the River into segments consistent with the lifecycle and needs of the Southern California Steelhead in the Watershed. This Physical Solution divides the River into seven reaches based on habitat requirements, habitat function, and shared hydrologic conditions. These are set forth in the table below.

Table 1 – Ventura River Reaches

Number	Reach	Fishery function
V 1	Ocean-Main Street Bridge (estuary)	Migration
V 2	Main Street Bridge-Shell Road	Migration
V 3	Shell Road-San Antonio Creek	Migration, spawning, juvenile rearing
SA 1	San Antonio Creek to Fox Creek/Ojai Creek	Migration, spawning, juvenile rearing
V 4	San Antonio Creek-Robles Diversion	Migration
V 5	Robles Diversion-Matilija Creek/North Fork Matilija Creek confluence (including 1 km section to Matilija Dam)	Migration, spawning, juvenile rearing
NF 1	North Fork Matilija Creek	Migration, spawning, juvenile rearing

There are several major human-made flood control and water management features on the Ventura River. Matilija Dam, currently operated by the Ventura County Watershed Protection District, is located in the upper watershed above the confluence of Matilija Creek and North Fork

Matilija Creek. Matilija Dam was constructed in 1946-47 with an original capacity of 7,020 acre feet; however, sedimentation and re-design of the dam has reduced its capacity and the dam does not currently divert any water for consumptive use. Matilija Dam blocks the migration of Southern California Steelhead into the historical spawning and rearing areas within Matilija Creek above the Dam. The Dam does not, however, block access by steelhead to habitat within North Fork Matilija Creek.

A second human-made combination of features on the Ventura River is the Robles Diversion and Fish Passage Facility ("**Robles Diversion Facility**"), the Robles Canal, and Lake Casitas. These facilities are operated by Cross-Defendant Casitas Municipal Water District ("**Casitas**"). The Robles Diversion Facility is located on the Ventura River two miles downstream of the Matilija Dam and approximately fourteen river miles from the Pacific Ocean. At the Robles Diversion Facility, Casitas diverts water from the Ventura River, channels the water through the 5.4 mile Robles Canal, and conveys the water to Lake Casitas. Lake Casitas is a human-made lake designed to hold 254,000 acre feet of water. Aside from limited Groundwater resources, Lake Casitas is the primary source of drinking water for Ojai, Oak View, Casitas Springs, and the western side of the City. None of these communities has access to any other sources of State-conveyed water or other imported waters. Operations of the Robles Diversion Facility are governed by a license ("**Casitas License**") issued by the State Board and a March 31, 2003 biological opinion ("**Casitas Biological Opinion**") issued by the National Marine Fisheries Service. Nothing in this Physical Solution lessens or increases, or may reasonably be interpreted to lessen or increase, the operational requirements in the Casitas License or in the Casitas Biological Opinion.

A third human-made feature on the Ventura River is the Foster Park Subsurface Dam. The Subsurface Dam extends from the Coyote Creek confluence approximately 973 feet east across the Ventura River. The Subsurface Dam extends five to forty feet deep from west to east. The dam does not extend across the entire canyon. There is an uncompleted "gap" approximately

300 feet in length at the eastern end. It was constructed by the City's predecessor, Ventura County Power Company, in or about 1906-1908, and is now owned and operated by the City. At or adjacent to this location, the City operates a subsurface collector and three wells.

A fourth human-made feature is the Ventura River Levee. It borders the east side of the Ventura River, stretching approximately 2.65 miles from the Pacific Ocean to Cañada de San Joaquin. It was completed by the United States Army Corps of Engineers Los Angeles District in December 1948 to protect adjacent low-elevation areas within the City from flooding. The Ventura County Watershed Protection District operates and maintains the Levee. Several additional smaller levees and hard stabilization structures occur through other parts of the Watershed.

4.3 Groundwater Basins

The Ventura River Watershed includes the Basins; depictions of each of the Groundwater basins are contained in Exhibit E to this Physical Solution at pages E-4 through E-8.

4.3.1 The Lower Ventura River Basin

The Lower Ventura River Basin follows the course of the Ventura River from Foster Park in the north to the Pacific Ocean at its southern end. It also includes the narrow area surrounding Cañada Larga Creek that flows in from the east. The northern end of this basin is marked by the border with the Upper Ventura River Basin below Foster Park. The east and west borders are formed by the Santa Ynez Mountains where impermeable rocks prevent significant Groundwater flow or storage. To the south, the basin boundary is the coast of the Pacific Ocean. The Lower Ventura River Basin is designated as Basin Number 4-3.02 in the Department of Water Resources ("**DWR**") Bulletin 118 and has been designated by DWR as a very low priority basin under the Sustainable Groundwater Management Act ("**SGMA**"). The surface area of the Basin is 5,300 acres.

4.3.2 The Upper Ventura River Basin

The Upper Ventura River Basin extends through northern and central Ventura County and generally follows the Ventura River. The northernmost point is located approximately ¼ mile downstream of the junction of Matilija Creek and North Fork Matilija Creek. Its northern border is defined by the Santa Ynez Mountains where low permeability rocks do not provide additional Groundwater storage. The northeastern boundary that divides the basin from the Ojai Valley Basin is formed by a subsurface impermeable bedrock ridge. The basin narrows to the south as it follows the Ventura River Valley until it reaches Foster Park. The Casitas Vista Bridge adjacent to Foster Park marks the divide between the Upper Ventura River and Lower Ventura River Basins. The ~~upper~~ Upper Ventura River Basin is designated as Basin Number 4-3.01 in DWR's Bulletin 118 and has been designated by the DWR as a medium priority basin under SGMA. As a medium priority basin under SGMA, a Groundwater Sustainability Plan ("**GSP**") must be adopted for the basin by the Upper Ventura River Groundwater Agency (**"UVRGA"**), the designated ~~Groundater~~Groundwater Sustainability Agency ~~applicable Upper Ventura River Groundwater Sustainability Agency (" **Upper GSA**")~~ for the basin on or before January 31, 2022. The surface area of the Basin is ~~7,410~~9,360 acres.

4.3.3 The Ojai Valley Basin

The Ojai Valley Basin is located in central Ventura County. Groundwater storage occurs within the alluvial material filling in the lower elevations of the relatively flat area in and around the City of Ojai. Alluvial sediment is composed primarily of sand, silt, and gravel that is sufficiently permeable to allow the Groundwater storage and flow. This sediment originally accumulated as alluvial fan deposits, formed by rivers and streams draining from the mountains, slowing, spreading out, and depositing material at the base of the mountain range. These deposits, therefore, are thickest at the base of the mountains to the north and east. This basin has the largest capacity to store Groundwater of the four Groundwater basins in the Ventura River

Watershed, with a DWR-estimated maximum storage capacity of about 85,000 acre feet and a usable capacity of 25,000 acre feet. The surface area of the basin is 6,830 acres. The Ojai Valley Groundwater Basin is designated as Basin Number 4-2 in DWR's Bulletin 118 and has been designated by DWR as a high priority basin under SGMA. As a high priority basin under SGMA, a GSP or equivalent must be adopted for the basin by the applicable GSA on or before January 31, 2022. The Ojai Basin Groundwater Management Agency (**Ojai GMA**) submitted a GSP alternative (**Ojai Basin Alternative or Alternative**) to DWR for evaluation and assessment under SGMA. DWR did not approve the proposed alternative, citing, among other things, the fact that basin Groundwater is the primary contributor of flow, for much of the year, to San Antonio Creek, and no evidence was provided to indicate that subsequent studies of safe or sustainable yield considered impacts to stream flows, or desired or optimal minimum Groundwater discharge rates to San Antonio Creek.

The boundaries of the Ojai Valley Basin are mainly mountain ranges, where the geology does not allow Groundwater flow or storage, and faults. To the north of Ojai, the Topa Topa and Santa Ynez Mountains form the basin boundary. Black Mountain and the Santa Ana fault bound the basin to the south, and non-permeable rock units along the eastern and western edges prevent Groundwater flow into or out of the basin. The Ojai Valley Basin is separated from the Upper Ojai Valley Basin by the San Cayetano Fault. The western boundary also marks the Groundwater divide that separates the Ojai Valley Basin from the Upper Ventura River Basin. Groundwater from this basin flows into San Antonio Creek.

In addition, Casitas, the Ventura County Watershed Protection District, the Ojai GMA, and the Ojai Water Conservation District, formed in 1949 as the San Antonio Water Conservation District and renamed in 1990, have collaborated to develop a project that could divert water into settling ponds along San Antonio Creek for Groundwater recharge of the Ojai Basin.

4.3.4 The Upper Ojai Valley Basin

The Upper Ojai Valley Basin is located in the northeastern portion of Ventura County. It is the smallest of the Basins, encompassing 3,806 acres or 5.95 square miles, and has a DWR-estimated maximum storage capacity of 5,600 acre feet. The basin is an intra-montane depression, bounded on all sides by mountain ranges and thrust faults that mark the boundary between mountains and the valley floor. On the northern edge, Black Mountain and the San Cayetano fault separate the basin from the Ojai Valley Basin. To the south, the Sulfur Mountains and the Lion fault mark the boundary of the Groundwater storage zone. The primary surface feature draining the basin is Lion Canyon Creek, which flows to the west and is a major contributor to San Antonio Creek. The basin is split in half by a surface water divide, where the eastern portion lies outside of the Ventura River Watershed. The Upper Ojai Valley Basin is designated as Basin Number 4-1 in DWR's Bulletin 118 and has been designated by DWR as a very low priority basin under SGMA.

5. REASONABLE AND BENEFICIAL USES OF THE VENTURA RIVER WATERSHED

Currently, the water needs within the Ventura River Watershed, regardless of claim of right, are supplied entirely from local surface water and Groundwater sources. At the time of this Physical Solution, no imported water is used within the Watershed. Water from the Ventura River Watershed is therefore critical to life within the Watershed, to the local economy, and to the health of the region. Water from the Ventura River Watershed is vital for a variety of both consumptive and instream reasonable and beneficial uses. These reasonable and beneficial uses are described in more detail below.

5.1 Forest Land and Open Space

The upper portion and majority of the Watershed remains largely in natural condition and has been designated as National Forest land and wilderness areas. The largest portion, approximately 75%, is designated as U.S. Forest Service land (55%), and open space land (20%), which includes both land set aside for conservation and land currently leased for oil and gas exploration and production and may include agricultural uses. In 1995, Ventura County passed a limited-growth initiative called SOAR (Save Open Space and Agricultural Resources) to curb urban sprawl, preserve agricultural lands, and protect open space areas in the unincorporated County land and within multiple Ventura County communities including Ventura and the greater Ojai Valley. As such, the level of development within the unincorporated portions of the Watershed has been limited for the last twenty-five years. In 2016, Ventura County voters approved the extension of this initiative to 2050.

5.2 Consumptive Uses

Water from the Ventura River Watershed supports a variety of reasonable and beneficial consumptive uses, including municipal, agricultural, and industrial uses under various claims of right, e.g., riparian, overlying, appropriative, and prescriptive. The types of uses are described below.

5.2.1 Reasonable and Beneficial Municipal Uses

Water for municipal uses accounts for approximately 55% of the total water demand from the Ventura River Watershed, with residential use making up most of urban water demand. Due to strict conservation efforts, urban water demand has not increased significantly in recent decades, despite growth in population.

There are four major municipal water suppliers in the Ventura River Watershed. Cross-Defendant Casitas is the largest water purveyor in the Watershed, providing water to both water resale agencies and retail customers. Casitas uses surface water from the Ventura River, which is

diverted from the River through the Robles Diversion and stored in Lake Casitas, and through Groundwater wells in the Upper Ventura River and Ojai Valley Basins, to provide municipal service to its retail and wholesale customers. Casitas has implemented significant conservation efforts to reduce municipal demand, including a Water Shortage Contingency Plan, consistent with the Urban Water Management Planning Act. Casitas has declared Stage 3 water supply conditions and has implemented restrictions on residential irrigation, reduced customer allocations, and prohibited waste. These efforts include implementing and maintaining Stage 3 drought restrictions since April of 2016. These restrictions include prohibitions on water waste, restrictions on the timing of residential irrigation, and a 10% reduction in all customers' individual allocations for their non-essential outdoor use. Casitas also operates many conservation programs including free water surveys, free water conservation devices, and rebates for small irrigation controllers. In addition, Casitas offers an agricultural rebate program that encourages greater water use efficiency for farms within its service area.

The City is the second largest municipal supplier within the Ventura River Watershed. The City Produces water through a subsurface diversion and three subsurface wells, including its Nye wells, at Foster Park to supply its municipal customers. The City has a Water Shortage Event Contingency Plan that is consistent with the Urban Water Management Planning Act. The City has implemented significant conservation efforts to reduce municipal demand. These efforts include implementing Water Shortage Regulations and Rates, complying with the mandates of the Water Conservation Act of 2009 (Senate Bill X7-7), maintaining a 20% mandatory conservation cutback, promoting the use of recycled water, offering rebates to encourage water wise landscaping, offering free high efficiency sprinkler nozzles, implementing an Advanced Metering Infrastructure program and a Smart Irrigation Controller program, providing free water efficiency surveys, enacting a Water Rights Dedication and Water Resources Net Zero (In Lieu) Fee Ordinance and Resolution, and taking other steps to reduce consumption.

Cross-Defendant the Ventura River Water District ("**VRWD**") is the third largest municipal supplier within the Ventura River Watershed. VRWD supplies water to an area of approximately 3.3 square miles, or 2,103 acres, stretching from the southwestern edge of the City of Ojai down to the northern half of Oak View, and in the eastern half of Casitas Springs. VRWD serves a population of approximately 5,700 through 2,190 connections, and its customers include residential, commercial, and industrial. VRWD does not serve agricultural water. VRWD operates four wells in the Upper Ventura River Basin. VRWD has implemented significant conservation efforts to reduce municipal demand. During the drought, VRWD customers reduced water usage by 35%, and in 2016 VRWD adopted its Water Waste and Conservation Ordinance, which directed staff to expand public information campaign and increase public outreach, and adopted conservation prohibitions for customers to be enforced by fines and water restrictions. Additional conservation efforts include provision of free water saving equipment, water saving equipment rebates, irrigation efficiency equipment, free water surveys for residential customers, and funding for drought education and outreach activities.

Cross-Defendant the Meiners Oaks Water District ("**MOWD**") is the fourth largest municipal supplier within the Ventura River Watershed. MOWD supplies water to the community of Meiners Oaks on the east side of the Ventura River, providing potable water service to a population of approximately 4,200, through 1,280 service connections. MOWD's highest priority is to provide water for residential and commercial use, but also provides some water for agricultural use, which is declining. Agricultural connections primarily serve small citrus or avocado orchards. MOWD operates four wells in the Upper Ventura River Basin. MOWD has implemented significant conservation efforts to reduce municipal demand. In 2020 MOWD adopted an Allocation Program by which MOWD adopted and enforces all appropriate, applicable water conservation measures and policies adopted by its wholesale supplier, Cross-Defendant Casitas, and MOWD agreed to enact 5 stages of drought measures, consistent with stages that are adopted by Casitas. For each drought stage, MOWD customers are requested to reduce water usage by a given percentage. Decreased water usage is encouraged through

MOWD's water rate structure and required conservation measures are enforced by fines. Since May of 2016 MOWD customers have been subject to a Stage 3 drought emergency, and MOWD has prohibited installation of new or increased in size connections. MOWD required that its customers reduce water use by at least 30%; since the drought emergency declaration, MOWD has actually realized conservation rates of up to 40%.

Other municipal suppliers of water include but are not limited to Cross-Defendants Casitas Mutual Water Company, Gridley Road Water Group, Hermitage Mutual Water Company, North Fork Springs Mutual Water Company, Old Creek Road Mutual Water Company, Rancho del Cielo Mutual Water Company, Senior Canyon Water Company, Siete Robles Mutual Water Company, Sisar Mutual Water Company, and Tico Mutual Water Company.

In addition, water for domestic use is provided by way of private wells located on private property. It is estimated that there are approximately 367 active wells in the Ventura River Watershed. Owners/Operators of these wells are either Parties to this Action or have been provided notice of this Action.

5.2.2 Reasonable and Beneficial Agricultural Uses

Use of water from the Watershed for reasonable and beneficial agricultural uses supports a significant farming economy within the Watershed. According to DWR's Agricultural Land Use and Crop Mapping from 2014, citrus and avocado are the primary crops grown within the Watershed, with citrus constituting approximately 51% of the active agricultural acreage and avocados constituting 32%. Other crops include grains, hay, row crops, berries, sod, olive, grapes, apples, walnuts, flowers, Christmas trees, and other fruit tree crops.

The State Board regulates irrigated agriculture in the Watershed through the statewide Irrigated Lands Regulatory Program to prevent agricultural discharges from impairing surface

water and Groundwater bodies. The regulations that apply to irrigated agriculture in Ventura County are contained in the *Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region* ("**Conditional Waiver**"). The Ventura River Watershed contains approximately 3,253 acres of irrigated agriculture. As of 2019, approximately 92% of those acres (2,978 acres) were enrolled in the Ventura County Agricultural Irrigation Lands Group ("**VCAILG**"). In order to protect both surface water and Groundwater quality, the Conditional Waiver requires that growers implement best management practices that address the quantity and quality of runoff and leachate from agricultural acreage. Because adoption of efficient irrigation practices limits discharges to both surface and Groundwater, promotion of irrigation efficiency is a priority for VCAILG and other agricultural support services in Ventura County. Improvements in irrigation efficiency are promoted through outreach, education classes and on-farm demonstrations, irrigation system testing services, and grant programs for purchase and installation of water saving equipment, such as micro sprinkler and drip irrigation systems.

Water sources to support reasonable and beneficial agricultural uses include Groundwater from private wells or from small water companies, with water from Casitas used for supplemental or backup water. Agriculture has implemented significant conservation efforts; specifically, highly efficient irrigation systems (drip, micro sprinkler, and combinations thereof) are employed on the majority of irrigated agriculture, irrigation systems are routinely tested for distribution uniformity, and irrigation runoff is minimal in the Watershed.

Agricultural users within the Watershed include but are not limited to Cross-Defendants Wood-Claeyssens Foundation, Rancho Matilija Mutual Water Company, Senior Canyon Mutual Water Company, Rancho De Cielo Mutual Water Company, Gridley Road Water Group, Hermitage Mutual Water Company, Sisar Mutual Water Company, Casitas' and MOWD's agricultural customers, and family farms in the Ojai Valley.

The Wood-Claeyssens Foundation and its farm tenants and sub tenants produce water for agricultural and domestic uses on the historic Taylor Ranch property, which borders the lower Ventura River and overlies the Lower Ventura River Basin. They are working closely with the Ventura Farm Bureau and the Ventura County Irrigation Land Group to farm strawberries using best management practices including micro sprinklers and drip irrigation to minimize water use and runoff and for the lemon and avocado orchards, planting the trees on raised beds using drip irrigation, which minimizes water use and virtually eliminates runoff.

The Rancho Matilija Mutual Water Company produces water from the Watershed for its shareholders to use for agricultural irrigation (primarily blackberries, row crops, and tangerine orchards at this time) and for domestic ranch and livestock uses on their properties located northeast of Lake Casitas. Rancho Matilija's shareholders have implemented water conservation measures such as real-time smart phone-connected moisture sensing used to determine drip irrigation frequency and duration as well as land fallowing.

5.2.3 Reasonable and Beneficial Industrial Uses

Water from the Ventura River Watershed is also used for reasonable and beneficial industrial uses. Such uses include, but are not limited to, oil and gas operations. The major oil field in the watershed is the Ventura oil field, an area that covers approximately 3,410 acres on both sides of Highway 33 in the lower Watershed near the coast. The Ojai oil field comprises 1,780 acres of active fields. There are over 700 active oil wells in the Watershed. Aera Energy LLC is the primary oil and gas producer in the Watershed. Beyond oil fields, the Watershed's major industrial land use is in the lower watershed along Ventura Avenue east of the Ventura River. Various manufacturing, construction, processing, and industrial storage facilities occupy this area, a number of which serve as support services to the oil extraction industry.

5.3 Instream Uses – *Oncorhynchus mykiss*

The Ventura River Watershed is home to many instream uses. It is home to eleven endangered or threatened species, including the Southern California Steelhead, arroyo toad, California least tern, California red-legged frog, Foothill yellow-legged frog, Least Bell's vireo, southwestern willow flycatcher, and western snowy plover. This Physical Solution uses the health of the Southern California Steelhead population as a proxy for the overall health of the instream uses in the Ventura River Watershed, and that population will be referred to in this Physical Solution as the "Fishery." The Court finds that, consistent with the California Constitution and public trust doctrine, the protections afforded to the Southern California Steelhead in this Physical Solution will also benefit and protect the other instream uses within the Watershed in an efficient, non-wasteful manner. The life stages, habitat, and other details regarding the Southern California Steelhead within the Ventura River Watershed are described below.

The Watershed is home to the Southern California Steelhead fish species with the scientific name *Oncorhynchus mykiss*, which is typically abbreviated as *O. mykiss*. *O. mykiss* have different life history forms, including as Rainbow Trout or as Steelhead Trout. *O. mykiss* that remain in freshwater throughout their lifecycle are referred to as Rainbow Trout and have a resident life history form. *O. mykiss* that migrate to the Pacific Ocean and then return to spawn in freshwater are referred to as Steelhead Trout and have an anadromous life history form. Both life history forms can be produced by a single set of parents depending on a variety of variables.

The particular anadromous life history form of *O. mykiss* in the Ventura River Watershed has been designated as the Southern California Steelhead Distinct Population Segment. In 1997, the Southern California Steelhead Evolutionarily Significant Unit ("**ESU**") was listed as endangered under the Federal Endangered Species Act. (62 FR 43937-01.) In 2005, critical habitat for the Southern California Steelhead ESU was designated, including approximately 48 miles of the Ventura River and its tributaries within the Ventura River Hydrologic Unit. (70 FR

52488-01.) In 2006, the Southern California Steelhead Distinct Population Segment was listed as endangered. (71 FR 834-01.)

The life history of a Southern California Steelhead starts when a female excavates a shallow nest, termed a "redd," in streambed gravel and deposits eggs, which males then fertilize. The period between fertilization by the male and hatching varies, lasting from about three weeks to two months depending on water temperature and other factors. After the eggs hatch, the young fish remain in the gravel nest for a period of time as they develop (termed "alevins") before emerging into the surface waters. The young fish, known as fry, emerge from the gravel two to six weeks after hatching. The young *O. mykiss* remain in the creek or river rearing for a period of one to two years as they grow and develop into the parr stage.

Parr eventually undergo a physiological change known as smoltification that allows them to migrate to saltwater (e.g., the Pacific Ocean). After growing in the marine environment for typically one to four years, steelhead leave the marine environment to reproduce in the freshwater environment (e.g., the Ventura River). Returning adults typically migrate to their natal rivers or streams but can also spawn in non-natal streams. Steelhead, unlike salmon, may survive after spawning and migrate back downstream to the ocean to spawn again the next year. Post-spawning adult steelhead are termed Kelts. Steelhead, primarily females, may spawn two or three times before they die.

The habitat and flow needs of the Southern California Steelhead are variable depending on the life stage of the species. Primary constituent elements ("**PCEs**") have been described by the National Marine Fisheries Service for each life history stage of Southern Steelhead critical habitat as essential to the conservation of the species. (70 FR 52630). The general PCEs for steelhead are described below.

5.3.1 Spawning

Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, egg incubation, hatching, and larval development.

5.3.2 Rearing

Freshwater rearing sites with water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and movement; water quality and forage supporting juvenile development; and natural cover such as shade, submerged and overhanging large wood, large rocks and boulders, and juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

5.3.3 Migration

Freshwater migration corridors free of passage obstruction with water quantity and quality conditions suitable for juvenile and adult movement and survival.

5.3.4 Estuary

Estuarine areas with water quality, water quantity, and salinity conditions suitable for juvenile rearing and the physiological transitions between fresh- and saltwater (smolting).

5.3.5 Marine Areas

Nearshore and offshore marine areas with water quality and quantity conditions and forage, supporting growth and maturation.

5.4 Protection of Both Instream and Consumptive Uses

The purpose of this Physical Solution is to protect both the reasonable and beneficial

instream and consumptive uses described above. Continued consumptive use of water from the Watershed is essential to support human life, health, and the economy that is dependent on the Watershed for this vital resource. At the same time, this Physical Solution establishes a commitment to maintain the steelhead population in the Ventura River Watershed through improvements to habitat quality and availability for all freshwater life stages of steelhead, as well as to preserve **Historical Flow Conditions**, as set forth in the Plan, necessary to support steelhead whenever physically practicable. This Physical Solution therefore balances the uses in the manner compelled by Article X, section 2 of the California Constitution, the public trust doctrine, and California water law by imposing the Physical Solution set forth in Section 7 of this Physical Solution.

6. INTEGRATION OF PHYSICAL SOLUTION WITH GROUNDWATER SUSTAINABILITY PLANS

GSPs are currently being developed for the Ojai Valley Basin and the Upper Ventura River Basin to meet the January 31, 2022 implementation date required by SGMA and have not been completed. In addition, GSPs may be developed for the Upper Ojai and Lower Ventura River Basins in the future. The Physical Solution is designed to minimize interference with the timely completion and implementation of the ongoing GSPs, and, in accordance with this Physical Solution, the Parties and the **Management Committee** ("**MC**"), an arm of the Court, appointed by the Court, to administer this Physical Solution and Judgment, will coordinate with the GSAs completing the GSPs in finalizing and preparing the ~~Management Plan~~Fisheries Management Plan, a plan to move the conditions of the Fishery in the Watershed from Baseline Conditions to Good Condition, to prevent duplication of efforts.

~~Water Code section 10733.6(b)(2) provides that management of a basin pursuant to an adjudication action may satisfy SGMA requirements; therefore, a~~At the election of each respective GSA, portions of the ~~Physical Solution~~Fisheries Management Plan could be used to inform the management of the Upper Ventura River and Ojai Basins ~~in accordance with SGMA~~.

The Physical Solution is ~~expressly designed~~intended to address one of the six "undesirable results" ~~that the GSP must avoid~~identified by SGMA — the significant and undesirable depletions of interconnected surface water, here, the impacts to Fishery. (See Water Code § 10721 (x)(6).) The Court finds that the Physical Solution ~~addresses~~ is intended to address this "undesirable result," and if they so choose, the GSAs may ~~adopt~~ use the information contained in the Fisheries Management Plan~~the Physical Solution to meet the requirements of that portion of the~~ in their GSP. ~~In addition, the Physical Solution and the finally adopted Management Plan will include a water management component that could accommodate one or more other requirements of the GSPs, and result in avoidance of the other undesirable results. (See Section 6.)~~

~~The GSAs, working in consultation with the MC, have the discretion to legally use all or any portion of the Physical Solution and/or the Plan as a GSP alternative in accordance with Water Code section 10733.6(b)(2)~~

7. PHYSICAL SOLUTION

7.1 Three Phases of the Physical Solution

The Physical Solution consists of three phases, as briefly described here and as described in detail in Section 7.4 of this Physical Solution. The first phase, the **Adoption Phase**, is short, begins when the Physical Solution is entered, and allows the Parties time to establish the governance structure and adopt the ~~Management Plan~~Fisheries Management Plan that will inform the following two phases. In addition, the Parties will take the specific actions set forth below to improve the Watershed during the Adoption Phase. The second phase, the **Implementation Phase**, is a ten-year period after adoption of the ~~Management Plan~~Fisheries Management Plan in which the Parties will implement the ~~Management Plan~~Fisheries Management Plan. The third phase, the **Adaptive Management Phase**, is a continuing series of ten-year periods in which the Parties will adaptively manage the implementation of the ~~Management Plan~~Fisheries Management Plan and implement the updated ~~Management Plan~~Fisheries Management Plan until and so that Good Condition is achieved. Each of the three phases includes distinct management

objectives and measures that must be met by the Parties, as further described in this Physical Solution. The purpose of phasing the Physical Solution is to allow the Parties to transition from the existing conditions within the Watershed (referred to as the **Baseline Conditions** and initially described in Section 7.2 below and as will be further defined in the ~~Management Plan~~Fisheries Management Plan) to the improved conditions identified in the ~~Management Plan~~Fisheries Management Plan.

7.2 Baseline Conditions – Reach-By-Reach Habitat Assessment and Limiting Factors

To prepare the ~~Management Plan~~Fisheries Management Plan and to measure the success of the Physical Solution, it is necessary to first define the current conditions as of the beginning of the Adoption Phase (Baseline Conditions) in the Watershed. Defining Baseline Conditions will inform the specific actions that the Parties must take to improve conditions from the Baseline Conditions. In addition, defining Baseline Conditions will provide the Parties with a way to measure the success of the Physical Solution and the conditions under which the Court, during the Implementation and Adaptive Management Phases, may need to exercise its continuing jurisdiction to address any material excursions below Baseline Conditions. This portion of the Physical Solution defines initial Baseline Conditions in the Watershed. As provided below, the ~~Management Plan~~Fisheries Management Plan will expand upon and provide more detail regarding this definition of initial Baseline Conditions.

The health and habitat needs of the Fishery vary within different portions of the Watershed and the different life stage needs of the species within those different portions of the system. Maintaining the Fishery requires an understanding of suitability and quality of habitat pertinent to the life stage habitat requirements of the species. As identified in the Report, "flows in the Ventura River watershed are variable throughout the year and from year to year." Report at p. 9. The Watershed is subject to wide variations in precipitation, occasional flooding, periodic large natural disasters such as wildfires, all of which significantly impact the Watershed, its water

quality, and the Fishery. As a result of the environmental variability in freshwater and ocean conditions (e.g., drought and low flow conditions, ocean upwelling, etc.), in addition to other factors such as steelhead stock-recruitment relationships (e.g., the number of spawning adults has a large influence on subsequent juvenile abundance), variations in food availability within and among years, quality and availability of suitable habitat, and biological interactions with native and non-native species, there is high variability in steelhead population abundance within the Ventura River Watershed.

There are many different ways to divide the Watershed for purposes of establishing Baseline Conditions and efficient management of the system. Historically, and as a matter of convenience, the Ventura River has been described as having the five reaches that are identified earlier in this Physical Solution. Other methods have described the River as having more than twenty reaches, and the Report uses sixteen reaches. This Physical Solution uses the seven reaches and associated functions and habitat assessment described below, in which reaches are defined based on the habitat requirements of the Watershed and the specific lifecycle needs of the steelhead associated with that habitat. These seven reaches are described in Table 1 and depicted in Exhibit E to this Physical Solution at page E-2, and the Baseline Conditions of each reach at the time of this Physical Solution are described as follows:

7.2.1 Reach V1

Reach V1 begins at the Pacific Ocean and extends to the Main Street bridge crossing. Reach V1 includes the Ventura River lagoon and estuary. All adult steelhead entering the Ventura River from the Pacific Ocean, and all steelhead out-migrants (juvenile smolts and post-spawning adults) must pass through Reach V1. Steelhead smolts that can reach the estuary from upstream rearing habitats may also continue rearing in the estuary where prey items are generally abundant. However, the area of the historic estuary has been reduced and habitat degraded by

approximately 70%. Therefore, under Baseline Conditions, the primary steelhead lifecycle function of Reach V1 is for migration.

7.2.2 Reach V2

Reach V2 begins at the Main Street Bridge from the top end of the Estuary and ends where the Shell Road Bridge crosses over the Ventura River. A major limiting factor in Reach V2 is the presence of extremely dense stands of Arundo donax ("**Arundo**"), primrose, and other non-native aquatic macrophytes that choke the river channel and riparian zone, precluding the presence of native plants (especially willows) and blocking both upstream and downstream passage of steelhead. Arundo removes surface water (through evapotranspiration) at higher rates (three times the rate) than native plants. Combined with the abundance of non-native common carp that degrade habitat and water quality for steelhead, potential rearing habitat (pools) is severely degraded in Reach V2 at this time. Therefore, under Baseline Conditions, there is no spawning habitat within this reach, and the sole steelhead lifecycle function of Reach V2 is for migration.

7.2.3 Reach V3

Reach V3 begins at Shell Road bridge and ends at the confluence of San Antonio Creek and the Ventura River. Under Baseline Conditions, reach V3 suffers from Arundo infestation, degraded stream habitats, and an absence of boulder clusters. Reach V3 includes Foster Park. The subsurface dam and related facilities in the vicinity of Foster Park sometimes act as barriers or impediments to steelhead migration under certain conditions. Under Baseline Conditions, this reach is primarily a passage corridor for upstream and downstream migrating steelhead. However, spawning and rearing may be supported in certain portions of Reach V3, including in the area of Casitas Springs and at the confluence of San Antonio Creek. The general pattern is that fish that spawn in San Antonio Creek (Reach SA1) move to the confluence of the Ventura

River and to the Casitas Springs areas of Reach V3 under favorable conditions during the spring to rear in the mainstem Ventura River over the summer and fall months.

7.2.4 Reach SA 1

Reach SA 1 includes that portion of San Antonio Creek from its confluence with the Ventura River upstream to Fox Canyon. Under Baseline Conditions, San Antonio Creek contains good spawning habitat, and relatively good habitat for young-of-the-year juvenile rearing. However, under Baseline Conditions there is a lack of rearing habitat for older juveniles due to the lack of pools throughout San Antonio Creek. The absence of pool habitat forces rearing juveniles to an early outmigration into the mainstem rearing habitat in Reach V3 adjacent to and downstream from the confluence with the Ventura River. There is also an absence of boulder clusters that would provide velocity refuges and cover, juvenile and adult steelhead holding and foraging sites, substrate for algal and macroinvertebrate production that are important to the food resources for juvenile *O. mykiss* growth and survival and also promote pool formation. The presence of Arundo is another limiting factor in this reach. An additional limiting factor in San Antonio Creek is the presence of livestock that, when unconstrained, trample the stream banks, causing sedimentation in the stream channel and spawning beds and reducing riparian vegetation as well as increased nutrient and coliform loading to the creek.

7.2.5 Reach V4

Reach V4 is located between the confluence with San Antonio Creek and the Robles Diversion Facility. Under Baseline Conditions, this reach includes what is commonly referred to as the "dry reach" downstream of the Robles Diversion Facility that often has intermittent flows or is dry during the summer and fall months. Under dry conditions, adult steelhead are unable to migrate to upper Watershed spawning and rearing habitat, and smolts that are produced in the upper Watershed (Reach V5 and Reach NF 1) are unable to out-migrate through this reach.

Further, smolts that do attempt to out-migrate are often left stranded in drying pools, including pools just downstream of the Robles Diversion Facility. During wet years, this reach is suitable for steelhead migration for short periods during extended runoff from storms. Under Baseline Conditions, therefore, the lifecycle function served by Reach V4 is for migration under suitable precipitation conditions.

7.2.6 Reach V5

Reach V5 extends upstream from the Robles Diversion Facility to the confluence of Matilija Creek and North Fork Matilija Creek, including the section below Matilija Dam. Under Baseline Conditions, Reach V5 contains some rearing and spawning habitat. Its primary functions under Baseline Conditions are for migration, spawning, and juvenile rearing, but the presence of non-native predatory largemouth bass in this reach may reduce juvenile steelhead survival.

7.2.7 Reach NF 1

Reach NF 1 extends from the confluence of North Fork Matilija Creek to the upstream reaches of North Fork Matilija Creek where a complete barrier to upstream migration exists at the Wheeler Gorge Campground. Under Baseline Conditions, Reach NF 1 has good steelhead spawning and rearing habitat where available, with higher densities of *O. mykiss* spawners and both young-of-the-year and older juveniles than reaches in the lower Watershed. This reach has good pool rearing habitat. This reach also includes the presence of residualized steelhead/rainbow trout that support the overall steelhead population. Limiting factors under

Baseline Conditions in this reach include only marginal availability of suitably sized spawning areas and gravel, and potential competition between juvenile steelhead and resident rainbow trout.

7.2.8 Continuing Jurisdiction is Reserved for Coyote Creek and Cañada Larga Tributaries

Although no management actions are presently recommended for two tributaries of the Ventura River, they are nevertheless included in this Physical Solution, and the Court retains continuing jurisdiction over them. First, Coyote Creek from Lake Casitas to the confluence with the Ventura River is dry much of the year due to the Lake Casitas Dam, and the habitat in this reach is severely degraded. In addition, on the Cañada Larga tributary, the Highway 33 bridge creates a barrier to steelhead passage, but it cannot reasonably be removed. The adaptive management process in this Physical Solution will allow for the reconsideration of management actions for these two tributaries in the future.

7.3 ~~Management Plan~~Fisheries Management Plan/Mandatory Plan Elements

The core of this Physical Solution is the development, implementation, and adaptive management and updating of a ~~Management Plan~~Fisheries Management Plan (or the "Plan") that will move the condition of the Southern California Steelhead in the Watershed from the Baseline Conditions to Good Condition, as defined in the Plan and in this Physical Solution, during the life of the Physical Solution. While rainfall and flow in the Watershed has largely remained consistent over the historical period (generally 1929 through 2019), habitat conditions in the Watershed downstream of Matilija Dam have been degraded over the past 150 years through agricultural and urban development, construction of dams, water storage infrastructure, flood control infrastructure, and other factors. Specific efforts to maintain Historical Flow Conditions upon which the Southern California Steelhead depend and habitat enhancement Plan elements are expected to contribute to improved access and migration opportunity, habitat quality, availability, and suitability. These efforts to maintain Historical Flow Conditions and these habitat

improvements are expected to lead to improved abundance of steelhead and other fish and wildlife within the Watershed. The Plan will also provide detailed monitoring programs to provide feedback for adaptive resource management. The hydrogeology of the Watershed, combined with high temperatures and the seasonality and variability of precipitation, causes portions of the mainstem river and tributaries to exhibit intermittent flows during the summer months, regardless of human consumptive use. This creates dry reaches where no summer rearing by Steelhead or other fish is possible. These intermittent reaches usually provide passage corridors during higher flow periods in the winter and early spring. Actions to protect Historical Flow Conditions, which are largely replicated by existing flow conditions, in combination with additional habitat enhancement measures identified in the Plan, will be sufficient, barring extraordinary conditions, to move the Fishery from Baseline Conditions to Good Condition.

The required elements of this Plan are set forth in this Section 7.3 of the Physical Solution. During the Adoption Phase, the Parties will create more specific mandatory implementation actions and details to achieve the required elements and adopt the final Plan, subject to Court oversight. During the Implementation and Adaptive Management Phases, the Parties will implement the Plan and regularly measure its success. The Court will retain jurisdiction to ensure Plan implementation and to address material excursions below Baseline Conditions, following the procedures outlined in this Physical Solution. The Plan must include the mandatory elements described in this section.

7.3.1 Management Objectives

The Plan shall include management objectives, one of which must be to develop and implement actions that are intended to move the condition of the Fishery in the Watershed from the Baseline Conditions to Good Condition, as defined in the Plan and this Physical Solution.

7.3.2 Baseline Conditions Refined

The Plan shall provide a more detailed assessment of Baseline Conditions that will include the definition contained herein but shall include additional metrics to assist with determining material excursions below Baseline Conditions and improvements above Baseline Conditions.

7.3.3 Healthy Fishery/Good Condition Defined

The Plan shall establish detailed criteria to be used to define and measure what constitutes a healthy Fishery and Good Condition in the Watershed. The Plan shall, at a minimum, use the following approach to Good Condition. The recognized method for determining whether a fishery is in good condition is to assess the condition of the fishery at the individual, population, and community level or tiers. Under this method, the Fishery in the Watershed will be considered to be in a Good Condition when the qualitative individual, population, and community conditions described below are being achieved. The naturally high variability in the dynamics of the Ventura River *O. mykiss* population makes quantitative metrics infeasible, and hence this Physical Solution uses qualitative metrics to assess the condition of the Fishery. The qualitative metrics established in the Plan will be assessed based on the weight of the evidence and on the specific functions served by each reach of the Watershed. The general conditions that the Plan must use to assess the condition of the *O. mykiss* population within the Watershed are as follows:

7.3.3.1 *O. Mykiss* Population

The *O. mykiss* population may be considered to be in a Good Condition if, based on snorkel surveys or similar evidence, the population shows presence within suitable habitats (including those where habitat enhancement actions have been implemented as part of this Physical Solution) within the geographic distribution of the Ventura River Watershed, or the population shows evidence of rebounding following adverse environmental conditions, such as drought. Natural *O. mykiss* populations, including the Ventura River population, experience dynamic and variable abundance within and between years in response to a number of factors, many of which are outside of the control of the Physical Solution (e.g., ocean conditions,

interactions with native and non-native species, baseline hydrologic conditions, and extended droughts, etc.) and therefore population abundance or species densities alone are not an effective measure of the condition of the Fishery. However, when assessed within this dynamic and variable system, the *O. mykiss* population should be present within suitable habitat within the Watershed when the Fishery is in a Good Condition.

7.3.3.2 *O. Mykiss* Population Diversity

The *O. mykiss* population may be considered to be in Good Condition if, based on snorkel surveys or similar evidence, the population shows evidence of life stage diversity as reflected by multiple age classes, including successful reproduction reflected in the presence of young-of-the-year *O. mykiss.*

7.3.3.3 Condition of Individual *O. Mykiss*

The *O. mykiss* population may be considered to be in a Good Condition if, based on snorkel surveys or similar evidence, individual fish in the documented population appear to be healthy and in good shape, free from abnormalities associated with a diseased or unhealthy population.

7.3.3.4 Condition of Overall Watershed *O. Mykiss* Population

The *O. mykiss* population may be considered to be in a Good Condition if, based on snorkel surveys or similar evidence, the predominant species inhabiting the Watershed are native species (both aquatic and riparian species) with relatively low abundance of non-native species predators and competitors of *O. mykiss*.

7.3.4 Habitat Enhancements and Other Specific Watershed Improvement Projects

The Plan will include specific management measures or actions that when implemented will improve Baseline Conditions and move the Fishery toward Good Condition. Measures can be completed by entities that are not a Party to this Physical Solution; however, this Physical Solution imposes a duty to support all management measures in the Plan and ensure their implementation. At a minimum, the Plan shall include the following measures:

7.3.4.1 Fish Passage Improvements 1 – Sub-Surface Interceptor Wall at Foster Park

Fish Passage Improvements 1 consist of the notching of the existing sub-surface dam at Foster Park, within Reach V3, and improvements around a concrete pipe in the Ventura River that currently serve as potential fish passage barriers under low-flow conditions. The goal of the projects is to extend the flow range for unimpeded passage for *O. mykiss* and allow greater access to existing habitat in the upper Watershed. The City shall cause the construction of Fish Passage Improvements 1, at its sole cost, during the Adoption Phase.

7.3.4.2 Fish Passage Improvements 2 – Improvement of the Fraser Street Road Crossing

Fish Passage Improvements 2 consist of improvements to the Fraser Street Road Crossing. The Fraser Street Road Crossing is located in Reach SA 1. Currently, Fraser Street Road Crossing serves as a potential fish passage barrier under certain flow conditions. Fish Passage Improvements 2 will ensure unimpeded passage across a wide range of flow conditions, providing spawning access over a range of water year types.

7.3.4.3 Gravel Enhancement in Matilija Creek and North Fork Matilija Creek

This measure would augment spawning gravel in Reach NF 1. The measure would strategically inject sufficient amounts of suitable size gravels during appropriate years within a period of ten (10) years after entry of the Physical Solution and Judgment. Gravels would then be

naturally dispersed downstream during high flow events: (1) to replace gravel recruitment currently blocked by Matilija Dam, (2) to improve gravel substrate for macroinvertebrate production, and (3) to improve the availability of suitable gravel for *O. mykiss* redd construction, spawning, and egg incubation.

7.3.4.4 Boulder and Large Woody Material Augmentation in San Antonio Creek

This measure would install boulder cover and large woody material augmentation in San Antonio Creek to enhance juvenile Steelhead rearing habitat, improve protection and cover from predation, increase structure diversity of habitat, and increase holding habitat as a velocity refuge.

7.3.4.5 Large Woody Material Augmentation in the Mainstem Ventura River at the Confluence with San Antonio Creek

This measure would increase the availability of large woody material and create and stabilize deeper pool habitat in the mainstem Ventura River at the confluence with San Antonio Creek, improving juvenile over-summering rearing conditions and resulting in greater survival of juvenile rearing steelhead.

7.3.4.6 Arundo Removal

This measure would consist of the removal of the Arundo to allow for improvement to upstream and downstream passage for adult and juvenile steelhead by reducing transpiration, decreasing adverse geomorphological conditions such as channel braiding, encouraging complex habitat creation, increasing native plant and wildlife species, and improving fish passage conditions by removing passage impediments.

7.3.4.7 Reduction of Predator and Non-Native Fish

Invasive non-native fish species impair the viability of the Fishery. Non-native fish species compete with native fish species for food and habitat, degrade habitat quality and water

quality (e.g., carp), and are predators (e.g., largemouth bass) on juvenile steelhead. This measure would, subject to permitting, implement some or all of the numerous existing and proven non-native fish removal techniques (e.g., electrofishing, netting, hook and line, spearfishing, etc.).

7.3.4.8 Additional Projects for Further Consideration

The Plan shall describe how the Parties will participate and support other Watershed projects that will help improve on Baseline Conditions and move the Fishery toward Good Condition. For example, long-term plans exist for the removal of Matilija Dam. Removal of the Dam would open access to major historical spawning and rearing grounds for the Fishery. Consistent with the continuing provision of water for existing reasonable and beneficial municipal, agricultural, industrial, or other consumptive uses, the Parties shall support efforts to remove Matilija Dam. This support shall include, but not be limited to, consideration of the adoption of resolutions of support for Dam removal or submission of written letters of support.

The Plan will also consider other proposed or ongoing Watershed projects, including, but not limited to, improvements to the Live Oaks and Casitas Springs levees, removal of the Wheeler Gorge Campground passage barrier, replacement of the current Grand Avenue fair weather crossing with a free span bridge, addressing various pipeline crossings that could present barriers such as the Casitas pipeline that crosses San Antonio Creek and the Ojai Valley Sanitation District pipeline that crosses San Antonio Creek, brownfield remediation projects, conservation easements or livestock exclusion projects, and land protection projects.

7.3.5 <u>Protection of Historical Flow Conditions and Site-Specific Flow Enhancement</u>

Precipitation in the Watershed is highly variable both spatially and temporally. Spatially, the upper portion of the Watershed receives, on average, double the annual volume of rainfall received in the lower portion of the Watershed. Seasonally, the Watershed receives most of its rainfall between November and April, with minimal rainfall between May and September. Based on historical records, the Watershed experiences large differences in annual rainfall volume, with wet and dry years at least partially caused by El Niño and La Niña cycles. Because of the extreme variability in precipitation timing and amount in the Watershed, streamflow in the River and its tributaries is also highly variable year-to-year and within a given year, independent of consumptive uses. The Fishery has adapted to this variability in flow in the Watershed and has been considered to be in Good Condition when flows in the past were in the range of current conditions.

Because the decline in the Fishery is linked most directly to loss of habitat and access thereto, the main actions required by the Plan will focus on improvements to Fishery habitat and Fishery access to habitat. At the same time, however, the Plan must also include specific steps to maintain and, if feasible and consistent with applicable GSPs, enhance Historical Flow Conditions critical to the Fishery. At a minimum, the Plan will address three high priority juvenile steelhead rearing reaches and will protect Historical Flow Conditions in these reaches as follows:

(1) Foster Park Flow Protocols. The Plan will recognize and include the City's existing water management protocols at Foster Park that meet or exceed requirements to protect Historical Flow Conditions in this reach. The City's implementation of these Foster Park Flow Protocols does not determine or limit its water rights in any way, consistent with this Physical Solution. The City will be responsible for continuing its existing Foster Park Flow Protocols, as described below:

(a) When daily average flows as measured at the VR-1 gage fall below 4.0 cubic feet per second ("**cfs**") for 3 consecutive days, the City will shut down wells Nye 7 and 8 before noon on the following business day;

(b) If daily average flows as measured at the VR-1 gage fall below 3.0 cfs on any day of the time period in Section (a) above, the City will also shut down the subsurface intake at the same time as the shutdown in Section (a) above;

(c) If the daily average flows as measured by the VR-1 gage fall below 4.0 cfs for 3 consecutive days, but stay above 3.0 cfs during that period, the City would shut down wells Nye 7 and 8 but would be permitted to continue to operate the subsurface intake until the daily average flows fall below 3.0 cfs for three consecutive days, at which time the City will cease all water extraction at Foster Park until flows return to levels above these thresholds.

(d) The City shall monitor the impact of pumping on instream flows using the VR1 and VR2 gages. The City shall specifically evaluate the impact of continued pumping at the subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to Sections (a) to (c) above. If monitoring at station VR-2 downstream demonstrates a sustained impact on instream flows after the shutdown of wells Nye 7 and 8, or after the shutdown of the subsurface intake, the City and Channelkeeper shall meet and confer on or before 30 June of the following year to discuss whether continuing to pump groundwater when instream flows fall below 4.0 cfs may occur or whether all Production should stop at 4.0 cfs. If the City and Channelkeeper are unable to agree, either may pursue any available legal remedy they have related to the sole question of whether production should stop at 4.0 cfs by seeking resolution of the issue via the Court pursuant to this Physical Solution.

(e) The Foster Park Flow Protocols may be temporarily modified or suspended under emergency conditions. Emergency conditions include Act of God, unforeseen pipe failure, and the inability of the City to obtain sufficient usable replacement water from Casitas or other sources to serve its customers. The City shall promptly notify Channelkeeper in writing whenever such an emergency condition exists. The notification shall include the justification for the modification, and supporting documentation. If necessary, the City and Channelkeeper shall meet and confer about the modification or suspension to limit its impact on Southern California steelhead and other impacted species.

(f) If the City seeks to modify the Foster Park Flow Protocols pursuant to Section (e) above because it is unable to obtain replacement water from Casitas, the City shall provide Channelkeeper with 30 days written notice, if such notice is feasible in light of water management plans or testing trends, or as much advance notice as is feasible when the inability results from an unexpected event. If the modification is based on the inability to obtain replacement water from Casitas, the City shall implement the following specific water conservation measures in the impacted service area during the emergency period of modification or suspension:

(i) City Actions

a. Encourage maximum conservation by all customers and users in the impacted area.

b. No outdoor irrigation using potable water will be allowed.

c. All water use not required for health and safety is prohibited.

d. Suspend the issuance of any new development approvals and new water connections in the impacted area other than those required to be processed by state law. Building permits which do not create new demand for water or which are for emergencies,

public safety and water conservation may be exempted by the City Manager.

(ii) Water Customer Actions

a. Comply with mandatory water conservation regulations.

b. Prohibition of all outside water use unless necessary for the preservation of health and safety and the public welfare.

c. Watering with hand-held five gallon maximum bucket, filled at exterior hose bib or interior faucet (not by hose) shall be allowed at any time. This will assist in preserving vegetable gardens or fruit trees.

d. The filling of swimming and wading pools is prohibited;

(2) San Antonio Creek. The Plan shall identify Historical Flow Conditions and measures to prevent degradation of flows in San Antonio Creek, as measured at the gage at San Antonio Creek (USGS gage 11117500; VCWPD Station 605), and implement monitoring measures to determine whether it is feasible to enhance flows and/or habitat in San Antonio Creek. This will include, but not be limited to, providing incentives and legal certainty to encourage voluntary projects or actions by landowners that have a documented in-stream flow enhancement benefit. Examples of these efforts include projects identified as part of the Ventura River Watershed Instream Flow Enhancement and Water Resiliency Framework; and

(3) North Fork Matilija Creek. The Plan shall identify Historical Flow Conditions and measures to prevent degradation of Historical Flow Conditions in North Fork Matilija Creek, as measured at the gage at North Fork Matilija Creek (USGS gage 11116000; VCWPD Station 604), and implement monitoring measures to determine whether it is feasible to enhance flows and/or habitat in North Fork Matilija Creek.

Consistent with the continuing provision of water for existing reasonable and beneficial municipal, agricultural, industrial, or other consumptive uses, the Plan shall also consider other water management measures to be implemented by the Bound Parties, designed to reduce the demand for water from the Watershed or to adjust the timing and amount of Production as necessary to maintain and, if feasible, enhance base flows to improve habitat conditions for steelhead. Such efforts, upon a finding of cause and effect between that Production and Fishery condition, may include conservation efforts, scheduling the timing of Production in a manner consistent with the life stage needs of the steelhead, and reducing Production consistent with existing reasonable and beneficial uses. These measures shall be equitably tailored to each Bound Party, taking into consideration past and current conservation efforts. The Plan may also consider any other feasible actions to be implemented by the Bound Parties to improve water quality within the Watershed. Subject to the **Uncontrollable Conditions**, the Court retains jurisdiction to order specific water management actions when there are material excursions below Baseline Conditions during the Implementation of Adaptive Management Phases.

7.3.6 GSP Processes

The Plan shall describe how the Plan will work in concert with the GSP processes. Consistent with the continuing provision of water for existing reasonable and beneficial municipal, agricultural, industrial, or other consumptive uses, the Parties shall exercise good faith and reasonable efforts to participate in the creation and implementation of GSPs for the Basins within the Watershed that require GSPs. ("Regulated Basins"). In accordance with Code of Civil Procedure section 830(a)(4), the Parties anticipate that this Physical Solution will help to achieve the Groundwater sustainability goals of SGMA within the Regulated Basins. Specifically, this Physical Solution ~~avoids~~ is intended to avoid the undesirable result of depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water, as defined in Water Code section 10721(x)(6). The Plan shall be consistent with the GSPs of the Regulated Basins and shall be implemented in a manner that

furthers the requirements and objectives of the GSPs. ~~By implementing the Plan to maintain the Fishery in a Good Condition, the Parties are avoiding any significant and unreasonable adverse impacts to instream beneficial uses that may be associated with Production in the Basins. In addition, participation by the Parties in the implementation of the GSPs, once adopted and enforced by the GSAs, will assist in the implementation of this Physical Solution.~~ This Physical Solution and the GSPs will therefore complement each other and collectively assist in achieving the goals of both the Physical Solution and SGMA.

7.3.7 Monitoring and Reporting

The Plan shall include a specific monitoring and reporting program, including the monitoring of hydrology, precipitation, in-stream flow, surface water-Groundwater interaction, water quality, and Fishery and habitat. At a minimum, the general condition of the Fishery and the Watershed shall be assessed and reported annually as compared to Baseline Conditions. The Plan shall establish a schedule for more detailed monitoring that is based on snorkel surveys or other similar evidence, and could include fish tracking or tagging systems, which shall occur at a minimum every five years. The Plan shall also establish a schedule for more detailed reporting based on these more detailed monitoring efforts. The Plan shall be developed in a manner that prevents duplication of efforts for groundwater and surface water monitoring with the GSAs within the Regulated Basins.

7.4 Phasing

The Parties are obligated to implement the Physical Solution to move the conditions in the Watershed from the Baseline Conditions toward Good Condition. Implementation of the Physical Solution will take place in the following three phases:

7.4.1 Adoption Phase

7.4.1.1 Term

The period from entry of this Physical Solution through adoption of the Plan shall be defined as the "**Adoption Phase**," and shall be no longer than eighteen (18) months, unless otherwise extended by the Court upon motion of any Party for good cause shown.

7.4.1.2 Required actions during Adoption Phase

During the Adoption Phase, the Parties must perform all the actions listed below (**Adoption Phase Requirements**). Failure to implement the Adoption Phase Requirements will be a violation of this Physical Solution. Adoption Phase Requirements shall be implemented by individual Parties, or through action of the MC to be funded by the Parties.

7.4.1.2.1 Formation and Funding of the MC

During the Adoption Phase, certain Parties will organize the MC and provide sufficient funding for the MC and the **Technical Advisor**.

7.4.1.2.2 Adoption of the ~~Management Plan~~Fisheries Management Plan

During the Adoption Phase, the Parties must finalize and have the MC adopt the Plan, subject to the Court's review and approval.

7.4.1.2.3 Foster Park Flow Management

The City shall implement the Foster Park Flow Protocols described in Section 7.3.5.

7.4.1.2.4 Fish Passage Improvements 1

During the Adoption Phase, the City shall complete the construction of Fish Passage Improvements 1.

7.4.1.2.5 Arundo removal

During the Adoption Phase, certain Parties shall commence or fund and cause Arundo, removal programs at strategic locations within the Watershed. The Wood-Claeyssens Foundation will prepare and propose an Arundo and trash/debris removal program for those portions of the Ventura River contiguous to its riparian land within Reaches V1 and V2 and for implementation forthwith in a form and manner approved by the MC.

7.4.1.2.6 Initiation of Monitoring Program

During the Adoption Phase, the Bound Parties shall commence initial hydrology and biology monitoring within six months of entry of this Physical Solution. The complete monitoring and assessment program shall be fully developed and implemented by the end of the Adoption Phase.

7.4.1.3 Objectives for the Adoption Phase

During the Adoption Phase, the Parties anticipate that implementation of the Adoption Phase Requirements will result in improvements in habitat and water management above the Baseline Conditions, but improvements may be marginal given the limited time involved in the Adoption Phase. Achievement of the Adoption Phase Requirements shall be compliance with the Physical Solution.

7.4.2 Implementation Phase

7.4.2.1 Term

The "**Implementation Phase"** begins upon final adoption of the Plan and runs for a ten (10) year period. Once adopted, the Plan becomes an enforceable part of this Physical Solution, and failure to complete the actions required by the Plan (**Implementation Phase Requirements**) will be a violation of this Physical Solution.

7.4.2.2 Required Actions During the Implementation Phase

During the Implementation Phase, the Bound Parties must complete the Implementation Phase Requirements, including implementation of the Fishery management actions as provided in the Plan, continuation of the Arundo, trash/debris removal programs proposed and initiated within Reaches V1 and V2 pursuant to Section 7.4.1.2.5 above as may be modified over time to address current conditions, implementation of the monitoring and assessment program and submission of all required annual and other reports.

7.4.2.3 Objectives for the Implementation Phase

During the Implementation Phase, the Parties anticipate that implementation of the Implementation Phase Requirements will result in improvements above the Baseline Conditions and progress toward Good Condition. If, during the Implementation Phase and subject to Uncontrollable Conditions, there are material excursions below Baseline Conditions, as defined in the Plan, as originally adopted, or as it may be amended during the Implementation Phase, the Court may exercise its continuing jurisdiction pursuant to Section 7.5 and for good cause shown, may require additional actions beyond the Implementation Phase Requirements. Otherwise, achievement of the Implementation Phase Requirements shall be compliance with the Physical Solution.

7.4.3 Adaptive Management Phase

7.4.3.1 Term

The Implementation Phase ends when the Plan has been implemented for a period of ten (10) years, and the "**Adaptive Management Phase**" begins. The Adaptive Management Phase shall consist of a series of ten (10) year periods in which the Plan is updated and Plan updates are adopted and implemented until Good Condition is achieved. Once readopted, each updated Plan becomes an enforceable part of this Physical Solution, and failure to complete the actions

required by the updated Plan **(Adaptive Management Phase Requirements**) will be a violation of this Physical Solution.

7.4.3.2 Required Actions During Adaptive Management Phase

During each Adaptive Management Phase, the MC must update and readopt the Plan as necessary to achieve Good Condition. Once the updated Plan for each Adaptive Management Phase is adopted, the Bound Parties must complete the Adaptive Management Phase Requirements, including implementation of the Fishery management actions as provided in the updated Plan, continuation of the Arundo, trash/debris program removal in Reaches V1 and V2 initiated pursuant to Section 7.4.1.2.5 above as may be modified over time to address current conditions, implementation of the monitoring and assessment program and submission of all required annual and other reports.

7.4.3.3 Objective for the Adaptive Management Phase

During the Adaptive Management Phase, the Parties anticipate that implementation of the Adaptive Management Phase Requirements will result in improvements above the revised Baseline Conditions, as defined in the updated Plan, and ultimate achievement of Good Condition. If, during each Adaptive Management Phase and subject to Uncontrollable Conditions, there are material excursions below the revised Baseline Conditions as defined in the then current updated Plan, the Court may exercise its continuing jurisdiction pursuant to Section 7.5 and, for good cause shown, may require additional actions beyond the Adaptive Management Phase Requirements. Otherwise, achievement of the Adaptive Management Phase Requirements shall be compliance with the Physical Solution.

7.5 <u>Role of Court to Enforce Physical Solution</u>

Under its continuing jurisdiction, the Court shall have the authority to enforce any failure to implement any mandatory requirement of the Physical Solution. If, after completing the dispute resolution process set forth in Section 7.8 of this Physical Solution, any Bound Party believes that another Bound Party is not complying with the mandatory requirements of this Physical Solution, that Bound Party may petition the Court for appropriate relief upon good cause shown. In addition, if, after the Adoption Phase and despite implementation of the Plan, and subject to Uncontrollable Conditions, there are material excursions below Baseline Conditions, as described above, the Court may, on motion and for good cause shown, order such additional actions as required to return to a condition at or above Baseline Conditions.

7.6 Uncontrollable Conditions

The Watershed and the Fishery face significant threats from climate change, natural catastrophes, drought conditions, water shortages, and similar external factors that are beyond the ability of the Bound Parties to control. In addition, implementation of the Physical Solution requires in certain cases approval of other governmental agencies not party to this Physical Solution. Finally, a minimum amount of reasonable and beneficial consumptive use of water from the Watershed is necessary to sustain existing human populations and uses and to implement the human right to water. See Water Code § 106.3. If implementation of any requirement of the Physical Solution becomes impracticable due to an Uncontrollable Condition, the Bound Parties will not be considered to be in violation of this Physical Solution for the period of time in which the Uncontrolled Condition prevents performance. As used in this Physical Solution, an "Uncontrollable Condition" is any circumstance beyond the Bound Parties' control, including without limitation, any act of God, war, fire, earthquake, flood, windstorm, drought or natural catastrophe, including climate change; the need to provide a minimum amount of reasonable and beneficial consumptive use of water from the Watershed; criminal acts; civil disturbance, pandemic, vandalism, sabotage, or terrorism; restraint by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency.

7.7 Management Committee (MC)

7.7.1 Appointment

The Court hereby establishes the MC, which shall be a ~~five~~ six member board composed of one representative each from the (1) City, (2) Casitas, (3) the Special District Group (consisting of rotating members of VRWD and MOWD), (4) the Agricultural/Mutual Water Company Group (as they may designate in their discretion), (5) Upper Ventura River Groundwater Agency and (5) the ~~Groundwater Sustainability Agency Group (consisting of rotating members of the Upper Ventura River Groundwater Agency and~~ Ojai Basin Groundwater Management Agency~~)~~. There shall be two non-voting ex officio members of the MC composed of (1) one representative from the County of Ventura and (2) one environmental stakeholder representative. Each representative shall be an employee, board member, group member, or other qualified designated representative of the designated entity and shall have knowledge of the Watershed, the Fishery, and existing water management activities in the Watershed. Appointments to the MC shall be for provisional terms of five (5) years, subject to the discretion of the Bound Party to substitute designees. This means, each member of the MC is subject to re-designation by the Bound Party subject to this provision, a reappointment a minimum of every five (5) years. An Agricultural/Mutual Water Company representative must be a designee of a Bound Party that has produced an amount equal to or greater than an average of one-hundred (100) AFY in the five (5) year period immediately preceding the appointment. The MC, subject to Court oversight, shall be primarily responsible for implementing this Physical Solution.

7.7.2 Assessment to Fund Plan Development and Implementation

The MC shall adopt an annual budget each year for the purpose of implementing and administering this Physical Solution. Any portion of the budgeted costs not funded by Party grants, third party grants, parcel taxes and benefit assessments will be funded by an assessment levied upon those Parties to the Judgment that produce water in quantities greater than *De*

Minimis. The MC, no later than one year after the commencement of the Implementation Phase, shall adopt an annual assessment ("**Annual Assessment**"), and shall continue to assess and collect such Annual Assessment for so long as funds may be required for the implementation of the Plan and Physical Solution, subject to adjustment by the MC. Adjustments may be required, necessary, and prudent to account for the availability of funds from sources made available other than by assessment on the Parties. For purpose of funding the Physical Solution only and not as an admission of proportionate, joint, and several responsibility or of the relative quantities of any water rights, the assessment shall be calculated and imposed on each Producer in amount equal to the Producer's percentage share of total Watershed water production above the *De Minimis* level.

The MC shall base its Annual Assessment on the five-year average usage of all Producers above *De Minimis*. The budgeted costs to implement the Plan and the Physical Solution shall be apportioned pro rata in an amount equal to each Producer's percentage share of the total Watershed water production in five-year increments. This means that the initial Annual Assessment will be based upon the use in the five years immediately preceding the commencement of the Implementation Phase and will continue to be the basis for levying assessments during the first five-year period (the "**Producer's Percentage**"). Thereafter, the Producer's Percentage shall be recalculated every five years and will be an amount equal to the Producer's average annual percentage share of the total Watershed water production as measured over the immediately preceding five-year period.

The Producers are encouraged to propose measures that will reduce the individual and cumulative costs of implementing the Plan and the Physical Solution. The MC shall develop, within six (6) months of its establishment, procedures for Producers to apply for credits as off-sets against the Annual Assessments for verified in-kind contributions that are approved in advance by the MC and implement approved elements of the Plan or actions required by the Physical Solution, including but not limited to Arundo, debris, and trash removal. In addition, the MC shall develop procedures for Producers to apply for credits against the assessment for the

development of projects that are not required by the Plan or Physical Solution, but are determined by the MC to materially advance the achievement of the management objectives of the Plan. The MC and the Bound Parties shall also make best efforts to secure additional grant or third-party funding where available and appropriate, for the purpose of implementing the Plan and Physical Solution, and such additional funding shall be used to offset the assessment or shall result in a credit against the assessment for individual parties who obtain such funding.

In order to insure that sufficient funding exists to implement the Adoption Phase, and subject to subsequent pro-rata reimbursement derived through Annual Assessments levied upon other unnamed Producers, the following Producer parties shall advance funding in excess of their Producer's Percentage as needed to implement the Adoption Phase based on the following percentages:

Party	**Estimated Share of Advanced Adoption Phase Costs**[5]
City	18.940%
Casitas	56.500%
VRWD	6.795%
MOWD	3.785%
Rancho Matilija Mutual Water Company	2.935%
Wood-Claeyssens Foundation	7.216%
Other/Agriculture	3.828%

The MC shall develop an equitable process by which the funding advanced by these initial parties during the Adoption Phase shall be reimbursed or credited against future assessments during the Implementation and Adaptive Management Phases. As noted above, however, the

[5] Based on best available information regarding water usage for the past five (5) years, subject to final participation of Parties and confirmation.

City shall be solely responsible for the funding of the Foster Park Passage Improvement Project and all future monitoring costs attributable thereto.

In addition, the MC will exercise good faith in considering and supporting reasonable efforts of any one or more public agencies who may, in their discretion, wish to use their individual powers through existing legal processes to seek to finance some or all of the implementation costs through a special parcel tax or a property-based benefit assessment. The Parties acknowledge that under existing law, a special parcel tax is a tax levied against property within the Watershed, as authorized under article XIII A of the California Constitution, article XIII D, section a(2) of the California Constitution, California Government Code section 37100.5, Government Code section 50075 *et seq.*, and any other provision of law authorizing such public agency to impose a parcel tax (including, for example, the Mello-Roos Community Facilities Act of 1982, Government Code section 53311 *et seq*.). Subject to limitations existing in applicable law authorizing such parcel tax, a public agency may determine a methodology for allocating the costs of watershed management to parcels within the watershed, provided that the parcel tax may not be based on the assessed value of any parcel. A parcel tax may not be levied by any public agency until that tax is submitted to the electorate and approved by a two-thirds vote.

The Producers further acknowledge that public agencies may also levy a property-based benefit assessment on property within the Watershed. Assessments are subject to the provisions of article XIII D of the California Constitution, and Government Code section 53750 *et seq*. (commonly known as Proposition 218). Assessments may not exceed the proportional specific benefit conferred on any parcel subject to the assessment, and the methodology for allocating such specific benefit in a proportionate manner must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California. Special benefits include benefits to parcels that are distinct and separate from general benefits conferred to the public at large. The public agency may not levy an assessment on property unless the public agency has first held a notified public hearing and balloting proceeding, and received

ballots in favor of the assessment from properties subject to the assessment representing a majority of the total amount of the assessment.

Following the expiration of the eighteen (18) month Adoption Phase, the ten (10) year Implementation Phase, and the first eighteen (18) months of the Adaptive Management Phase (being a total period of fifteen (15) years), a Producer may make application to the MC, and thereafter to the Court, to have the amount of their annual per acre foot assessment derived from their Producer's Percentage reduced by an amount equal to their pro rata share of monitoring costs incorporated into their Producer's Percentage on the grounds that the percolating Groundwater they pump is not hydrologically interconnected to the Ventura River. The Producer making this request bears the burden of proof of demonstrating by a preponderance of the evidence that there is no material hydrologic connection between their pumping of Groundwater and flow in the Ventura River. The reduction is applicable to the cost of monitoring only. The ongoing administrative costs, including legal expenses, incurred by the MC are not subject to this provision. The initial demonstration will be made to the MC and reviewable, *de novo*, by the Court.

This cost allocation methodology provided herein is the result of a compromise for purpose of agreed funding and is not an admission, express or implied, that there is a hydraulic interconnection between percolating Groundwater and water flowing within a known and defined channel of the Ventura River. Moreover, by agreeing to this method of cost-allocation for the purpose of funding the Physical Solution and the Plan, the Producers are expressly reserving all rights, whatever they may be, concerning whether there is a hydrologic interconnection between the Ventura River – including subsurface flow in a known and defined channel – and percolating Groundwater. This reservation includes the Party's right to oppose further measures not expressly authorized by the Physical Solution and Plan on the grounds there is no actual hydrologic interconnection between the production of percolating Groundwater and the Ventura

River and to contest regulatory conditions adopted that are in addition to or in conflict with those expressly set forth in the Physical Solution and the Plan.

Imposition of the cost allocation methodology provided herein is expressly subject to the condition precedent of the Court ordering the imposition of this Physical Solution and Plan, inclusive of this methodology being binding on all Producers of water from the Watershed in amount greater than or equal to five (5) AFY (non *De Minimis* Producers).

7.7.3 Powers and Duties

The MC shall carry out its powers, duties, and responsibilities in an impartial manner without favor or prejudice to any Bound Party. Subject to the continuing supervision and control of the Court, the MC shall have and may exercise the following express powers and duties, together with any specific power and duties set forth elsewhere in this Physical Solution or ordered by the Court:

7.7.3.1 Selection of the Technical Advisor

The MC shall select Technical Advisor with the necessary training, experience, and education to provide technical oversight of the implementation and performance of the Plan and make recommendations to the MC.

7.7.3.2 Adoption of Rules and Regulations

The MC shall prepare and propose for adoption by the Court appropriate rules and regulations, including conflict of interest rules for MC members. All MC rules and regulations, and any amendments to the MC rules and regulations, shall be consistent with this Physical Solution and are subject to approval by the Court, for good cause shown, after notice to and consideration of the objections of any Bound Party. Before proposing rules and regulations, or amendments thereto, for adoption by the Court, the MC shall hold a public hearing. At least

thirty (30) days prior to the date of the hearing, the MC shall send to all Bound Parties notice of the hearing and a copy of the proposed rules and regulations or amendments thereto.

7.7.3.3 Consideration and Adoption of the Plan and Amendments to the Plan

The MC shall consider and adopt the Plan, as well as any amendments to the Plan.

7.7.3.4 Voting Requirements

All decisions of the MC shall be by simple majority of its V~~v~~oting M~~m~~embers (as defined below) provided that, to be valid and binding, the following decisions of the MC set forth in Sections 7.7.3.4.1, 7.7.3.4.2, and 7.7.3.4.3 must be ratified by either: (i) a 75% vote of the Bound Parties with greater than one hundred (100) AFY annual average water production during the five years immediately preceding the vote (notwithstanding that a Bound Party may have no designee on the MC) or (ii) a volume vote of 80% of the Bound Parties based upon the cumulative production of water in the Watershed that occurred in the five years immediately preceding the vote. The vote will be conducted by written ballot pursuant to rules and regulations promulgated by the MC. ~~For the avoidance of doubt,~~ T~~t~~he presence of the two non-voting ex officio members shall not be counted for purposes of determining whether a quorum exists for MC meetings and actions taken.

Voting by the Voting Members shall be made on the basis of one vote for each Member, provided however that if the matter to be voted on exclusively concerns one of the Regulated Basins and not the other, the Voting Member appointed by the GSA representing an unaffected Basin may participate in Board discussions of the matter but shall not vote on the matter. Examples of matters that exclusively concern one of the Basins and not the other include, without limitation, management activities located in one Basin and not the other, monitoring activities in one Basin and not the other, assessments adopted pursuant to Section 7.7.2 applicable to one

Basin and not the other, and so on. For matters that concern both Basins, both of the GSA Members may vote on the matter.~~be adopted for~~

7.7.3.4.1 Execution of Agreements

Agreements of more than five (5) years in duration or for which the total value of services provided thereunder will exceed $500,000 unless approved pursuant to Section 7.7.3.4.2 below.

7.7.3.4.2 Approval of Proposed Modifications to the Implementation and Adaptive Management Measures Set forth in the Physical Solution and the Plan

Proposed modifications to the Implementation and Adaptive Management Measures set forth in this Physical Solution and the Plan that: (i) are reasonably likely to result in an increased cost that is subject to recovery from the Bound Parties through an Annual Assessment in an amount greater than five hundred thousand dollars ($500,000) over the duration of the respective Phase or one million dollars ($1,000,000) through all Phases or (ii) the abandonment or discontinuance of any habitat improvement measure set forth in the Physical Solution and the Plan.

7.7.3.4.3 Increases in Annual Assessments within a Phase

An increase in the cumulative Annual Assessment within a Phase, not previously approved pursuant to Sections 7.7.3.4.1 or 7.7.3.4.2 above, in an amount greater than twenty percent (20%) over the prior year.

7.7.3.5 Employment of Experts and Agents

In addition to the Technical Advisor, the MC may employ, contract with, or otherwise engage such administrative personnel, engineering, biological (fishery), legal, accounting, or other specialty services, and consulting assistants as appropriate to carry out the terms of this Physical Solution.

7.7.3.6 Notice List

The MC shall maintain a current list of Bound Parties to receive notice. Each Bound Party shall have an affirmative obligation to provide the MC with their current contact information. Any Person may be added to the MC's notice list by electronic written request. Whenever any parcel of property that is subject to this Judgement is transferred, the grantor of the property shall notify the grantee of the existence of this Physical Solution, and the grantee shall provide the MC with its current contact information.

7.7.3.7 Annual Budget

The MC shall prepare a proposed administrative budget for each year covering all of its operations, including, without limitation, costs of the Technical Advisor and other needed consultants and personnel. The MC shall hold a public hearing regarding the proposed administrative budget and adopt an administrative budget. Following the adoption of the budget, the MC may make expenditures within budgeted items in the exercise of power herein granted, as a matter of course.

7.7.3.8 Unauthorized Actions

The MC shall bring such action or motion as is necessary to enjoin any conduct prohibited by this Physical Solution.

7.7.3.9 Meetings and Records

Although the MC is not a separate public agency, the MC shall generally provide notice of and conduct all meetings and hearings in a manner consistent with the standards and timetables set forth in the Ralph M. Brown Act, Government Code sections 54950 *et seq.*, unless otherwise required by the MC's rules and regulations. The MC shall establish its own website and make its files and records available thereon.

7.7.3.10 Coordination with Groundwater Sustainability Agencies

~~In implementing its powers and duties~~As set forth above, the MC shall coordinate with ~~all~~ the GSAs governing the Regulated Basins. In accordance with Code of Civil Procedure section 830(b)(4), this Physical Solution, and the MC's activities ~~, are designed in a manner to be, and must~~shall be ~~interpreted,~~ consistent with the ~~achievement of Groundwater sustainability within the timeframes~~requirements of SGMA.

7.7.4 Technical Advisor

The Technical Advisor shall be appointed by the MC and shall report to the MC and the Court. The Technical Advisor shall have the following duties.

7.7.4.1 Monitoring Condition of the *O. mykiss* Population

Monitor the status of the *O. mykiss* population and their habitat using the criteria established in this Physical Solution and in accordance with the Plan.

7.7.4.2 Monitoring Implementation of Required Management Measures

Monitor the implementation of the Fishery management and water management measures required by this Physical Solution.

7.7.4.3 Measuring Devices

Propose to the MC the installation of any additional measuring devices to monitor the condition of the *O. mykiss* population, water quality, instream flows and water surface elevations, or to measure water Production in the Watershed.

7.7.4.4 Production Reports; Current Production Baseline

Require each Producer of water from the Watershed, other than *De Minimis* Producers, and every Bound Party that claims a right to Produce water within the Ventura River Watershed, inclusive of surface water, subterranean streams flowing in known and definite channels, and percolating Groundwater from the Basins in a quantity equal to or greater than five (5) AFY to file an annual **Production Report** with the MC, in a form, to be developed and promulgated by the Technical Advisor, consistent with Water Code section 4999 *et seq.* and shall demonstrate water use over a minimum period of ten (10) years prior to the Production Report. Production Reports will be filed under penalty of perjury and will be conclusive proof of the maximum quantity of water applied for beneficial use by the party under any claim of right in any future evidentiary proceeding. The failure to file a Production Report shall be considered non-use for that Producer/Bound Party for any such year consistent with Water Code section 5004. The timing of filing Production Reports shall be coordinated with the GSAs in the Watershed to avoid duplication.

De Minimis Producers shall file an annual report under penalty of perjury pursuant to Section 7.7.4.6 below sufficient to demonstrate that they qualify as *De Minimis* Producers. *De Minimis* Producers may also elect to file annual Production Reports with the MC to document their historical water Production.

Non-Producers owning inactive Production wells shall file with the MC evidence of their inactive Production well status on a form to be developed and promulgated by the Technical Advisor. Non-Producers claiming an unexercised right to Produce water from the Watershed may also elect to provide the MC with evidence of such a claim. In evaluating notices of **New Production**, the MC shall consider such prior claims filed with the MC.

The Technical Advisor shall also pursue State Board designation in accordance with Water Code section 5009 such that Producers must only file Production Reports with the MC. In addition, the Technical Advisor shall prepare an annual inventory of all water Production in the

Comment [B1]:

We would like to rely on the reporting under the settlement to satisfy reporting requirements for SGMA purposes in the UVRB. However, this approach would create a gap in reporting between 2 AFY (*De Minimis* under SGMA) and 5 AFY (*De Minimis* proposed in the PS). As written, UVRGA would have to figure out who falls between 2 and 5 AFY on our own and implement a separate extraction reporting program just for that to comply with SGMA. No small task and would be a large cost relative to the cumulative pumping volume. There are ~100 wells in UVRB that could potentially fall in this range.

UVRGA would appreciate the opportunity to discuss how we might partner on a solution that would meet the needs of both the PS and UVRGA and eliminates overlapping extraction reporting programs for the water users. We would like to consider an approach that would require reporting starting as 2 AFY, but the MC would only charge PS fees for 5AFY and above of reported use.

Watershed using Production Reports and other reports submitted pursuant to the Physical Solution, and/or previous reports to the State Board, DWR, Ojai GMA, or otherwise pursuant to Water Code section 5009, including an estimate of the quantity of water Produced by *De Minimis* Producers and a summary of reports by Non-Producers. This inventory shall be updated annually and included within the Annual Report. The Technical Advisor shall also analyze this inventory on annual basis and provide notice to the MC if there are any material increases in Production by any Producer.

7.7.4.5 New Production

Any Bound Party or Non-Producer seeking to commence New Production from the Watershed, and before seeking a Production-related (e.g., new well or appropriative water right) permit from any applicable local or state authority, shall give notice to the Technical Advisor of the proposed New Production on a form to be developed and promulgated by the Technical Advisor. Upon recommendation from the Technical Advisor, the MC shall evaluate whether the commencement of proposed New Production unreasonably interferes with the Physical Solution, complies with the reasonable and beneficial use mandates of Article X, section 2 of the California Constitution, and is protective of the public trust. The MC may impose reasonable mitigation or other requirements on the proposed New Production to ensure that it is consistent with the Physical Solution, the reasonable and beneficial use mandates of Article X, section 2 of the California Constitution, and protective of the public trust. Any decision of the MC regarding the New Production is subject to judicial review pursuant to the Court's continuing jurisdiction pursuant to Section 7.7.6 below.

7.7.4.6 *De Minimis* Producer

Except as set forth below, a~~A~~ *De Minimis* Producer shall be defined as any existing and New Production that is limited to less than five (5) AFY. To qualify as a *De Minimis* Producer, a Producer shall file an annual *De Minimis* production report with the MC, in a form consistent

Comment [B2]: UVRGA has concerns about setting the *De Minimis* threshold at 5 AFY because it is defined at 2 AFY in SGMA. This will create confusion and prevent UVRGA from relying on the extraction reporting to the MC for satisfying SGMA requirements. UVRGA would appreciate the opportunity to discuss how we might partner on a solution that would meet the needs of both the PS and UVRGA and eliminates overlapping extraction reporting programs for the water users. We would like to consider an approach that would require reporting starting as 2 AFY, but the MC would only charge PS fees for 5AFY and above of reported use.

with Water Code section 4999 *et seq.*, under penalty of perjury. The Technical Advisor shall develop and promulgate simple forms and procedures for *De Minimis* production reports.

Pursuant to Water Code Section 10737.2, *De Minimis* Producers in a Regulated Basin shall be defined as any existing and New Production that is limited to less than two (2) AFY. The qualifications for *De Minimis* producers shall be set forth on the GSP for each Regulated Basin.

Comment [B3]: Keith, this addition by itself does not address my concern.

7.7.4.7 Diversion of Flow

No Bound Party shall undertake or cause construction within the Watershed that will materially reduce the amount of storm flows that would otherwise enter the Watershed, or adversely affect the Baseline Conditions identified in the Plan and Section 7.2 of this Physical Solution, without prior notification to and evaluation for consistency with the Physical Solution, compliance with reasonable and beneficial use requirements, and protection of the public trust by the Technical Advisor. The Technical Advisor may preapprove types of infiltration projects that are consistent with the goals of this Physical Solution.

7.7.4.8 Data, Estimates, and Procedures

The Technical Advisor shall rely on and use the best available science, records and data to support the implementation of this Physical Solution. Where actual records or data are not available, the Technical Advisor shall rely on and use sound scientific and engineering estimates. The Technical Advisor may use preliminary records of measurements, and, if revisions are subsequently made, may reflect such revisions in subsequent accounting.

7.7.4.9 Status Reports

7.7.4.9.1 Contents of the Annual Report

The Technical Advisor shall prepare a report annually ("**Annual Report**") that includes information on the activities of the MC and information sufficient to document the status of the *O. mykiss* population, as set forth in this Physical Solution, and specifically in the ~~Management~~

~~Plan~~Fisheries Management Plan. The Annual Report shall include at least the following information: (a) summary of the MC's activities; (b) fiscal report of the preceding year's operations, including revenue and expenditures; (c) the general condition of the Fishery and the Watershed as compared to Baseline Conditions; (d) a summary of Watershed management measures implemented in the preceding year; (e) production reports for the Watershed; (f) evaluation of any notices of New Production; and (g) any other information necessary to assess implementation of the Physical Solution and to comply with the requirements of the ~~Management Plan~~Fisheries Management Plan.

7.7.4.9.2 Long Term Reporting

The Technical Advisor shall prepare and file at the end of the Implementation Phase, a report with long-term monitoring trends and a comprehensive evaluation of the state of the Watershed. Subsequent state of the Watershed long range reports shall be filed as to be determined by the MC ("**Long Term Report**").

7.7.4.9.3 Filing of Reports

The Technical Advisor shall prepare and file the Annual Report or Long Term Report (collectively, "**Status Reports**"), whichever is applicable, with the Court each year, on a date to be determined by the MC, beginning with an Annual Report filed the first on April 1st following the first full year after entry of this Physical Solution. Prior to filing a Status Report with the Court, the MC shall provide written notice to all Bound Parties that a draft of the Status Report is available for review and make the Status Report available on a web site available to all Bound Parties. The MC shall provide written notice to all Bound Parties of a public hearing to receive comments and recommendations for changes in the Status Report. The public hearing shall be conducted pursuant to rules and regulations promulgated by the MC. The notice of public hearing may include such summary of the draft Status Report as the MC may deem appropriate. The Status Reports shall consider the annual report filed for each Regulated Basin for that year pursuant to Water Code Section 10728.

Comment [B4]: Report should be aligned with SGMA reporting schedule, which follows the water year. SGMA annual reports are due on April 1.

7.7.5 Removal of the MC

The Court retains and reserves full jurisdiction, power, and authority to remove the MC, or any individual representative serving on the MC, for good cause, and to substitute a new MC or representative in its place, upon its own motion or upon motion of any Bound Party in accordance with the notice and hearing procedures set forth in Section 7.7.6 of this Physical Solution. The Court shall find good cause upon a showing that the MC or representative has: (1) failed to exercise its powers or perform its duties; (2) performed its powers in a biased manner; or (3) otherwise failed to act in a manner consistent with the provisions in this Physical Solution or subsequent order of the Court.

7.7.6 Court Review of MC Actions

Any action, decision, rule, regulation, or procedure of the MC or the Technical Advisor pursuant to this Physical Solution shall be subject to review by the Court on its own motion or on the timely motion by any Bound Party as follows:

7.7.6.1 Effective Date of MC Action

Any order, decision or action of MC or Technical Advisor pursuant to this Physical Solution shall be deemed to have occurred on the date of the order, decision or action.

7.7.6.2 Notice of Motion

Any Bound Party may move the Court for review of an action or decision pursuant to this Physical Solution by way of noticed motion, upon at least 30 days' notice thereof. The motion shall be served on all Bound Parties and the MC and Technical Advisor. Unless ordered by the Court on its own motion or by request by a Bound Party, any such petition shall not operate to stay the effect of any action or decision which is challenged. To have standing to bring such a motion, a Bound Party must have received notice of and participated in the proceedings of the

MC regarding the order, decision or action in question or make an adequate showing as to why such participating was impractical or futile.

7.7.6.3 Time for Motion

A Bound Party must file a motion to review any action or decision within ninety (90) days after such action or decision, except that motions for review of assessments hereunder shall be filed within thirty (30) days of MC mailing notice of the assessment.

7.7.6.4 Standard of Review

The Court's review of any legal determinations of the MC, including but not limited to interpretations of this Physical Solution, shall be *de novo*. The factual determinations of the MC shall be review under a substantial evidence standard, provided, however, that any factual determinations that involve or affect a Bound Party's vested fundamental rights, directly or otherwise, shall be reviewed *de novo*. For the purpose of this Physical Solution, such vested fundamental rights shall include the rights to produce, divert, receive, or use water.

7.7.6.5 Decision

The decision of the Court in such proceeding shall be an appealable supplemental order in this case. When the Court's decision is final, it shall be binding upon the MC and the Bound Parties.

7.8 <u>Dispute Resolution</u>

Except as discussed herein, all disputes arising under this Physical Solution, including those related to the condition of the Fishery, initially shall be submitted to the MC for resolution in accordance with this section. Any Bound Party may file a written request with the MC to hold a hearing on a dispute. Upon receipt of the written request, the MC shall provide notice that generally describes the nature of the dispute by posting it on its website. Thereafter, the MC shall cause an item to be placed on the agenda for a regularly-scheduled meeting of the MC within

forty-five (45) days or, or if requested by the moving party, call a special meeting for the purpose of providing a full hearing of the dispute and providing the interested Bound Parties with notice and opportunity to be heard. No later than thirty (30) days following the conclusion of the hearing(s), the MC shall issue a written decision that is dispositive of the dispute and that is supported by written findings. The written decision may include additional adaptive management provisions, including but not limited to, including any combination of water management and habitat improvement measures sufficient to establish the Fishery as in Good Condition in accordance with this Physical Solution. Any Bound Party may seek review of an adverse decision of the MC in accordance with the provisions of Section 7.7.6. This section does not apply to any dispute wherein any Party seeks a determination of the relative priority rights to water in the Watershed or to establish a comprehensive adjudication of water rights in the Watershed. Any such disputes shall be resolved solely by the Court pursuant to and accordance with Section 9.2 herein.

7.9 Need for Flexibility

This Physical Solution must provide flexibility and adaptability to allow the MC and the Court to use existing and future technological, social, institutional, and economic options in order to maximize reasonable and beneficial water use in the Watershed.

8. FINDINGS

The Court finds that the Physical Solution: (a) is compelled by the need to maximize the efficient reasonable and beneficial use of all water in the Watershed and avoid the waste of precious water resources and continued uncertainty created by unresolved competing claims to water in furtherance of the mandates of the State Constitution and State water policy; (b) is not expected to result in substantial injury to water right holders or beneficial uses; (c) is a fair and equitable basis for satisfying the reasonable and beneficial water uses within the Watershed, including consumptive and instream uses; (d) provides due consideration of and respects common law and statutory water right priorities and applicable public trust resources; and (e) is intended to

avoids depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial use of surface water. The Court finds that the Physical Solution is a legal, practical, and implementable means for making the maximum reasonable and beneficial use of the waters within the Watershed.

The Court finds, in accordance with Code of Civil Procedure section 830(a)(4), that this Physical Solution is intended to be consistent with the achievement of Groundwater sustainability within the timeframes of SGMA. Specifically, GSPs are designed to attain sustainability by avoiding "undesirable results." Water Code section 10721 defines "undesirable results" as including "depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of surface water." Because the imposition of the Physical Solution will coordinate actions by water right holders in a manner that avoids adverse impacts to beneficial uses of surface water, it ~~will~~ is anticipated that it will assist in the avoidance of undesirable results and aid in the development and implementation of GSPs.

The Court has considered existing water management plans and programs, and also finds that the Physical Solution is consistent with the water management and conservation goals contained in the following Water Management Plans:

Comment [B5]: Keith, this needs to be fixed, consistent with our earlier comments.

Comment [B6]: Keith, this needs to be fixed, consistent with our earlier comments.

Comment [B7]: Keith, this needs to be fixed, consistent with our earlier comments.

- The March 2015 Ventura River Watershed Management Plan adopted by the Ventura River Watershed Council, available at http://venturawatershed.org/the-watershed-plan.

- Groundwater Management Plan – 2018 Update, Ojai Valley Groundwater Basin adopted by the Ojai Basin Groundwater Management Agency, available at http://obgma.com/wp-content/uploads/2018/09/OBGMA-GMP-2018-Update-Final-8-30-18s.pdf.

Pursuant to Water Code section 10737.8, the Court finds that this Physical Solution will not substantially impair the ability of a GSA, the State Board, or DWR to comply with SGMA to achieve sustainable Groundwater management. Pursuant to Water Code section 10737.2, the Court finds that this Action has been managed in a manner that minimizes interference with the timely completion and implementation of GSPs for the Basins, avoids redundancy and unnecessary costs in the development of technical information and a physical solution, and is consistent with the attainment of sustainable Groundwater management within the timeframes established by SGMA.

Pursuant to Code of Civil Procedure section 850(a)(1)-(3), the Court finds that this Physical Solution: (1) is consistent with Article X, section 2 of the California Constitution; (2) is consistent with the water right priorities of all non-stipulating Parties and any Persons who have claims that are exempted by this Physical Solution; and (3) treats all objecting Parties and any Persons who have claim that are exempted equitably as compared to the stipulating Parties. This Physical Solution provides flexibility and adaptability to accommodate existing and future technological, social, institutional, and economic options under the Court's continuing jurisdiction to maximize reasonable and beneficial water use without significant and unreasonable harm to public trust resources. Although this Physical Solution is not a determination of the Bound Parties' relative water rights, the Physical Solution establishes a requirement that all water

use must be undertaken consistent with the Physical Solution and the management measures that will ensure the availability of water for consumptive uses, regardless of water right, while simultaneously maintaining the Fishery in Good Condition and for the protection of public trust resources as provided herein consistent with *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419. However, while the quantification of individual rights and declaration of relative priorities among Bound Parties is not needed at the present time, it is expressly reserved, without prejudice for future determination as may be required by the Court at a later date, as necessary to maintain and implement the Physical Solution or as may be requested by a Party upon a showing that the Physical Solution is injurious to a Party's water right, the priority of that right, or for other good cause. The Court reserves its discretion within its continuing jurisdiction to issue further orders in furtherance of the Physical Solution including the quantification of use and declaration of relative rights among some or all of the Bound Parties.

Through this Physical Solution, the Bound Parties are obligated to implement the ~~Management Plan~~Fisheries Management Plan that is designed to maintain the Southern California Steelhead population inhabiting the Ventura River Watershed in Good Condition, consistent with Article X, section 2 of the California Constitution and the public trust doctrine. The Bound Parties will implement this obligation through the Physical Solution to manage the steelhead population described below. The Physical Solution is based on the existing scientific literature addressing steelhead in the Watershed, including information contained in the Report, and the following reach-by-reach assessment of the Watershed.

9. ENFORCEMENT

9.1 Production in Compliance with Physical Solution

Each and every Bound Party, its officers, directors, agents, employees, successors, and assigns is enjoined and restrained from Producing water from the Watershed except in accordance with the requirements of this Physical Solution, and from otherwise violating the terms of this Physical Solution.

9.2 Continuing Jurisdiction

The Court retains and reserves full jurisdiction, power, and authority for the purpose of enabling the Court, upon motion of a Bound Party, to make such further or supplemental order or direction as may be necessary or appropriate to interpret, enforce, administer, or carry out this Physical Solution and Judgment, and to provide for such other matters as are not contemplated by this Physical Solution and Judgment, which might occur in the future, and which if not provided for would defeat the purpose of this Physical Solution and Judgment. The quantification of individual rights and declaration of relative priorities among the Bound Parties is expressly reserved, without prejudice, for future determination as may be required by the Court at a later date, as necessary to maintain and implement the Physical Solution and Judgment. Upon a showing to the Court demonstrating that good cause exists, e.g. that the Parties' efforts to bring the Fishery into Good Condition through the Physical Solution have been unsuccessful, the Court reserves continuing jurisdiction to require the quantification of use and declaration of rights among some or all Bound Parties under the City's first, second, third, fourth, fifth, seventh, eighth, and/or ninth claims for relief. The Court further reserves its authority to establish all processes and procedures necessary for the determination of the relative priority rights to water in the Watershed or for an adjudication of water rights in the Watershed among some or all Bound Parties, and the Court further retains jurisdiction to amend the Physical Solution and Judgment as is necessary.

10. MISCELLANEOUS PROVISIONS

10.1 Actions Not Subject to CEQA

Nothing in this Physical Solution, or in the implementation thereof, or the decisions of any entity acting under the authority of this Physical Solution, including the MC, shall be deemed a "project" subject to the California Environmental Quality Act ("**CEQA**"). (See e.g., *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, and *Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534). No Board, committee, or

entity formed pursuant to this Physical Solution shall be deemed a "public agency" subject to CEQA. (See Public Resources Code §21063.)

10.2 Designation for Notice and Service

Each Bound Party shall designate a name, address, and email address to be used for purposes of all subsequent notices and service herein, either by its endorsement on this Physical Solution or by a separate designation to be filed within thirty (30) days after entry of this Physical Solution. A Bound Party may change its designation by filing a written notice of such change with the MC. If no designation is made, a Bound Party's designee shall be deemed to be, in order of priority: i) the Bound Party's attorney of record; ii) if the Bound Party does not have an attorney of record, the Bound Party itself at the address specified on the MC's list.

10.3 Transfer of Real Property

Any Bound Party transferring any real property subject to this Physical Solution shall notify the transferee of the existence of the Physical Solution and its binding effect on the real property; provide grantee with a copy of the Physical Solution; and notify the MC of the transfer and file a written notice of transfer within ten (10) days after the transfer of the real property, stating the name, address, email address, and other contact information of the transferee. Transferee shall become a Bound Party, and if necessary, City shall substitute the transferee as Cross-Defendant pursuant to Code of Civil Procedure section 368.5.

10.4 Service of Documents

Unless otherwise ordered by the Court, delivery to or service to any Bound Party by the Court or any Bound Party of any document required to be served upon or delivered to any Bound Party pursuant to this Physical Solution shall be deemed made if by electronic service. All notices or service of documents pursuant to this Physical Solution by MC or any Bound Party will be made by electronic mail to the greatest extent feasible.

10.5 No Abandonment of Rights

In the interest of the Watershed, and consistent with the principles of reasonable and beneficial use, and the public trust, no Bound Party shall use more water than is reasonably required. Failure to use all of the water from the Watershed to which a Bound Party is entitled shall not, in and of itself, be deemed or constitute an abandonment of such Bound Party's right, in whole or in part

10.6 Intervention after Entry of Physical Solution

Any Person who is not a Bound Party or successor to a Bound Party and who proposes to Produce water from the Watershed, other than the federal government, is required to seek to become a Party subject to this Physical Solution through a noticed motion to intervene in this Physical Solution prior to commencing any Production. Thereafter, if approved by the Court, such intervenor shall be a Bound Party in this Physical Solution.

10.7 Physical Solution Binding on Successors

Subject to the specific provisions contained in this Physical Solution, this Physical Solution applies to and is binding upon, and inures to the benefit of the Bound Parties to this Action and all their respective heirs, successors-in-interest, and assigns.

10.8 Costs and Fees

Except subject to any existing court orders, each Bound Party shall bear its own costs and attorney's fees arising from the Action.

10.9 Heading and Section References

Captions and headings appearing in this Physical Solution are inserted solely as reference aids for ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

10.10 No Third Party Beneficiaries

There are no intended third party beneficiaries of any right or obligation of the Bound Parties.

10.11 Severability

Except as specifically provided herein, the provisions of this Physical Solution are not severable.

10.12 Cooperation and Further Acts

The Bound Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Physical Solution.

10.13 Exhibits and Other Writings

Any and all exhibits, documents, instruments, certificates or other writing attached hereto or required or provided for by this Physical Solution, shall be part of this Physical Solution and shall be considered set forth in full at reach reference thereto in this Physical Solution.

10.14 No Limitation on Statutory Authority.

Other than as expressly set forth herein, the Physical Solution will not be construed to affect or limit the authority of any Bound Party to fulfill its statutory, regulatory, or contractual responsibilities under applicable law.

Dated: _____

By: _____
The Honorable William F. Highberger
Judge of the Superior Court
County of Los Angeles

Exhibit A – Defined Terms

Defined Terms

1. **Action**. The Comprehensive Adjudication of the Ventura River Watershed, Los Angeles Superior Court Case No. 19STCP01176.
2. **Adaptive Management Phase**. The period commencing after the expiration of the Implementation Phase.
3. **Adoption Phase**. The period commencing after the Court enters Physical Solution and concluding when the Plan is adopted, which shall be no later than eighteen (18) months after entry of the Physical Solution unless otherwise extended by the Court upon motion of any Party for good cause shown.
4. **Adoption Phase Requirements**. The actions required to be taken by the Parties during the Adoption Phase as described further in Section 7.4.1 of this Physical Solution.
5. **AFY**. Acre feet per year.
6. **Amended Cross-Complaint**. The City's Third Amended Cross-Complaint as thereafter amended in this Action.
7. **Annual Assessment**. Annual assessment adopted by the MC collected as long as funds are required for the implementation of the Plan and Physical Solution.
8. **Annual Report**. The Annual Report prepared by the Technical Advisor to be filed with the Court, as more particularly described in Section 7.7.4.9 of this Physical Solution.
9. **Arundo**. Arundo donax.
10. **Baseline Conditions**. The current condition of each reach of the River at the time of this Physical Solution or as amended hereafter, as more particularly described in Section 7.2 of this Physical Solution.
11. **Basins**. The Lower Ventura River Basin, the Upper Ventura River Basin, the Ojai Valley Basin, and the Upper Ojai Valley Basin, as more particularly described in Section 4.3 of this Physical Solution.

12. **Bound Parties**. The Parties and property bound by this Physical Solution and their successors. This includes persons served a summons or a notice, owners of real property overlying the Basins, the State Water Resources Control Board, the California Department of Fish and Wildlife, Santa Barbara Channelkeeper, and any other Person joining this adjudication.

13. **Casitas**. Cross-Defendant Casitas Municipal Water District.

14. **Casitas Biological Opinion**. An opinion issued by the National Marine Fisheries Service for operation of the Robles Diversion and Fish Passage Facility.

15. **Casitas License**. The license issued by the State Board for operation of the Robles Diversion and Fish Passage Facility.

16. **CEQA**. The California Environmental Quality Act, Public Resources Code, section 21000, *et seq.*

17. **Cfs**. Cubic feet per second.

18. **Channelkeeper**. Plaintiff Santa Barbara Channelkeeper.

19. **City**. Defendant and Cross-Complainant City of San Buenaventura.

20. **City Settlement**. The settlement agreement executed by Channelkeeper and the City on September 30, 2019, as amended on August 20, 2020.

21. **Complaint**. The Complaint and Petition for Declaratory Relief and a Writ of Mandate filed by Channelkeeper in the County of San Francisco Superior Court (Case No. CPF-14-513875), and as thereafter amended in this Action.

22. **Comprehensive Adjudication Statutes**. Code of Civil Procedure sections 830 through 852.

23. **Conditional Waiver**. The Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands in the Los Angeles Region.

24. **Cross-Defendants**. Those Parties named as defendants in the Amended Cross-Complaint and those Persons who filed an answer to the Amended Cross-Complaint.

25. ***De Minimis*** Producer or Production. Any existing or New Production that is limited to less than five (5) AFY.

26. **Department**. The California Department of Fish and Wildlife.

27. **DWR**. The California Department of Water Resources.

28. **Endangered Species Act**. The Endangered Species Act, 16 U.S.C. section 1531, et seq.

29. **ESU**. The Southern California Steelhead Evolutionarily Significant Unit listed as endangered under the federal Endangered Species Act in 1997.

30. **Fishery**. The Southern California Steelhead population in the Ventura River Watershed.

31. **Fisheries Management Plan or Plan**. The Management Plan described in Section 7.3 of this Physical Solution.

31.32. **Good Condition**. The condition of the Fishery in the Watershed when the qualitative individual, population, and community conditions described in the Physical Solution and in the Plan are being achieved.

32.33. **Groundwater**. Water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but not including water that flows in known and definite channels.

33.34. **GSA**. Groundwater Sustainability Agency as that term is defined in Water Code section 10721(j).

34.35. **GSP**. Groundwater Sustainability Plan as that term is defined in Water Code section 10721(k).

35.36. **Historical Flow Conditions**. Flows in the Watershed in the pre-development period generally before 1958 as determined from gages at Foster Park (gage 8500), San Antonio Creek (gage 7500), and North Fork Matilija Creek (gage 6000).

36.37. **Implementation Phase**. The period commencing after adoption of the Plan and concluding ten years thereafter.

37.38. **Implementation Phase Requirements**. The actions required to be taken by the Parties during the Implementation Phase as described further in Section 7.4.2 of this Physical Solution.

38.39. **Judgment**. The Judgment entered by the Court in this Action that imposes the Physical Solution.

39.40. **Long Term Report**. The report prepared by the Technical Advisor to be filed with the Court, as more particularly described in Section 7.7.4.9 of this Physical Solution.

40.41. **Lower Ventura River Basin**. The Groundwater Basin designated as Number 4-302 by DWR Bulletin 118 and as more particularly described in Section 4.3.1 of this Physical Solution.

41.42. **MC**. The Management Committee, which is a five member board composed of one representative each from the (1) City, (2) Casitas, (3) the Special District Group (consisting of rotating members of VRWD and MOWD), (4) the Agricultural/Mutual Water Company Group (as they may designate in their discretion) and (5) the Groundwater Sustainability Agency Group (consisting of rotating members of the Upper Ventura River Groundwater Sustainability Agency and Ojai Basin Groundwater Management Agency). There shall be two non-voting ex officio members of the MC composed of (1) one representative from the County of Ventura and (2) one environmental stakeholder representative. Each representative shall be an employee, board member, group member, or other qualified designated representative of the designated entity and shall have knowledge of the Watershed, the Fishery and existing water management activities in the Watershed. The MC, subject to Court oversight, shall be primarily responsible for causing the Parties to implement this Physical Solution.

42. ~~**Management Plan or Plan**. The Management Plan described in Section 7.3 of this Physical Solution.~~

43. **MOWD**. The Meiners Oaks Water District.

44. **New Production**. Any Production from the Watershed by a Person who did not Produce water from the Watershed prior to January 2, 2020.

45. **Non-Producer(s)**. A Person who owns real property within the Watershed who is not presently Producing water and did not do so any time during the five years preceding January 2, 2020 and who may claim the right to Produce water from the Watershed.

46. **Ojai GMA**. The Ojai Basin Groundwater Management Agency.

47. **Ojai Valley Basin**. The Groundwater Basin designated as Number 4-2 in DWR's Bulleting 119 and as more particularly described in Section 4.3.3 of this Physical Solution.

48. **Party (Parties)**. The parties to this Action and their successors. This may be a subset of Bound Parties depending on context and intent in the judgment or Physical Solution.

49. **PCEs**. Primary constituent elements.

50. **Person**. Any natural person, firm, association, organization, joint venture, partnership, business, trust, corporation, or public entity.

51. **Physical Solution**. Stipulated Physical Solution and Judgment contained herein.

52. **Produce (Production)**. To pump, extract, or divert water.

53. **Production Report**. A Production Report is an annual report required to be submitted by the certain Parties consistent with Water Code section 4999 et seq., and providing the information on historical water use required by Water Code section 5002, as set forth in Section 7.7.4.4.

54. **Producer(s)**. A Person who Produces water.

55. **Report**. The Department's Instream Flow Regime Criteria on a Watershed Scale for the Ventura River dated March 2020 (Watershed Criteria Report No. 2020-01).

56. **Regulated Basins**. The two Basin that are regulated under SGMA: the Upper Ojai Valley Basin and the Upper Ventura River Basin.

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56.58. **SGMA**. The Sustainable Groundwater Management Act, Water Code section 10720, *et seq*.

57.59. **Southern California Steelhead or Steelhead**. The particular anadromous life history form of *O. mykiss* in the Ventura River Watershed.

58.60. **State Board**. The California State Water Resources Control Board.

59.61. **Status Reports**. The Annual Report and Long Term Reports prepared by the Technical Advisor to be filed with the Court, as more particularly described in Section 7.7.4.9 of this Physical Solution.

60.62. **Technical Advisor**. The advisor selected by the MC with the necessary training, experience, and education to provide technical oversight of the implementation and performance of the Fishery management program outlined in this Physical Solution and to make recommendations to the MC.

61.63. **Uncontrollable Conditions**. Any circumstance beyond the Parties' control, including without limitation, any act of God, war, fire, earthquake, flood, windstorm, drought or natural catastrophe, including climate change; the need to provide a minimum amount of reasonable and beneficial consumptive use of water from the Watershed; criminal acts; civil disturbance, vandalism, sabotage, or terrorism; restraint by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency.

62.64. **Upper Ojai Valley Basin**. The Groundwater Basin designated as Basin Number 4-1 in DWR's Bulletin 118 and as more particularly described in Section 4.3.4 of this Physical Solution.

63.65. **Upper Ventura River Basin**. The Groundwater Basin designated as Basin Number 4-3.01 in DWR's Bulletin 118 and as more particularly described in Section 4.3.2 of this Physical Solution.

64.66. **VCAILG**. The Ventura County Agricultural Irrigation Lands Group.

65.67. **VRWD**. The Ventura River Water District.

66.68. **WAP**. California's Water Action Plan.

67.69. **Watershed or Ventura River Watershed**. The entire Ventura River and its tributaries, as well as the Basins.

September 15, 2020

Exhibit B – List of Cross-Defendants

September 15, 2020

Exhibit C – List of Parcels

September 15, 2020

Exhibit D – List of Defaulted Cross-Defendants –

To be Completed with Court Confirmation

Exhibit E – Watershed and Basin Maps

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 9(a)

DATE: October 8, 2020

TO: Board of Directors

FROM: Executive Director

SUBJECT: Groundwater Sustainability Plan Update (Grant Category (d); Task 11: GSP Development and Preparation)

SUMMARY

Progress on the Groundwater Sustainability Plan (GSP) since the last update includes the following:

1. **GSP**:

    a. Groundwater-surface water model construction continued.

2. **Outreach**:

    a. The Ad Hoc Stakeholder Engagement Committee prepared a letter to the community, which was published in the Ojai Valley News on September 25, 2020. The letter proof is included in Attachment B.

3. **GSP Development Schedule**: The updated GSP Development Schedule is provided in Attachment A. The schedule was updated based on progress to date.

4. **GSP Grant Data Gap Tasks**:

    a. Establish Well Monitoring Network: The third, and final, annual report required under the grant will be submitted after Water Year 2020.

    b. All other data gap tasks in the grant have been completed or were deleted upon approval of the grant agreement amendment.

RECOMMENDED ACTIONS
Receive an update from the Executive Director concerning groundwater sustainability plan development and consider providing feedback.

BACKGROUND
Not applicable.

FISCAL SUMMARY
Not applicable.

ATTACHEMENTS

A. GSP Development Schedule
B. Letter to the Community Proof

\

Action: _____

Motion:_____ Second: _____

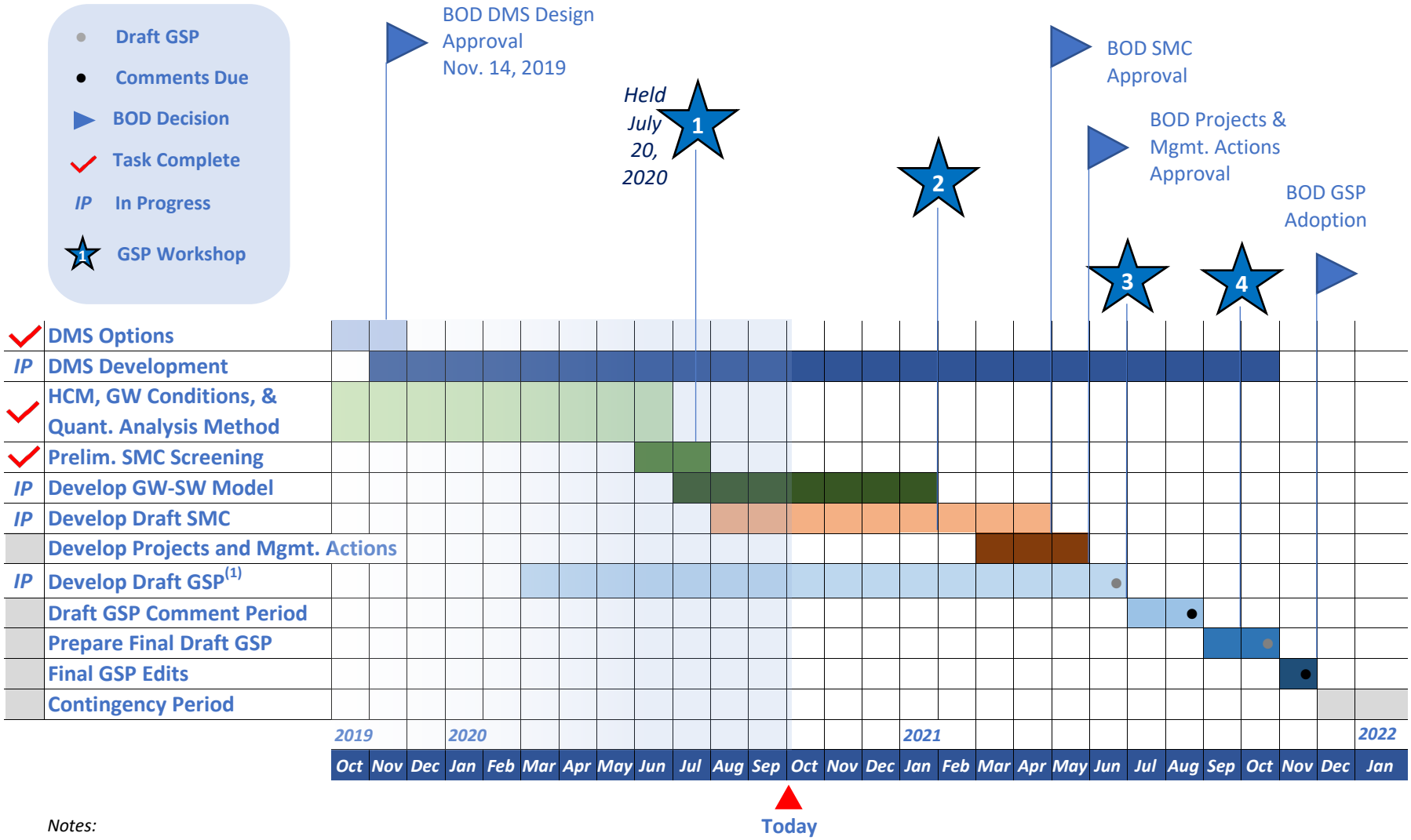
B. Kuebler___ D. Engle___ A. Spandrio___ S. Rungren___ G. Shephard___ E. Ayala___ L. Rose___

Item 9a

Attachment A

GSP Development Schedule

Upper Ventura River Groundwater Agency
GSP Development Schedule Updated October 3, 2020



Notes:

(1) GSP topics not listed above generally consist of background or supporting information and will be prepared concurrently with the above-listed tasks.

BOD = Board of Directors; DMS = Data Management System; HCM = Hydrogeologic Conceptual Model; GSA = Groundwater Sustainability Agency;

GSP = Groundwater Sustainability Plan; GW = Groundwater; SW = Surface Water

Item 9a

Attachment B

Letter Published in Ojai Valley News on 9/25/20

Upper Ventura River
GROUNDWATER AGENCY
SUSTAINABLE MANAGEMENT

https:// uvrgroundwater.org/

To Our Community,

Our task as a groundwater sustainability agency is to write a groundwater sustainability plan for our basin (California State Legislature signed the Sustainable Groundwater Management Act (SGMA) into action in 2014, our agency was formed in 2017, and we have since been working to complete the plan by the end of 2021). Our history and meeting notes are all available on our website and we are always open to public comment and input.

The plan we are working on will use the best science available, be vetted by our board, our community, hired hydrologic consultants, as well as by the State Department of Water Resources. We do not want the plan to have data gaps as that will make it inaccurate and may result in rejection or reworking. In order to make the most accurate plan possible we need all available data over a period of several decades. We need to know the rainfall, groundwater pumping and any other inputs and outputs of water from our basin. This includes the amount of water supplied from municipal water sources to people who use a well to supply a portion of their irrigation needs. For months we have been asking for this data and have received most of what we need. This data ask has nothing to do with the lawsuit/adjudication issue with the City of Ventura.

One water agency, Casitas Municipal Water District (CMWD), is not willing to supply the data, even with strict confidentiality agreements that go above and beyond what is required by law. As a last resort, we are seeking the data via a Public Records Act lawsuit and as we understand the law, CMWD should supply us with the needed data[1].

We have been tasked to write a defensible, correct, and complete groundwater sustainability plan. This plan will benefit everyone who lives in the region. Using all available data and science we are working hard on your behalf.

Please visit our website for more information.

Sincerely,

Board of Directors of the Upper Ventura River Groundwater Agency

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[1] Note: CMWD-appointed Director Angelo Spandrio did not participate in the vote to initiate the Public Records Act lawsuit against CMWD.

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 9(b)

DATE: October 8, 2020

TO: Board of Directors

FROM: Executive Director

SUBJECT: Rincon Consultants Work Order No. 2 for Groundwater Level Monitoring (Grant Category (b); Task 1: Establish Well Monitoring Network)

SUMMARY

As discussed during prior board meetings, the Agency's field services are being transitioned to Rincon Consultants. Proposed Rincon Consultants Work Order No. 2 addresses groundwater level monitoring through Water Year 2020/2021 (i.e. through September 30, 2021). The proposed scope of work and fees are detailed in the attached draft work order (Attachment A).

RECOMMENDED ACTIONS

1. Authorize the Executive Director to execute Rincon Consultants Work Order No. 2 for an amount not to exceed $11,250 for groundwater level monitoring.

2. Approve up to $8,750 for additional transducer installations and/or unanticipated costs, to be authorized at the discretion of the Executive Director.

BACKGROUND

Please see summary.

FISCAL SUMMARY

Groundwater level monitoring costs are included in the Fiscal Year 2020/2021 and long range budgets.

ATTACHMENTS

A. Draft Rincon Consultants Work Order No. 2

Action: _____

Motion:_____ Second: _____

B. Kuebler___ D. Engle___ A. Spandrio___ S. Rungren___ G. Shephard___ E. Ayala___ L. Rose___

Statement of Work
Work Order No. 2: As Needed Services

To: Rincon Consultants, Inc.
180 North Ashwood Avenue
Ventura, California 93003
Attention: Kiernan Brtalik
Email: kbrtalik@rinconconsultants.com

From: Upper Ventura River Groundwater Agency
202 W. El Roblar Dr., Ojai, California 93023
Attention: Bryan Bondy
Email: bbondy@uvrgroundwater.org

In accordance with our Master Services Agreement ("MSA") dated August 18, 2020, the following Statement of Work ("SOW") is entered into by Upper Ventura River Groundwater Agency ("Customer") and Rincon Consultants, Inc. ("Provider") for a new project and/or services (collectively, "Services"):

GENERAL NATURE OF SERVICES: Groundwater level monitoring, data processing, and preparation of annual data deliverable, as further described in the attached proposal. Provider shall ensure all work is performed under the supervision of a California Professional Civil Engineer or Professional Geologist. Provider shall ensure all work is performed in accordance with UVRGA's adopted procedures.

SCOPE OF SERVICES: Coordinate with well owners prior to field activities in accordance with UVRGA access agreements, download groundwater level data from seven groundwater level recording transducers and barometric loggers semi-annually, perform routine maintenance of transducers, process data semi-annually, prepare annual data deliverables, communicate any field issues to the Executive Director in a timely manner. Procure and install transducers in additional wells, as requested by UVRGA. This Work Order covers three semi-annual data download events (October 2020, spring 2021, and October 2021) and preparation of two data deliverables (for water Years ending September 30, 2020 and 2021).

COMPLETION DATE: December 31, 2021 (due data for final data deliverable for water year ending September 30, 2021).

COMPENSATION AND PAYMENT: Time and material services, not-to-exceed $11,250, without prior written authorization.

Contingency: An additional $8,750 is reserved for additional transducer installations and other potential unanticipated costs. Use of contingency funds requires prior written authorization by the Executive Director.

Labor Rates are pursuant to MSA.

PAYMENT TERMS

Payments shall be due:

☐ upon the completion of the SOW
☒ as follows: Per MSA terms.

ADDITIONAL TERMS AND CONDITIONS

This SOW will be governed by the terms and conditions of the MSA. In the event of any conflict between the terms set forth in this SOW and the MSA, the MSA shall be deemed to control the relationship between the parties with respect to the SOW.

ACCEPTED AND AGREED:

"PROVIDER" Rincon Consultants, Inc.	"CUSTOMER" UPPER VENTURA RIVER GROUNDWATER AGENCY
By: Print Name: Jennifer Haddow Title: Principal-in-Charge Date:	By: Print Name: Bryan Bondy Title: Executive Director Date:

Rincon Consultants, Inc.
180 North Ashwood Avenue
Ventura, California 93003

805 644 4455 OFFICE AND FAX

info@rinconconsultants.com
www.rinconconsultants.com

September 21, 2020
Project Number 20-10008

Attn: Bryan Bondy, Executive Director and GSP Manager
Upper Ventura River Groundwater Agency
202 West El Roblar Drive
Ojai, California 93023
Via Email: bbondy@uvrgroundwater.org

Subject: **Proposal to Complete Technical Services (Work Order No. 2): Groundwater Level Monitoring**

Dear Mr. Bondy:

We are pleased to provide this proposal to complete technical services for the Upper Ventura River Groundwater Agency (UVRGA). As discussed on September 1, 2020, UVRGA is requesting a scope of work and cost estimate to complete groundwater level monitoring and reporting activities. All work will be performed under the supervision of a licensed professional geologist or engineer and will be completed in accordance with UVRGA's *Monitoring and Data Collection Protocols and Data Quality Control Review Procedures*.

The following outlines our proposed tasks, general approach, and estimated schedule and cost to execute the project in a responsive and cost-effective manner.

Task 1. Data Retrieval and Routine Pressure Transducer Maintenance

Rincon will conduct monitoring activities to collect manual water level measurements, download data from pressure transducers located at each monitoring well, and complete light maintenance activities at each monitoring well head and pressure transducer. This task includes mobilization and demobilization activities, use of field equipment and vehicles, as well as data management of the manual water level measurements and pressure transducer data. Rincon will contact UVRGA prior to the groundwater monitoring events to confirm schedules and access. In addition, Rincon will notify well owners to coordinate access. Following each event, Rincon will also provide a post-event summary to update you on our team's progress and discuss any project needs. Note that following October 2020, Rincon will transmit processed data to UVRGA, including quality assurance and control checks and spreadsheet processing.

Task 2. Annual Data Deliverable Memorandum for Water Year 2019-2020

Rincon will provide a letter memorandum to briefly summarize groundwater level monitoring activities and notable observations. This will include a map and table of monitoring locations, as well as figures presenting groundwater level (depth-to-water) and elevation (Above Mean Sea Level). Appendices will be provided to present field data sheets, raw transducer data, and the processed data spreadsheet. A draft memorandum will be provided to UVRGA by December 31st to allow for review and edits prior to final submittal by January 31st.

Task 3. Pressure Transducer Procurement and Installation

As needed, Rincon will purchase, program, and deploy transducers at additional groundwater monitoring wells. We anticipate one field staff can visit new groundwater monitoring wells to safely install transducers. This task includes cost estimates for pressure transducers and hardware, as well as time for ordering and acquiring this equipment.

Based on experience using continuous pressure transducers in the Ventura River and throughout southern California, Rincon recommends purchasing either the HOBO 13-Foot Fresh Water Level Data Logger[1] or the Solinst Level Logger 5.[2] These pressure transducers provide data accuracy, ample memory for data storage, and feature long lasting battery capacity.

Assumptions

- One field technician can safely complete monitoring activities, and will coordinate access with well owners.
- Rincon will collect field data using electronic data forms on handheld devices to enhance the overall quality assurance program. This will also help streamline reporting activities as part of our standard automated reporting methods for groundwater level data.
- Deliverables can be provided in most formats requested by UVRGA, but it is assumed Rincon will provide documents as Microsoft Word and PDF files.
- Groundwater monitoring well specifications such as top of casing elevation will be provided by UVRGA.
- UVRGA will obtain access agreements for additional groundwater monitoring locations prior to Rincon's installation of new pressure transducers and/or commencement of monitoring activities.
- Rincon assumes barometric data will be available from UVRGA's existing monitoring network to compensate level data.
- We assume groundwater level monitoring will require up to 4 hours per event for mobilization and access coordination, up to 6 hours for field monitoring activities, and up to 2 hours per event for data management. Following October 2020, we anticipate an additional 4 hours per event to process and transmit data to UVRGA.
- We assume that annual reporting activities will require up to 22 hours. This includes draft submittal to UVRGA and up to one round of revisions.
- We estimate pressure transducer and equipment procurement, programming, and deployment will require up to 12 hours.

Cost Estimate

Table 1 presents cost estimates based on the level of effort and assumptions described above. To ensure appropriate budget for these tasks, we recommend establishing a 10 percent contingency to accommodate unforeseen circumstances that may arise during this program. Note that these costs are inclusive of project management and administrative services. Rincon will bill on a time materials basis in accordance with our fee schedule provided as Exhibit B in our Master Services Agreement with UVRGA.

[1] https://www.onsetcomp.com/products/data-loggers/u20-001-04/
[2] https://www.solinst.com/products/dataloggers-and-telemetry/3001-levelogger-series/levelogger/

Table 1. Cost Estimates

Tasks	Labor Cost	Direct Expense	Hours	Cost (Per Event)
Task 1. Data Retrieval and Routine Logger Maintenance[1]	$1,450	$200	12	$1,650
Task 1. Data Retrieval and Routine Logger Maintenance (after October 2020)[1]	$1,950	$200	16	$2,150
Task 2. Annual Data Deliverable Memorandum for Water Year 2019-2020	$2,650	$-	22	$2,650
Task 3. Pressure Transducer Procurement and Installation	$1,600	$1,100	12	$2,700

Notes:
[1] Following October 2020, Task 1 includes additional effort to complete data processing and transmittal prior to each event.

Authorization and Schedule

We are prepared to begin this assignment following your written authorization in accordance with our current Master Services Agreement dated August 18, 2020 with UVRGA. We understand that UVRGA would like to complete groundwater monitoring in October 2020. Our team is prepared to begin work on this assignment immediately and would welcome a kickoff meeting with you at your earliest convenience to discuss project specific details and schedules.

We sincerely appreciate your consideration of Rincon Consultants for this project. Please do not hesitate to contact us if you have questions about this proposal.

Sincerely,
Rincon Consultants, Inc.

Kiernan Brtalik, CPSWQ, QSD/P
Water Resources Project Manager
Phone: 805-644-4455 x45
Email: kbrtalik@rinconconsultants.com

Jennifer Haddow, PhD
Vice President/Principal Environmental Scientist
Phone: 805-644-4455 x44
Email: jhaddow@rinconconsultants.com