

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, November 12, 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/95543293635?pwd=NHdiQnI4NTVHVk1Pc2k1cnduU3M2QT09>

Meeting ID: 955 4329 3635 Passcode: 584326

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

November 12, 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 October 8, 2020 Regular Board Meeting**
- b. **Approve Financial Report for October 2020**
- c. **Receive and File Fiscal Year 2020/2021 1st Quarter Budget Report**

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. Adjudication Coordination Update

The Board will receive an update concerning staff and counsel efforts to coordinate with the adjudication process and consider providing feedback to staff.

b. Rincon Consultants Work Order No. 3 for Camino Cielo Stream Flow Gauge Installation and 2021 Stream Flow Monitoring

The Board will consider authorizing the Executive Director to execute Rincon Consultants Work Order No. 3 for an amount not to exceed \$18,050 for stilling well installation and 2021 stream flow monitoring and approving up to \$1,800 in contingency for potential unanticipated costs, to be authorized at the discretion of the Executive Director.

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.

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 December 10, 2020.

**DRAFT UPPER VENTURA RIVER GROUNDWATER AGENCY
MINUTES OF REGULAR MEETING OCTOBER 8, 2020**

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

Meeting ID: 926 0487 3346 Passcode: 122104

<https://zoom.us/j/92604873346?pwd=SFFrNGpZUII5UnVBSG5DeTIYK3Y2dz09>

1) CALL TO ORDER

Vice Chair Kuebler called the meeting to order at 1:01 pm.

2) ROLL CALL

Executive Director Bondy called the roll.

Directors present: Bruce Kuebler, Larry Rose, Emily Ayala, Susan Rungren, Angelo Spandrio, Glenn Shephard.

Directors absent: Diana Engle.

3) APPROVAL OF AGENDA

Director Kuebler asked if there are any proposed changes.

Executive Director Bondy requested that Item 8B be moved up on the agenda after public comments because Agency Counsel has a 2 p.m. commitment.

Director Rose motioned to move Item No. 8B to follow public comments. Director Ayala seconded the motion.

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

Absent: D. Engle

Noes: None.

4) PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

Director Kuebler called for public comments on items not appearing on the agenda.

Tim Becker from Kear Groundwater asked about timing of agency groundwater data logger downloading. Executive Director Bondy will follow up with Tim Becker offline.

5) CONSENT CALENDAR

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

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

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

Absent: D. Engle

Noes: None.

6) DIRECTORS ANNOUNCEMENTS

- a. Directors may provide oral reports on items not appearing on the agenda.**
- b. Directors shall report time spent on cost-sharing eligible 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: No report. Spent one hour helping write a letter for publication in the Ojai Valley News and talking to constituents.

Director Rose: No report and no time.

Director Shephard: No report and no time.

7) EXECUTIVE DIRECTOR'S REPORT

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

Executive Director Bondy has been able to tie-up most loose ends with former Agency Administrator Summer Ward. He introduced Maureen Tucker from Olivarez Madruga Lemieux O’Neill has who will be providing administrative support. He plans to work with Ms. Tucker to determine her skills, and see what tasks are best suited for her.

Director Ayala asked about the Agency’s mailing address. Executive Director Bondy said that Meiners Oaks Water District has agreed to continue receiving the Agency’s mail.

Director Spandrio asked about the weekly calls concerning the physical solution. Executive Director Bondy explained that the physical solution proposing parties invited UVRGA counsel and staff to participate in the meet and confer process to offer input. He said the details cannot be discussed due to confidentiality agreements. Director Spandrio asked whether these activities are budgeted. Executive Director Bondy responded that the activities

are not explicitly listed in the budget, but he feels they fall within the general duties of Agency Counsel and the Executive Director.

Director Kuebler asked if there were any public comments. None were offered.

Recommended Action:

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

No motion.

8) ADMINISTRATIVE ITEMS

a. Fiscal Year 2019/2020 Year End Budget Report

Executive Director Bondy reviewed the written staff report and attachments with the Board.

Director Spandrio asked for an explanation of the balance sheet. Executive Director Bondy described the assets, liabilities, and equity. Director Spandrio asked for further explanation about retained earnings. Executive Director Bondy explained that retained earnings are the cumulative net income to date, including prior years. He asked if that answered the question. Director Spandrio said no. Executive Director Bondy offered to provide further explanation outside of the meeting. Director Spandrio agreed.

Director Kuebler asked if there were any public comments. None were offered.

Note: Director Shepherd left the meeting during the item at 2:35 pm.

Recommended Action:

Receive and file the year-end budget report.

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

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

Absent: D. Engle and G. Shephard

Noes: None.

b. Physical Solution Comments

[Note Item 8b was heard out-of-order immediately after public comments.]

Director Rungren noted for the record that she has participated in conversations with the Executive Director about the physical solution and offered to recuse herself.

Director Ayala mentioned that she was unsure whether she should participate in the item because she plans to separately comment on the physical solution.

Executive Director Bondy mention that five directors are required for a motion on the item.

Agency Counsel Lemieux reviewed conflict of interest provisions relevant to the item. He stated that he did not believe there were any conflicts that should prevent any of the directors from participating and voting on the item. The directors agreed to proceed with the item.

Agency Counsel Lemieux and Executive Director Bondy review the proposed physical solution comments with the Board. Agency Counsel Lemieux summed up the comments as simply addressing duplicating efforts/costs and inconsistencies with Sustainable Groundwater Management Act.

Director Kuebler said that he and Diane Engle would have a problem with groundwater sustainability agencies (GSAs) being voting members of the management committee. He said the management committee should instead have seats for both Ventura River Water District and Meiners Oaks Water District.

Executive Director Bondy suggested that disagreements between the proposing parties about the physical solution language should be discussed in another forum. Agency Counsel added that the UVRGA should comment on the physical solution as drafted. Executive Director Bondy added that if the proposing parties choose to remove the GSAs from the management committee, the issue that is being commented on would go away. However, if that is the case he would like to see some language that more formally obligates the management committee to coordinate with the GSAs on monitoring in order to prevent duplication of efforts.

Director Kuebler asked if there were any public comments.

Rene Roth thanked the Agency for its thorough work on this issue and our transparency. She stated that the physical solution needs to be vetted and agreed to. She hopes to attend more meetings and learn more. Director Kuebler thanked Ms. Roth for attending.

Director Kuebler asked for Director comments.

Director Spandrio said it was important to note that the GSA is not a named party in the adjudication. He stated that the proposed Physical Solution is on a collision course with the GSA. He feels that the comments should not be submitted and that a letter should be sent to the City of Ventura indicating where the collisions will occur. He added that the physical solution should be developed to be in accordance with the GSP and that the timing of

physical solution approval and associated management plan is optimistic. He suggested a general letter citing where we see potential problems as opposed to detailed changes to the physical solution.

Director Shephard thanked Executive Director Bondy and Agency Counsel for putting together the Physical Solution comments. He expressed concerns about a six member management committee. He suggests that the management committee edits could be made more generic. He said he would support sending a letter or the redline comments.

Director Rose stated his support for sending the redline comments.

Director Rungren thanked everyone for a good discussion. She stated that she is more comfortable after listening to staff and believes the redline comments will help move the process along.

Director Ayala said that she appreciates the discussion and the Executive Director's scientific eye on things. She said she feels awkward because she plans to send separate comments as a landowner.

Agency Counsel clarified that the Agency comments are coming from the board and are not to be viewed as the comments of any individual director.

Director Kuebler thanked Agency Counsel and Executive Director Bondy for coordinating with the adjudication process. He expressed support for sending the redline comments but would like to include clarification in a cover letter concerning the management committee.

Recommended Action:

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

Director Rose motioned to authorized staff to send the redline comments to the physical solution together with a cover letter discussing the general concerns expressed during the discussion. Director Shepard seconded the motion.

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

Absent: D. Engle

Noes: None.

9) GSP ITEMS

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

Executive Director Bondy reviewed the written staff report and attachments with the Board.

No questions from the Directors.

Director Kuebler asked if there were any public comments.

Tim Becker from Kear Groundwater asked about timing of installing the Camino Cielo stream gage equipment. Executive Director Bondy will follow up with Tim Becker offline.

Recommended Action:

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

No motion.

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

Executive Director Bondy briefly reviewed the purpose of the proposed work order with the Board and recommended approval.

Director Kuebler asked if there were any public comments. None were offered.

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.

Director Rose moved the recommended actions. Seconded by Director Rungren.

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

Absent: D. Engle and G. Shephard

Noes: None.

10) COMMITTEE REPORTS

a. Ad Hoc Stakeholder Engagement Committee

Director Rose said the committee has no report.

11) FUTURE AGENDA ITEMS

Referring to the AB 992 letter from Agency Counsel, Director Ayala asked if UVRGA needed a social media presence. Director Rose stated that UVRGA already has a Facebook page.

Director Spandrio requested an item on the October meeting agenda to discuss UVRGA’s involvement with the physical solution, specifically budget impacts.

Executive Director Bondy stated that terms for the stakeholder directors and the Casitas and Ventura River Water District directors expire in early 2021.

12) ADJOURNMENT – The meeting was adjourned at 2:58 pm.

DRAFT

Action: _____

Motion: _____ Second: _____

B.Kuebler ___ D.Engle ___ A.Spandrio ___ S.Rungren ___ G.Shephard ___ E.Ayala ___ L.Rose ___

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

DATE: November 5, 2020
TO: Board of Directors
FROM: Carrie Troup C.P.A., Treasurer
SUBJECT: Approve Financial Report for October 2020

September 2020 UVRGA Balance \$ 182,812.74

October 2020 Activity:
Revenues:

CA Dept. of Water Resources DWR Grant Invoice No. 5 payment \$ 132,043.22

September Expenditures Paid:

\$ -

Checks Pending Signature:

2144	Olivarez, Madrugá, Lemieux, O'Neill, September services	\$ 6,180.00
2145	California Special Districts Assoc. Membership	\$ 1,482.00
2146	Carrie Troup, C.P.A. October services	\$ 1,536.01
2147	Void	\$ -
2148	Intera Incorporated October services	\$ 13,225.50
2149	Bondy Groundwater Consulting, Inc. October services	<u>\$ 13,080.32</u>

Total Expenditures Paid & To Be Paid October \$ 35,503.83

October 2020 UVRGA Ending Balance: \$ **279,352.13**

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.

Item 5c

Upper Ventura River Groundwater Agency
FY 20/21 Budget v Actual Q1
 July through September 2020

	TOTAL			
	Jul - Sep 20	Annual Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
Interest/Penalties	86.39	0.00	86.39	100.0%
41000 · Grant Income				
41100 · DWR GSP Grant Income	0.00	308,604.00	-308,604.00	0.0%
Total 41000 · Grant Income	0.00	308,604.00	-308,604.00	0.0%
43000 · Groundwater Extraction Fee	171,808.87	343,618.00	-171,809.13	50.0%
Total Income	171,895.26	652,222.00	-480,326.74	26.36%
Expense				
50001 · Personnel Expenses				
50100 · Salaries Expense	0.00	0.00	0.00	0.0%
50200 · Payroll Taxes	0.00	0.00	0.00	0.0%
50400 · Worker's Comp Insurance	0.00	0.00	0.00	0.0%
Total 50001 · Personnel Expenses	0.00	0.00	0.00	0.0%
55000 · Administrative Exp				
55005 · Rent Expense	0.00	600.00	-600.00	0.0%
55010 · Telephone Expense	0.00	800.00	-800.00	0.0%
55011 · Computer Maintenance	193.75	2,500.00	-2,306.25	7.75%
55015 · Postage & Shipping	0.00	750.00	-750.00	0.0%
55020 · Office Supplies & Software	0.00	1,500.00	-1,500.00	0.0%
55025 · Minor Equipment	0.00	2,500.00	-2,500.00	0.0%
55035 · Advertising and Promotion	335.00	750.00	-415.00	44.67%
55055 · Insurance Expense-SDRMA	0.00	4,000.00	-4,000.00	0.0%
55060 · Memberships-CSDA	0.00	1,500.00	-1,500.00	0.0%
Total 55000 · Administrative Exp	528.75	14,900.00	-14,371.25	3.55%
58000 · Professional Fees				
58005 · Executive Director /GSP Manager	61,598.85	176,500.00	-114,901.15	34.9%
58010 · Legal Fees	12,647.05	50,000.00	-37,352.95	25.29%
58015 · Website	0.00	3,000.00	-3,000.00	0.0%
58020 · Accounting	4,683.25	30,000.00	-25,316.75	15.61%
58030 · Agency Administrator	1,618.00	24,000.00	-22,382.00	6.74%
58040 · Audit	0.00	14,000.00	-14,000.00	0.0%
58050 · Other Professional Services	72,632.50	345,306.00	-272,673.50	21.03%
Total 58000 · Professional Fees	153,179.65	642,806.00	-489,626.35	23.83%
Total Expense	153,708.40	657,706.00	-503,997.60	23.37%
Net Ordinary Income	18,186.86	-5,484.00	23,670.86	-331.64%
Net Income	18,186.86	-5,484.00	23,670.86	-331.64%

Item 5c

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

	<u>Sep 30, 20</u>	<u>Sep 30, 19</u>	<u>\$ Change</u>	<u>% Change</u>
ASSETS				
Current Assets				
Checking/Savings				
Bank of the Sierra	182,812.74	156,851.01	25,961.73	16.55%
Total Checking/Savings	<u>182,812.74</u>	<u>156,851.01</u>	<u>25,961.73</u>	<u>16.55%</u>
Accounts Receivable				
11000 - Accounts Receivable				
11001 - DWR Grant Retention 10%	35,452.36	0.00	35,452.36	100.0%
11000 - Accounts Receivable - Other	134,767.50	125,883.15	8,884.35	7.06%
Total 11000 - Accounts Receivable	<u>170,219.86</u>	<u>125,883.15</u>	<u>44,336.71</u>	<u>35.22%</u>
Total Accounts Receivable	<u>170,219.86</u>	<u>125,883.15</u>	<u>44,336.71</u>	<u>35.22%</u>
Other Current Assets				
13000 - Prepaid Expenses	6,906.18	4,583.76	2,322.42	50.67%
Total Other Current Assets	<u>6,906.18</u>	<u>4,583.76</u>	<u>2,322.42</u>	<u>50.67%</u>
Total Current Assets	<u>359,938.78</u>	<u>287,317.92</u>	<u>72,620.86</u>	<u>25.28%</u>
TOTAL ASSETS	<u>359,938.78</u>	<u>287,317.92</u>	<u>72,620.86</u>	<u>25.28%</u>
LIABILITIES & EQUITY				
Liabilities				
Current Liabilities				
Accounts Payable				
20000 - Accounts Payable	0.00	12,720.75	-12,720.75	-100.0%
Total Accounts Payable	<u>0.00</u>	<u>12,720.75</u>	<u>-12,720.75</u>	<u>-100.0%</u>
Other Current Liabilities				
24000 - Payroll Liabilities	0.00	1,787.91	-1,787.91	-100.0%
Total Other Current Liabilities	<u>0.00</u>	<u>1,787.91</u>	<u>-1,787.91</u>	<u>-100.0%</u>
Total Current Liabilities	<u>0.00</u>	<u>14,508.66</u>	<u>-14,508.66</u>	<u>-100.0%</u>
Long Term Liabilities				
28000 - Notes Payable				
28100 - Member Agency Zero-Int Loan	90,000.00	90,000.00	0.00	0.0%
Total 28000 - Notes Payable	<u>90,000.00</u>	<u>90,000.00</u>	<u>0.00</u>	<u>0.0%</u>
Total Long Term Liabilities	<u>90,000.00</u>	<u>90,000.00</u>	<u>0.00</u>	<u>0.0%</u>
Total Liabilities	<u>90,000.00</u>	<u>104,508.66</u>	<u>-14,508.66</u>	<u>-13.88%</u>
Equity				
32000 - Retained Earnings	251,751.92	124,558.09	127,193.83	102.12%
Net Income	18,186.86	58,251.17	-40,064.31	-68.78%
Total Equity	<u>269,938.78</u>	<u>182,809.26</u>	<u>87,129.52</u>	<u>47.66%</u>
TOTAL LIABILITIES & EQUITY	<u>359,938.78</u>	<u>287,317.92</u>	<u>72,620.86</u>	<u>25.28%</u>

UPPER VENTURA RIVER GROUNDWATER AGENCY Item No. 7

DATE: November 12, 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 has been working with Maureen Tucker on admin transition.*
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. *Payment on the final outstanding invoice from the second round of groundwater extraction fees was received.*
 - b. Audit: *Fiscal Year 19/20 audit activities began in mid-October.*
 - c. GSP Grant: Grant Progress Report and Invoice No. 5 were submitted to DWR on July 13. *Payment in the amount of \$132,043 was received on October 15.*
3. Legal:
 - a. *Counsel worked on privileged and confidential matters.*
 - b. *Counsel cooperated with a District Attorney investigation of a Brown Act complaint. The DA's findings were transmitted in a letter dated October 20, 2020 (Attachment A).*
 - c. *Counsel and the Executive Director participated in weekly calls concerning the physical solution and finalized the UVRGA physical solution comment letter pursuant to Board direction provided on October 8, 2020 (Attachment B).*
 - 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: *Please see Item 9a.*
- b. Groundwater and Surface Water Monitoring: *Groundwater level data were downloaded from deployed transducers in October.*
- c. Camino Cielo Crossing Surface Water Flow Gauge: *Staff recommends installing the gauge this fall during low flow conditions and deferring gauging until next spring because the current dry season is almost over.*
- d. DWR Surface Water Flow Gauge: *DWR is working on CEQA compliance. The gauge will be installed and maintained at no cost to UVRGA.*

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): *No activity since the last Board meeting.*

7. Miscellaneous:

- a. *The Executive Director reached out to Casitas Municipal Water District, Ventura River Water District, Farm Bureau of Ventura County, and environmental 501(c)(3) organizations concerning UVRGA director appointments for 2021-2022.*
- b. *Ventura River Water District reappointed the current Director and alternate for the 2021-2022 term (Attachment C).*

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. Letter from District Attorney re: Brown Act Inquiry
- B. Physical Solution Comment Letter
- C. Ventura River Water District UVRGA Director Appointment Resolution

Action: _____

Motion: _____ Second: _____

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

Item 7

Attachment A

Letter from District Attorney re: Brown Act Inquiry



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

GREGORY D. TOTTEN
District Attorney

October 20, 2020

[REDACTED]

CHERYL M. TEMPLE
Chief Assistant District Attorney

MICHAEL K. FRAWLEY
Chief Deputy District Attorney
Administrative Services

R. MILES WEISS
Chief Deputy District Attorney
Criminal Prosecutions

W. CHARLES HUGHES
Chief Deputy District Attorney
Justice Services

MICHAEL R. JUMP
Chief Deputy District Attorney
Victim & Community Services

KEVIN B. DRESCHER
Chief Deputy District Attorney
Special Prosecutions

MICHAEL BARAY
Chief Investigator
Bureau of Investigation

Re: Brown Act Inquiry – Upper Ventura River Groundwater Agency

Dear [REDACTED]:

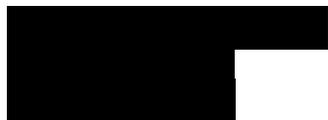
In response to your Brown Act inquiry, I have examined the circumstances surrounding actions taken by the Upper Ventura River Groundwater Agency (UVRGA) to commence litigation against the Casitas Municipal Water District (CMWD). Based on the information available to me, I do not find a violation of the Brown Act.

Factual Summary

The UVRGA Board meeting agenda for July 9, 2020, reflects a closed session item related to anticipated litigation under Government Code section 54956.9(d)(4). Per the minutes of that meeting, counsel for UVRGA reported that the Board discussed potential litigation and no reportable actions were taken.

On August 13, 2020, the UVRGA filed a lawsuit in Ventura County Superior Court against CMWD, seeking to compel production of records under the California Public Records Act (CPRA). The filing raised questions whether the UVRGA Board voted to authorize the lawsuit at the July 11, 2020, meeting and, if so, whether that should have been reported at the meeting. Failure to report the action and the vote was reported to this office as a potential Brown Act violation.

The UVRGA Board meeting agenda for September 10, 2020, reflects two closed session items related to litigation. One item specifically identifies the pending CMWD litigation and the other references anticipated litigation under Government Code section 54956.9(d)(4). Following the September 10, 2020, meeting, UVRGA dismissed its lawsuit against CMWD and re-filed it. These actions raised questions whether UVRGA



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voted on these matters in closed session yet failed to report them or disclose the votes. These questions were also reported to this office as potential Brown Act violations.

Review of these issues is complicated by the fact that UVRGA does not appear to broadcast, record, or post audio or video of its meetings, as so many other governmental agencies do. Thus, there is no contemporaneous record of events and no one was able to view the meeting remotely as it occurred, which may have clarified the situation and avoided suspicion of misconduct.

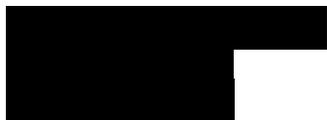
However, draft minutes for the September 10, 2020, meeting reflect that after closed session, counsel for UVRGA reported that the Board had discussed the two litigation items. The minutes further state that Director Spandrio did not participate at counsel's request to avoid a conflict of interest and that Director Shephard was absent from the closed session.

The minutes also reflect UVRGA's counsel reported that to promote transparency the Board had decided to vote on the closed session matters in open session. Following the report, counsel recommended dismissal of the CMWD lawsuit without prejudice, which means the dismissal would not be permanent and the lawsuit could be filed again. The minutes reflect the Board members unanimously approved dismissal, with Director Spandrio not participating and Director Shephard being absent. Counsel then recommended re-filing the lawsuit, which was again approved with the same voting pattern. The minutes reflect these actions were undertaken to cure an alleged Brown Act violation claimed by CMWD and that counsel was directed to send a notice of cure to CMWD.

Discussion with counsel for UVRGA corroborated that no reportable actions took place at the July 9, 2020, meeting. Counsel represented that a UVRGA manager had authority to commence litigation under certain circumstances, so that no Board vote was required in those circumstances. It was also represented that the Board did not vote to initiate the CMWD litigation. Counsel also represented that the September 10, 2020, vote to dismiss and re-file the lawsuit effectively and efficiently avoided litigation over the Brown Act violation CMWD alleged, although there had been no violation.

Analysis

California Government Code section 54956.9 permits discussion of anticipated and pending litigation in closed session. A vote taken by a Brown Act body to commence litigation generally must be reported publicly after closed session under Government Code section 54957.1(a)(2). An exception to that requirement exists if disclosure would



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jeopardize the ability to conclude settlement negotiations. (Government Code section 54957.1(a)(2).) If no vote is taken to commence litigation, there is no reportable action. If there is a vote, but settlement attempts are to continue prior to commencing litigation, there is no action reportable at that meeting.

Under the circumstances revealed in UVRGA Board meeting minutes and described by counsel, and in the absence of contrary evidence, UVRGA took no action during the July 9, 2020, closed session that was required to be reported under the Brown Act. I therefore find no violation in failing to report during that meeting.

I similarly find no violation at the September 10, 2020, meeting. The items were properly listed on the closed session agenda and the Board was within its authority to discuss them in closed session. That the Board chose to vote on the litigation matters openly did not violate the Brown Act. At least under circumstances such as these, holding the vote in open session furthers two key goals of the Brown Act, an opportunity for public participation and transparency in government. The CMWD litigation was specifically identified on the agenda, so anyone with an interest in that litigation was on notice that it would be addressed at the meeting. If anyone wished to make public comment about the litigation, they had notice and the ability to do so, regardless of whether the Board's vote was held in closed or open session. By holding the vote in open session, the Board provided more public access than if they had done so in closed session and more transparency than the Brown Act requires. Under these circumstances, I find no violation with respect to the September 10, 2020, meeting.

Thank you for bringing these issues to my attention. If you have any further questions or comments, please do not hesitate to contact me.

Very truly yours,



CHUCK HUGHES
Chief Deputy District Attorney

WCH:ct



Item 7

Attachment B

Physical Solution Comment Letter

October 13, 2020

To Whom It May Concern:

The Upper Ventura River Groundwater Agency ("UVRGA") is grateful for the opportunity to respond to your draft Physical Solution. Attached you will find a red line copy of the Physical Solution that indicates our suggested revisions.

As you know, UVRGA is the Groundwater Sustainability Agency (GSA) for the Upper Ventura River Basin and is not a party to the underlying action and is not intended to be a signatory to the Physical Solution. By providing these comments UVRGA does not endorse the Physical Solution or any of the concepts or objectives advanced in the Physical Solution. These comments are offered simply to harmonize the Physical Solution as presented with the statutory obligations of the GSA. The attached comments are the comments of the GSA as an entity and are not intended to reflect the individual comments or opinions of individual members of the board or their affiliated organizations. If such individuals or organizations wish to express an opinion regarding the Physical Solution they will do so separately.

In reviewing the Physical Solution, we have found three areas of concern. First, and most importantly, 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. Finally, the Physical Solution does not include required SGMA elements such as specification of minimum thresholds, measurable objectives, and interim milestones. 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.

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.

Second, we are concerned that the Physical Solution could create processes that require time and expense that are redundant with the processes required by SGMA. For example, 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

October 13, 2020

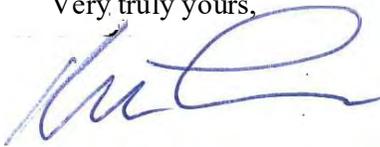
Page 2

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.

Finally, we also have some concerns about the proposed 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. Instead, if the stipulating parties wish to include a GSA representative, we propose that each GSA has its own representative. We believe the focus of potential GSA participation on the Management Committee would be ensuring that both programs work together to avoid SGMA undesirable results for depletion of interconnected surface water and cost reductions through implementation of coordinated groundwater and surface water monitoring programs. If the stipulating parties ultimately choose not to include the GSAs on the Management Committee, we would recommend that the Physical Solution include additional, prescriptive language that lays out how coordination with the GSAs on these and other important issues will be accomplished.

Thank you for the opportunity to comment. We are available to answer any questions that you have regarding our proposal.

Very truly yours,



Keith Lemieux

September 15, 2020

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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

September 15, 2020

1 [PROPOSED] STIPULATED PHYSICAL SOLUTION AND JUDGMENT

2

3 Certain **Parties**¹ to this **Action** have stipulated to entry of this **Physical Solution** and

4 **Judgment** (“Physical Solution”). The stipulation of the Parties is conditioned on further

5 proceedings that will result in the Physical Solution becoming binding on all **Bound Parties** in

6 this Action. The Court, having exercised its constitutional duty to evaluate a physical solution,

7 considered the pleadings, the stipulation of the Parties, the evidence presented, and based on the

8 findings of fact and conclusions of law set forth below, approves the Physical Solution² and

9 enters this Judgment that imposes the Physical Solution in furtherance of the requirements of

10 Article X, section 2 of the California Constitution. In imposing the Physical Solution, the Court

11 has determined that the Physical Solution optimizes the reasonable and beneficial use of water in

12 the Ventura River Watershed and avoids substantial injury, material expense, and unnecessary

13 waste of precious water resources in a manner protective of public trust resources, that it is

14 consistent with Code of Civil Procedure sections 830-852, as applicable, and that it conforms

15 with California water law and policy, including because it preserves the continuing jurisdiction of

16 the Court to enforce the Physical Solution and to address future disputes, if necessary. This

17 Physical Solution does not determine water rights or directly limit water **Production**. Instead, it

18 creates a specific plan to manage the Watershed to protect existing reasonable and beneficial uses

19

20 ¹ A list of defined terms used herein is attached hereto as Exhibit A. For ease of reference, defined terms are placed

21 in initial capitals, and bolded when defined.

22 ² A “physical solution” describes an agreed upon or judicially-imposed resolution of conflicting claims in a manner

23 that advances the constitutional rule of reasonable and beneficial use of the state’s water supply. (*City of Santa Maria*

24 *v. Adam* (2012) 211 Cal.App.4th 266, 288.) It is defined as both a defense to the issuance of an injunction (*Tulare*

25 *Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 574, 579; *Rancho Santa Margarita*

26 *v. Vail* (1938) 11 Cal.2d 501, 556) and as “an equitable remedy designed to alleviate overdrafts

27 and the consequential depletion of water resources in a particular area, consistent with the constitutional mandate to

28 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.

September 15, 2020

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

16
17 Based on the findings of fact and conclusions of law contained in this Physical Solution,
18 the Court determines that the imposition of the Physical Solution is required to implement the
19 mandate of Article X, section 2 of the California Constitution in a manner that does not cause
20 substantial injury to water right holders, is consistent with the public trust doctrine, and Code of
21 Civil Procedure section 849 because it preserves and protects all reasonable and beneficial uses of
22 water of the Ventura River Watershed and reasonably balances the needs of public trust resources
23 with the consumptive use needs of people, agriculture, and industry while establishing and
24 implementing actions to maintain the **Fishery in Good Condition**. The Physical Solution
25 establishes a long-term management plan that accounts for: the specific needs of the Fishery,
26 variable hydrology of the region, periods of low and very low precipitation, and the condition and
27 quality of the habitat during the lifecycle of the Fishery, including the specific reach habitat
28 requirements pertinent to that lifecycle, and thereby ensures the viability of the Fishery through a

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

5
6 **1. DESCRIPTION OF LITIGATION**

7 **1.1 Initiation of Litigation**

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

18
19 In response to the Complaint, the City filed a Cross-Complaint, and later a First Amended
20 Cross-Complaint, against other surface water and Groundwater users in the Ventura River
21 Watershed who it alleged affect the flow of water in the Ventura River. As used herein, the
22 **Ventura River Watershed** or **Watershed** includes the entire Ventura River and its tributaries, as
23 well as the Basins. Channelkeeper moved to strike the City’s First Amended Cross-Complaint,
24 and the San Francisco Superior Court granted the motion.

1 **1.2 Appeal and Court of Appeal Decision**

2 The City appealed the decision to strike its First Amended Cross-Complaint. On January
3 30, 2018, the Court of Appeal, First Appellate District, Division Two, reversed the San Francisco
4 Superior Court’s decision and remanded the matter in *Santa Barbara Channelkeeper v. City of*
5 *San Buenaventura* (2018) 19 Cal.App.5th 1176.

6
7 **1.3 Amended Pleadings and Transfer of Venue**

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

15
16 In the Amended Cross-Complaint, the City named approximately 2,300 Cross-Defendants
17 who beneficially use or who have potential rights to waters of the Ventura River flowing in a
18 known and defined channel or Groundwater in the Ventura River Watershed, including surface
19 water from the Ventura River and its tributaries and Groundwater from the Basins. The Amended
20 Cross-Complaint also alleged that the Court has in rem jurisdiction over all property overlying the
21 Basins. The Amended Cross-Complaint alleges nine separate claims for relief, which are two
22 claims for injunctive relief (first and second claims for relief), one claim for entry of a physical
23 solution (sixth claim for relief), and declaratory relief claims for pueblo and/or treaty water rights,
24 prescriptive water rights, appropriative water rights, municipal priority, the human right to water,
25 and reasonable and beneficial use (third, fourth, fifth, seventh, eighth, and ninth claims for relief),
26 and asserts the City’s relative priority rights to water, including, without limitation, a request for a
27 comprehensive adjudication of the Ventura River Watershed and the imposition of a physical
28 solution.

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

5
6 **1.4 Service of Parties and Default**

7 On or about November 21, 2019, the Court granted the City’s motion to approve a notice
8 of adjudication and form answer pursuant to Code of Civil Procedure section 836. In accordance
9 with the Court’s order and pursuant to the Amended Cross-Complaint, the City has served or
10 provided notice to: (1) all property owners overlying the Basins; (2) all property owners whose
11 property is contiguous to the Ventura River or its tributaries, other than the federal government;
12 and (3) all known holders of appropriative water rights, other than the federal government.

13 Pursuant to the Court’s November 21, 2019 order, the City has served a summons on
14 approximately 2,300 Cross-Defendants owning approximately 1,750 riparian parcels and
15 provided 12,766 notices to the owners of approximately 10,000 parcels overlying the Basins. A
16 complete list of all Cross-Defendants is contained in Exhibit B to this Physical Solution. A
17 complete list of all parcels that (1) are owned by Cross-Defendants and/or (2) were provided
18 notice of the Action, and which are thus bound by the Physical Solution, is contained in Exhibit C
19 to this Physical Solution.

20
21 Certain Cross-Defendants, Producers, ***De Minimis Producers, Non-Producers***, and
22 overlying landowners stipulated to this Physical Solution with the understanding that the Physical
23 Solution is not a determination of their water rights; they accordingly do not object to the
24 Physical Solution and plan to comply with the requirement to file their water Production
25 information as specified in Section 7.7.4.4 or *De Minimis* Production information as specified in
26 Section 7.7.4.6. Stipulation to the Physical Solution constitutes a response to the Amended
27 Cross-Complaint, and no default shall be taken against such stipulating Parties.

September 15, 2020

1 Numerous Cross-Defendants have failed to stipulate to the Physical Solution, have not
2 responded timely, or at all, to the Amended Cross-Complaint, and their defaults have been
3 entered. Notice of this Physical Solution and Judgment has been given to the defaulted Cross-
4 Defendants, together with the opportunity to be heard regarding this Physical Solution, and the
5 Court hereby enters default judgment against all defaulted Cross-Defendants and incorporates
6 those default judgments into this Physical Solution. All defaulted Cross-Defendants, and their
7 successors and assigns, are subject to the terms of the Physical Solution and Judgment, and this
8 Court's continuing jurisdiction as set forth herein. All defaulted Cross-Defendants are identified
9 in Exhibit D to this Physical Solution.³
10

11 In addition, in accordance with Code of Civil Procedure section 836, the City provided
12 notice of this Action to all property owners who were not otherwise named Parties to this Action
13 and who own property overlying the Basins. Property owners who elected to become Parties to
14 this Action are bound by this Physical Solution as Parties. Consistent with Code of Civil
15 Procedure section 836(k), property owners who did not elect to become Parties are also bound by
16 this Physical Solution. Consistent with Code of Civil Procedure section 836(j), the common law
17 of stream adjudications, and Article X, section 2 of the California Constitution, the Court has in
18 rem jurisdiction over the real property of the Watershed, identified herein, inclusive of
19 usufructuary rights to the waters of the Ventura River and its tributaries, whether flowing on the
20 surface or underground within a known and defined channel, and within the Basins, and this
21 Physical Solution applies to those properties. Therefore, all Persons holding fee title to real
22 property overlying one or more of the Basins, whether or not they chose to become a Party in this
23 Action, are subject to the terms of this Physical Solution.
24
25
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27

28 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 **1.5 Answers, Cross-Complaints, and Intervention**

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

11
12 On or about December 6, 2019, the Court granted the unopposed motions of the State
13 Board and the California Department of Fish & Wildlife (“**Department**”) to intervene in the
14 Action, specifically in the Amended Cross-Complaint. The State Board and the Department, with
15 Court approval, elected not to file a complaint in intervention, but instead filed notices of
16 appearance in connection with the Amended Cross-Complaint, subjecting themselves to the
17 Court’s jurisdiction and in the absence of their tendering an affirmative pleading, limiting
18 themselves to the issues raised in the existing pleadings in the Action.

19
20 **1.6 City Settlement**

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

1 **2. JURISDICTION AND BASIS FOR PHYSICAL SOLUTION**

2 This Action is a comprehensive adjudication that adopts and imposes a Physical Solution
3 concerning the reasonable and beneficial uses of the waters of the Ventura River Watershed,
4 including both surface water and Groundwater, without causing waste of precious water
5 resources. The Court has original jurisdiction⁴ over the subject matter of the Action and the
6 Bound Parties sufficient to enter the Physical Solution pursuant to Article X, section 2 of the
7 California Constitution, the public trust doctrine, Code of Civil Procedure sections 830-852
8 (collectively, the “**Comprehensive Adjudication Statutes**”), as applicable, and California water
9 law and policy.

10
11 On or about March 8, 2019, the State Board submitted a letter to the Honorable Kevin C.
12 Brazile, Presiding Judge of the Los Angeles Superior Court, regarding the judicial assignment of
13 this Action and specifically requesting coordination with the Judicial Council. The Court finds
14 that pursuant to Code of Civil Procedure section 838(a)(1), assignment by the Judicial Council is
15 not required because the Action was not filed and is not being heard in a county that overlies the
16 Basins or any portion of the Basins. In addition, the Court has conferred with the Judicial
17 Council and has determined that no action by the Judicial Council is required. No Party
18 challenged this determination.

19
20 The Court and the Comprehensive Adjudication Statutes require that all Persons having or
21 claiming any right, title, or interest to Groundwater within the Basins be notified of the Action.
22 Notice has been given pursuant to the Court’s order and the Comprehensive Adjudication
23 Statutes. All Persons having or claiming any right, title, or interest to Groundwater within the
24 Basins have been given an opportunity to become Parties to the Action in accordance with the
25 Code of Civil Procedure. All named Parties who have not been dismissed or defaulted have
26 appeared or have been given adequate opportunity to appear. The Court therefore has personal
27

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

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

6
7 The Court finds and concludes that the imposition of the Physical Solution: (1) optimizes
8 the reasonable and beneficial use of waters in the Ventura River Watershed and avoids waste in
9 accordance with Article X, section 2 of the California Constitution; (2) avoids unreasonable
10 injury to any water right holder and will avoid the present need for a specific allocation of water
11 among competing water right claims; (3) fairly and reasonably ensures native waters are made
12 available for beneficial use among all water right holders; (4) establishes a comprehensive
13 approach to maintaining the **Southern California Steelhead** Fishery population in the Ventura
14 River Watershed in Good Condition, consistent with the Constitutional mandate of reasonable
15 and beneficial use and the public trust doctrine; (5) establishes a management structure to ensure
16 implementation of the Physical Solution emphasizing local involvement (Water Code section
17 113); (6) facilitates water resource planning and sustainable water use and reduces uncertainty;
18 (7) furthers the mandates of the State Constitution and State water policy; and (8) as is customary
19 in comprehensive adjudications, maintains continuing jurisdiction of the Court to oversee the
20 implementation of the Physical Solution and to resolve conflicts as they may arise among the
21 Parties to and Persons bound by the Physical Solution. As such, the Physical Solution will
22 provide for the long-term, comprehensive, and efficient management of water in the Watershed in
23 a manner not otherwise available under applicable law.

24
25 In addition, and as applicable, the Court finds pursuant to Code of Civil Procedure section
26 850(a) that the Physical Solution: (1) is consistent with Article X, section 2 of the California
27 Constitution; (2) is consistent with the water right priorities of all Parties and any Persons who
28 have claims that are exempted pursuant to Code of Civil Procedure section 833 as no water rights

1 or beneficial uses will incur substantial injury by the imposition of the Physical Solution; and (3)
2 treats all objecting Parties and any Persons who have claims that are exempted pursuant to Code
3 of Civil Procedure section 833 equitably as compared to the stipulating Parties.
4

5 Following its complete evaluation and investigation of the Physical Solution, and based
6 on these findings, the Court enters this Physical Solution on all Bound Parties, including any
7 objecting Party, to this Action. Additionally, this Physical Solution binds all Persons holding fee
8 title to real property in the Basins pursuant to Code of Civil Procedure section 836.
9

10 **3. SCOPE OF PHYSICAL SOLUTION AND JUDGMENT**

11 **3.1 Resolution of all Claims**

12 As is discussed herein, all claims in the Action, Amended Complaint, and Amended
13 Cross-Complaint are hereby resolved, either finally or conditionally, by this Physical Solution
14 and Judgment, and this Physical Solution and Judgment shall constitute a final judgment pursuant
15 to Code of Civil Procedure section 577.
16

17 In the Complaint, Channelkeeper asked the Court to declare that the City's extraction of
18 water from the Ventura River from April through October is unreasonable, in violation of Article
19 X, section 2 of the California Constitution, and to direct the State Board to perform alleged
20 mandatory duties under Article X, section 2, Water Code section 275, and the public trust
21 doctrine to prevent that alleged unreasonable use by the City. Channelkeeper's claims as against
22 the City in the Amended Complaint have been resolved by the City Settlement, as amended and
23 through this Physical Solution. Channelkeeper's claims as against the State Board are deemed
24 moot based upon entry of the Physical Solution and the Court's ongoing jurisdiction over the
25 subject matter of those claims.
26

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

1 comprehensive adjudication of the Ventura River Watershed and the imposition of a physical
2 solution. This Physical Solution is intended to serve as a stipulated judgment, resolving the
3 City's sixth claim for relief for the imposition of a physical solution. All other claims in the
4 Amended Cross-Complaint are conditionally reserved as is discussed in section 3.2 herein.
5

6 **3.2 Reservation of Claims**

7 The Parties stipulate and the Court finds that this Physical Solution and Judgment
8 sufficiently resolves the current competing claims among the Bound Parties, and that it is not
9 necessary at this time for the Court to determine the relative priority rights to water in the
10 Watershed pursuant to other causes of action in the Amended Cross-Complaint or at this time to
11 establish a comprehensive adjudication of water rights in the Watershed. The Judgment entered
12 herein is conditioned upon the successful implementation of the Physical Solution. The Court
13 specifically retains post-Judgment jurisdiction to determine the relative priority rights to all water
14 rights in the Watershed and/or to establish a comprehensive adjudication of water rights in the
15 Watershed, if it becomes necessary to do so in the future. As to the City's Amended Cross-
16 Complaint, the Court specifically retains jurisdiction to determine the City's first, second, third,
17 fourth, fifth, seventh, eighth, and ninth claims for relief, if it becomes necessary to do so in the
18 future. Any such determination shall be made pursuant to this Court's continuing jurisdiction
19 pursuant to and in accordance with Section 9.2 herein.
20

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

- 24 a. Decree in Santa Ana Water Company vs. Ramon G. De La Riva, et al., 1st Judic.
25 Dist. of CA, County of Ventura, rendered 3/10/1874;
- 26 b. Santa Ana Water Co. v. Town of San Buenaventura, 56 F. 339 (1893);
- 27 c. Rice v. Meiners (Sup. Ct. of the County of Ventura, October 22, 1902); and
28

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

3
4 **3.3 Role of the State Board and the Department**

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

12
13 The Department provides this document as a tool for consideration in water
14 management planning. It presents an analytical approach that can be
15 implemented, if appropriate, under the specific circumstances of a watershed,
16 stream or information need. This report and the Overview [of Analysis for
17 Instream Flow Regime Criteria on a Watershed Scale], in and of themselves,
18 should not be considered to provide binding guidelines, establish legal
19 compliance, or ensure project success.

20 Accordingly, this Report is “a tool for consideration in the management planning” in the
21 Watershed, and is considered as part of the broader goal of this Physical Solution, which
22 considers and balances consumptive uses, Fishery needs, and other needs within the Watershed.
23 As stated in the Overview Analysis for Instream Flow Regime Criteria on a Watershed Scale
24 (March 2020), the Report presents “a range of different flow regime criteria that can be adapted to
25 the specific needs of each selected stream and watershed.” Report at p. 7. Pursuant to Water
26 Code section 1257.5, the State Board must consider the Report and any other recommendations
27 from the Department when acting on applications to appropriate water, and, subject to judicial
28 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

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

7
8 **4. VENTURA RIVER WATERSHED, VENTURA RIVER AND THE BASINS**

9 **4.1 The Ventura River Watershed**

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

16
17 The upper reaches of the Watershed lie within the Topa Topa Mountains, Santa Ynez
18 Mountains, and the greater Transverse Ranges, with ridges in these ranges delineating the upper
19 extent of the Watershed. The altitude of the Watershed varies from approximately 6,000 feet to
20 sea level at the coastal estuary. The total length from the furthest headwaters to the Pacific Ocean
21 is over thirty-three miles.

22
23 Steep mountains and foothills comprise most of the land area in the Watershed, covering
24 most of its north half and framing it on three sides, with a large portion of this area being U.S.
25 Forest Service land or other conserved lands. Land use in the Watershed is divided between
26 National Forest, open space, urban or industrial, and agricultural or rural designations. The
27 largest portion, approximately 75%, is designated as U.S. Forest Service land (55%), and open
28 space lands (20%), which includes both land set aside for conservation and land currently leased

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

7
8 Precipitation in the Watershed is highly variable both spatially and temporally. Spatially,
9 the upper portion of the Watershed receives, on average, double the annual volume of rainfall
10 received in the lower portion of the Watershed. Seasonally, most of rain occurs between
11 November and April, with minimal rain occurring between May and September. Based on
12 historical records, the Watershed experiences large differences in annual rainfall volume, with
13 regular cycles of wet and dry years at least partially caused by El Nino and La Nina cycles. Long
14 periods of drought are a common occurrence in the Watershed. Periodic high flow events and
15 flooding also occur.

16
17 The Watershed is home to many species, including the Southern California Steelhead, a
18 species listed as endangered under the federal **Endangered Species Act**, as described in more
19 detail below. The regular periods of drought experienced in the Watershed, coupled with the
20 historical development within the Watershed, create challenges to the survival of the steelhead
21 population. Natural precipitation does not occur in sufficient magnitude in certain years and/or in
22 drought condition years to enable the successful migration of the steelhead to and from the Pacific
23 Ocean for the completion of its lifecycle. Consequently, habitat that enables the Fishery to
24 survive during several years of low precipitation is required to maintain the steelhead population
25 within the Watershed.

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

4
5 **4.2 The Ventura River**

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

10
11 The Ventura River has traditionally been divided into five reaches. For the reasons set
12 forth below, the Physical Solution does not use this historical division of the River, but those
13 historical reaches are: Reach 1, including the Ventura River lagoon and estuary; Reach 2,
14 extending from the top end of the estuary to a point upstream of where treated wastewater from
15 the Ojai Valley Sanitation District's Wastewater Treatment Plant is discharged to the River;
16 Reach 3, located downstream of Foster Park and extending from Weldon Canyon to the
17 confluence of Coyote Creek; Reach 4, located between Coyote Creek and the confluence with the
18 North Fork Matilija Creek and including Foster Park; and Reach 5, including North Fork Matilija
19 Creek.

20
21 The upper portions of the Ventura River and its primary headwater Matilija Creek and
22 North Fork Matilija Creek typically have perennial flow from the higher moisture in the
23 mountainous climate and high rainfall volumes in the upper catchment. The River in this portion
24 flows through narrow canyon formations with a steep bed slope resulting in high energy flows.

25
26 The middle section of the Ventura River, from the Robles Diversion to San Antonio Creek
27 confluence, consists of lower-gradient braided channels incised into a wider floodplain. Due to
28

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

3
 4 The lower section of the Ventura River, from its confluence with San Antonio Creek to
 5 the estuary, is fed by contributions from San Antonio Creek, the Ojai Valley Sanitation District’s
 6 wastewater facility, and small discharges from a number of small side canyons and tributaries.

7
 8 Because the historical division of the River is not linked directly to the lifecycle and needs
 9 of the Southern California Steelhead in the Watershed, this Physical Solution differs from the
 10 historical division and does divide the River into segments consistent with the lifecycle and needs
 11 of the Southern California Steelhead in the Watershed. This Physical Solution divides the River
 12 into seven reaches based on habitat requirements, habitat function, and shared hydrologic
 13 conditions. These are set forth in the table below.

14 **Table 1 – Ventura River Reaches**

15

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

16
 17
 18
 19
 20
 21
 22
 23
 24
 25 There are several major human-made flood control and water management features on the
 26 Ventura River. Matilija Dam, currently operated by the Ventura County Watershed Protection
 27 District, is located in the upper watershed above the confluence of Matilija Creek and North Fork
 28

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

7
8 A second human-made combination of features on the Ventura River is the Robles
9 Diversion and Fish Passage Facility (“**Robles Diversion Facility**”), the Robles Canal, and Lake
10 Casitas. These facilities are operated by Cross-Defendant Casitas Municipal Water District
11 (“**Casitas**”). The Robles Diversion Facility is located on the Ventura River two miles
12 downstream of the Matilija Dam and approximately fourteen river miles from the Pacific Ocean.
13 At the Robles Diversion Facility, Casitas diverts water from the Ventura River, channels the
14 water through the 5.4 mile Robles Canal, and conveys the water to Lake Casitas. Lake Casitas is
15 a human-made lake designed to hold 254,000 acre feet of water. Aside from limited Groundwater
16 resources, Lake Casitas is the primary source of drinking water for Ojai, Oak View, Casitas
17 Springs, and the western side of the City. None of these communities has access to any other
18 sources of State-conveyed water or other imported waters. Operations of the Robles Diversion
19 Facility are governed by a license (“**Casitas License**”) issued by the State Board and a March 31,
20 2003 biological opinion (“**Casitas Biological Opinion**”) issued by the National Marine Fisheries
21 Service. Nothing in this Physical Solution lessens or increases, or may reasonably be interpreted
22 to lessen or increase, the operational requirements in the Casitas License or in the Casitas
23 Biological Opinion.

24
25 A third human-made feature on the Ventura River is the Foster Park Subsurface Dam.
26 The Subsurface Dam extends from the Coyote Creek confluence approximately 973 feet east
27 across the Ventura River. The Subsurface Dam extends five to forty feet deep from west to east.
28 The dam does not extend across the entire canyon. There is an uncompleted “gap” approximately

1 300 feet in length at the eastern end. It was constructed by the City’s predecessor, Ventura
2 County Power Company, in or about 1906-1908, and is now owned and operated by the City. At
3 or adjacent to this location, the City operates a subsurface collector and three wells.
4

5 A fourth human-made feature is the Ventura River Levee. It borders the east side of the
6 Ventura River, stretching approximately 2.65 miles from the Pacific Ocean to Cañada de San
7 Joaquin. It was completed by the United States Army Corps of Engineers Los Angeles District in
8 December 1948 to protect adjacent low-elevation areas within the City from flooding. The
9 Ventura County Watershed Protection District operates and maintains the Levee. Several
10 additional smaller levees and hard stabilization structures occur through other parts of the
11 Watershed.
12

13 **4.3 Groundwater Basins**

14 The Ventura River Watershed includes the Basins; depictions of each of the Groundwater
15 basins are contained in Exhibit E to this Physical Solution at pages E-4 through E-8.
16

17 **4.3.1 The Lower Ventura River Basin**

18
19 The Lower Ventura River Basin follows the course of the Ventura River from Foster Park
20 in the north to the Pacific Ocean at its southern end. It also includes the narrow area surrounding
21 Cañada Larga Creek that flows in from the east. The northern end of this basin is marked by the
22 border with the Upper Ventura River Basin below Foster Park. The east and west borders are
23 formed by the Santa Ynez Mountains where impermeable rocks prevent significant Groundwater
24 flow or storage. To the south, the basin boundary is the coast of the Pacific Ocean. The Lower
25 Ventura River Basin is designated as Basin Number 4-3.02 in the Department of Water Resources
26 (“DWR”) Bulletin 118 and has been designated by DWR as a very low priority basin under the
27 Sustainable Groundwater Management Act (“SGMA”). The surface area of the Basin is 5,300
28 acres.

1 **4.3.2 The Upper Ventura River Basin**

2
3 The Upper Ventura River Basin extends through northern and central Ventura County and
4 generally follows the Ventura River. The northernmost point is [located approximately ¼ mile](#)
5 [downstream of](#) the junction of Matilija Creek and North Fork Matilija Creek. Its northern border
6 is defined by the Santa Ynez Mountains where low permeability rocks do not provide additional
7 Groundwater storage. The northeastern boundary that divides the basin from the Ojai Valley
8 Basin is formed by a subsurface impermeable bedrock ridge. The basin narrows to the south as it
9 follows the Ventura River Valley until it reaches Foster Park. The Casitas Vista Bridge adjacent
10 to Foster Park marks the divide between the Upper Ventura River and Lower Ventura River
11 Basins. The ~~upper-Upper~~ [Upper Ventura River Basin](#) is designated as Basin Number 4-3.01 in DWR’s
12 Bulletin 118 and has been designated by the DWR as a medium priority basin under SGMA. As
13 a medium priority basin under SGMA, a Groundwater Sustainability Plan (“GSP”) must be
14 adopted for the basin by the [Upper Ventura River Groundwater Agency \(“UVRGA”\), the](#)
15 ~~designated Groundwater Sustainability Agency applicable Upper Ventura River~~
16 ~~Groundwater Sustainability Agency (“Upper GSA”) for the basin~~ [on or before January 31, 2022.](#)
17 The surface area of the Basin is [7,419,360](#) acres.

18
19 **4.3.3 The Ojai Valley Basin**

20
21 The Ojai Valley Basin is located in central Ventura County. Groundwater storage occurs
22 within the alluvial material filling in the lower elevations of the relatively flat area in and around
23 the City of Ojai. Alluvial sediment is composed primarily of sand, silt, and gravel that is
24 sufficiently permeable to allow the Groundwater storage and flow. This sediment originally
25 accumulated as alluvial fan deposits, formed by rivers and streams draining from the mountains,
26 slowing, spreading out, and depositing material at the base of the mountain range. These
27 deposits, therefore, are thickest at the base of the mountains to the north and east. This basin has
28 the largest capacity to store Groundwater of the four Groundwater basins in the Ventura River

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

13
14 The boundaries of the Ojai Valley Basin are mainly mountain ranges, where the geology
15 does not allow Groundwater flow or storage, and faults. To the north of Ojai, the Topa Topa and
16 Santa Ynez Mountains form the basin boundary. Black Mountain and the Santa Ana fault bound
17 the basin to the south, and non-permeable rock units along the eastern and western edges prevent
18 Groundwater flow into or out of the basin. The Ojai Valley Basin is separated from the Upper
19 Ojai Valley Basin by the San Cayetano Fault. The western boundary also marks the Groundwater
20 divide that separates the Ojai Valley Basin from the Upper Ventura River Basin. Groundwater
21 from this basin flows into San Antonio Creek.

22
23 In addition, Casitas, the Ventura County Watershed Protection District, the Ojai GMA,
24 and the Ojai Water Conservation District, formed in 1949 as the San Antonio Water Conservation
25 District and renamed in 1990, have collaborated to develop a project that could divert water into
26 settling ponds along San Antonio Creek for Groundwater recharge of the Ojai Basin.

1
2
3 **4.3.4 The Upper Ojai Valley Basin**
4

5 The Upper Ojai Valley Basin is located in the northeastern portion of Ventura County. It
6 is the smallest of the Basins, encompassing 3,806 acres or 5.95 square miles, and has a DWR-
7 estimated maximum storage capacity of 5,600 acre feet. The basin is an intra-montane
8 depression, bounded on all sides by mountain ranges and thrust faults that mark the boundary
9 between mountains and the valley floor. On the northern edge, Black Mountain and the San
10 Cayetano fault separate the basin from the Ojai Valley Basin. To the south, the Sulfur Mountains
11 and the Lion fault mark the boundary of the Groundwater storage zone. The primary surface
12 feature draining the basin is Lion Canyon Creek, which flows to the west and is a major
13 contributor to San Antonio Creek. The basin is split in half by a surface water divide, where the
14 eastern portion lies outside of the Ventura River Watershed. The Upper Ojai Valley Basin is
15 designated as Basin Number 4-1 in DWR’s Bulletin 118 and has been designated by DWR as a
16 very low priority basin under SGMA.
17

18 **5. REASONABLE AND BENEFICIAL USES OF THE VENTURA RIVER**
19 **WATERSHED**

20 Currently, the water needs within the Ventura River Watershed, regardless of claim of
21 right, are supplied entirely from local surface water and Groundwater sources. At the time of this
22 Physical Solution, no imported water is used within the Watershed. Water from the Ventura
23 River Watershed is therefore critical to life within the Watershed, to the local economy, and to the
24 health of the region. Water from the Ventura River Watershed is vital for a variety of both
25 consumptive and instream reasonable and beneficial uses. These reasonable and beneficial uses
26 are described in more detail below.
27

28 **5.1 Forest Land and Open Space**

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

12
13 **5.2 Consumptive Uses**

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

18
19 **5.2.1 Reasonable and Beneficial Municipal Uses**

20
21 Water for municipal uses accounts for approximately 55% of the total water demand from
22 the Ventura River Watershed, with residential use making up most of urban water demand. Due
23 to strict conservation efforts, urban water demand has not increased significantly in recent
24 decades, despite growth in population.

25
26 There are four major municipal water suppliers in the Ventura River Watershed. Cross-
27 Defendant Casitas is the largest water purveyor in the Watershed, providing water to both water
28 resale agencies and retail customers. Casitas uses surface water from the Ventura River, which is

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

14
15 The City is the second largest municipal supplier within the Ventura River Watershed.
16 The City Produces water through a subsurface diversion and three subsurface wells, including its
17 Nye wells, at Foster Park to supply its municipal customers. The City has a Water Shortage
18 Event Contingency Plan that is consistent with the Urban Water Management Planning Act. The
19 City has implemented significant conservation efforts to reduce municipal demand. These efforts
20 include implementing Water Shortage Regulations and Rates, complying with the mandates of the
21 Water Conservation Act of 2009 (Senate Bill X7-7), maintaining a 20% mandatory conservation
22 cutback, promoting the use of recycled water, offering rebates to encourage water wise
23 landscaping, offering free high efficiency sprinkler nozzles, implementing an Advanced Metering
24 Infrastructure program and a Smart Irrigation Controller program, providing free water efficiency
25 surveys, enacting a Water Rights Dedication and Water Resources Net Zero (In Lieu) Fee
26 Ordinance and Resolution, and taking other steps to reduce consumption.

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

15
16 Cross-Defendant the Meiners Oaks Water District (“**MOWD**”) is the fourth largest
17 municipal supplier within the Ventura River Watershed. MOWD supplies water to the
18 community of Meiners Oaks on the east side of the Ventura River, providing potable water
19 service to a population of approximately 4,200, through 1,280 service connections. MOWD’s
20 highest priority is to provide water for residential and commercial use, but also provides some
21 water for agricultural use, which is declining. Agricultural connections primarily serve small
22 citrus or avocado orchards. MOWD operates four wells in the Upper Ventura River Basin.
23 MOWD has implemented significant conservation efforts to reduce municipal demand. In 2020
24 MOWD adopted an Allocation Program by which MOWD adopted and enforces all appropriate,
25 applicable water conservation measures and policies adopted by its wholesale supplier, Cross-
26 Defendant Casitas, and MOWD agreed to enact 5 stages of drought measures, consistent with
27 stages that are adopted by Casitas. For each drought stage, MOWD customers are requested to
28 reduce water usage by a given percentage. Decreased water usage is encouraged through

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

6
7 Other municipal suppliers of water include but are not limited to Cross-Defendants
8 Casitas Mutual Water Company, Gridley Road Water Group, Hermitage Mutual Water Company,
9 North Fork Springs Mutual Water Company, Old Creek Road Mutual Water Company, Rancho
10 del Cielo Mutual Water Company, Senior Canyon Water Company, Siete Robles Mutual Water
11 Company, Sisar Mutual Water Company, and Tico Mutual Water Company.

12
13 In addition, water for domestic use is provided by way of private wells located on private
14 property. It is estimated that there are approximately 367 active wells in the Ventura River
15 Watershed. Owners/Operators of these wells are either Parties to this Action or have been
16 provided notice of this Action.

17
18 **5.2.2 Reasonable and Beneficial Agricultural Uses**

19
20 Use of water from the Watershed for reasonable and beneficial agricultural uses supports a
21 significant farming economy within the Watershed. According to DWR's Agricultural Land Use
22 and Crop Mapping from 2014, citrus and avocado are the primary crops grown within the
23 Watershed, with citrus constituting approximately 51% of the active agricultural acreage and
24 avocados constituting 32%. Other crops include grains, hay, row crops, berries, sod, olive,
25 grapes, apples, walnuts, flowers, Christmas trees, and other fruit tree crops.

26
27 The State Board regulates irrigated agriculture in the Watershed through the statewide
28 Irrigated Lands Regulatory Program to prevent agricultural discharges from impairing surface

1 water and Groundwater bodies. The regulations that apply to irrigated agriculture in Ventura
2 County are contained in the *Conditional Waiver of Waste Discharge Requirements for*
3 *Discharges from Irrigated Lands within the Los Angeles Region* (“**Conditional Waiver**”). The
4 Ventura River Watershed contains approximately 3,253 acres of irrigated agriculture. As of
5 2019, approximately 92% of those acres (2,978 acres) were enrolled in the Ventura County
6 Agricultural Irrigation Lands Group (“**VCAILG**”). In order to protect both surface water and
7 Groundwater quality, the Conditional Waiver requires that growers implement best management
8 practices that address the quantity and quality of runoff and leachate from agricultural acreage.
9 Because adoption of efficient irrigation practices limits discharges to both surface and
10 Groundwater, promotion of irrigation efficiency is a priority for VCAILG and other agricultural
11 support services in Ventura County. Improvements in irrigation efficiency are promoted through
12 outreach, education classes and on-farm demonstrations, irrigation system testing services, and
13 grant programs for purchase and installation of water saving equipment, such as micro sprinkler
14 and drip irrigation systems.

15
16 Water sources to support reasonable and beneficial agricultural uses include Groundwater
17 from private wells or from small water companies, with water from Casitas used for supplemental
18 or backup water. Agriculture has implemented significant conservation efforts; specifically,
19 highly efficient irrigation systems (drip, micro sprinkler, and combinations thereof) are employed
20 on the majority of irrigated agriculture, irrigation systems are routinely tested for distribution
21 uniformity, and irrigation runoff is minimal in the Watershed.

22
23 Agricultural users within the Watershed include but are not limited to Cross-Defendants
24 Wood-Claeysens Foundation, Rancho Matilija Mutual Water Company, Senior Canyon Mutual
25 Water Company, Rancho De Cielo Mutual Water Company, Gridley Road Water Group,
26 Hermitage Mutual Water Company, Sisar Mutual Water Company, Casitas’ and MOWD’s
27 agricultural customers, and family farms in the Ojai Valley.

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

8
9 The Rancho Matilija Mutual Water Company produces water from the Watershed for its
10 shareholders to use for agricultural irrigation (primarily blackberries, row crops, and tangerine
11 orchards at this time) and for domestic ranch and livestock uses on their properties located
12 northeast of Lake Casitas. Rancho Matilija's shareholders have implemented water conservation
13 measures such as real-time smart phone-connected moisture sensing used to determine drip
14 irrigation frequency and duration as well as land fallowing.

15
16 **5.2.3 Reasonable and Beneficial Industrial Uses**

17
18 Water from the Ventura River Watershed is also used for reasonable and beneficial
19 industrial uses. Such uses include, but are not limited to, oil and gas operations. The major oil
20 field in the watershed is the Ventura oil field, an area that covers approximately 3,410 acres on
21 both sides of Highway 33 in the lower Watershed near the coast. The Ojai oil field comprises
22 1,780 acres of active fields. There are over 700 active oil wells in the Watershed. Aera Energy
23 LLC is the primary oil and gas producer in the Watershed. Beyond oil fields, the Watershed's
24 major industrial land use is in the lower watershed along Ventura Avenue east of the Ventura
25 River. Various manufacturing, construction, processing, and industrial storage facilities occupy
26 this area, a number of which serve as support services to the oil extraction industry.

27
28 **5.3 Instream Uses – *Oncorhynchus mykiss***

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

13
14 The Watershed is home to the Southern California Steelhead fish species with the
15 scientific name *Oncorhynchus mykiss*, which is typically abbreviated as *O. mykiss*. *O. mykiss*
16 have different life history forms, including as Rainbow Trout or as Steelhead Trout. *O. mykiss*
17 that remain in freshwater throughout their lifecycle are referred to as Rainbow Trout and have a
18 resident life history form. *O. mykiss* that migrate to the Pacific Ocean and then return to spawn in
19 freshwater are referred to as Steelhead Trout and have an anadromous life history form. Both life
20 history forms can be produced by a single set of parents depending on a variety of variables.

21
22 The particular anadromous life history form of *O. mykiss* in the Ventura River Watershed
23 has been designated as the Southern California Steelhead Distinct Population Segment. In 1997,
24 the Southern California Steelhead Evolutionarily Significant Unit ("ESU") was listed as
25 endangered under the Federal Endangered Species Act. (62 FR 43937-01.) In 2005, critical
26 habitat for the Southern California Steelhead ESU was designated, including approximately 48
27 miles of the Ventura River and its tributaries within the Ventura River Hydrologic Unit. (70 FR
28

1 52488-01.) In 2006, the Southern California Steelhead Distinct Population Segment was listed as
2 endangered. (71 FR 834-01.)

3
4 The life history of a Southern California Steelhead starts when a female excavates a
5 shallow nest, termed a “redd,” in streambed gravel and deposits eggs, which males then fertilize.
6 The period between fertilization by the male and hatching varies, lasting from about three weeks
7 to two months depending on water temperature and other factors. After the eggs hatch, the young
8 fish remain in the gravel nest for a period of time as they develop (termed “alevins”) before
9 emerging into the surface waters. The young fish, known as fry, emerge from the gravel two to
10 six weeks after hatching. The young *O. mykiss* remain in the creek or river rearing for a period of
11 one to two years as they grow and develop into the parr stage.

12
13 Parr eventually undergo a physiological change known as smoltification that allows them
14 to migrate to saltwater (e.g., the Pacific Ocean). After growing in the marine environment for
15 typically one to four years, steelhead leave the marine environment to reproduce in the freshwater
16 environment (e.g., the Ventura River). Returning adults typically migrate to their natal rivers or
17 streams but can also spawn in non-natal streams. Steelhead, unlike salmon, may survive after
18 spawning and migrate back downstream to the ocean to spawn again the next year. Post-
19 spawning adult steelhead are termed Kelts. Steelhead, primarily females, may spawn two or three
20 times before they die.

21
22 The habitat and flow needs of the Southern California Steelhead are variable depending on
23 the life stage of the species. Primary constituent elements (“PCEs”) have been described by the
24 National Marine Fisheries Service for each life history stage of Southern Steelhead critical habitat
25 as essential to the conservation of the species. (70 FR 52630). The general PCEs for steelhead
26 are described below.

27
28 **5.3.1 Spawning**

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

3
4 **5.3.2 Rearing**

5
6 Freshwater rearing sites with water quantity and floodplain connectivity to form and
7 maintain physical habitat conditions and support juvenile growth and movement; water quality
8 and forage supporting juvenile development; and natural cover such as shade, submerged and
9 overhanging large wood, large rocks and boulders, and juvenile and adult forage, including
10 aquatic invertebrates and fishes, supporting growth and maturation.

11
12 **5.3.3 Migration**

13
14 Freshwater migration corridors free of passage obstruction with water quantity and quality
15 conditions suitable for juvenile and adult movement and survival.

16
17 **5.3.4 Estuary**

18
19 Estuarine areas with water quality, water quantity, and salinity conditions suitable for
20 juvenile rearing and the physiological transitions between fresh- and saltwater (smolting).

21
22 **5.3.5 Marine Areas**

23
24 Nearshore and offshore marine areas with water quality and quantity conditions and
25 forage, supporting growth and maturation.

26
27 **5.4 Protection of Both Instream and Consumptive Uses**

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

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

11
12 **6. INTEGRATION OF PHYSICAL SOLUTION WITH GROUNDWATER**
13 **SUSTAINABILITY PLANS**

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

24
25 ~~Water Code section 10733.6(b)(2) provides that management of a basin pursuant to an~~
26 ~~adjudication action may satisfy SGMA requirements; therefore, a~~ **At the election of each**
27 **respective GSA**, portions of the ~~Physical Solution~~ **Fisheries Management Plan** could be used to
28 **inform the management of** the Upper Ventura River and Ojai Basins ~~in accordance with SGMA.~~

1 The Physical Solution is ~~expressly designed~~intended to address one of the six “undesirable
2 results” ~~that the GSP must avoid~~identified by SGMA— the significant and undesirable
3 depletions of interconnected surface water, here, the impacts to Fishery. (See Water Code §
4 10721 (x)(6).) The Court finds that the Physical Solution ~~addresses~~is intended to address this
5 “undesirable result,” and if they so choose, the GSAs may ~~adopt~~use the information contained in
6 the Fisheries Management Plan~~the Physical Solution to meet the requirements of that portion of~~
7 their GSP. ~~In addition, the Physical Solution and the finally adopted Management Plan will~~
8 ~~include a water management component that could accommodate one or more other requirements~~
9 ~~of the GSPs, and result in avoidance of the other undesirable results. (See Section 6.)~~

10
11 ~~The GSAs, working in consultation with the MC, have the discretion to legally use all or~~
12 ~~any portion of the Physical Solution and/or the Plan as a GSP alternative in accordance with~~
13 ~~Water Code section 10733.6(b)(2)~~

14 15 **7. PHYSICAL SOLUTION**

16 **7.1 Three Phases of the Physical Solution**

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

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

7
8 **7.2 Baseline Conditions – Reach-By-Reach Habitat Assessment and Limiting**
9 **Factors**

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

21
22 The health and habitat needs of the Fishery vary within different portions of the
23 Watershed and the different life stage needs of the species within those different portions of the
24 system. Maintaining the Fishery requires an understanding of suitability and quality of habitat
25 pertinent to the life stage habitat requirements of the species. As identified in the Report, “flows
26 in the Ventura River watershed are variable throughout the year and from year to year.” Report at
27 p. 9. The Watershed is subject to wide variations in precipitation, occasional flooding, periodic
28 large natural disasters such as wildfires, all of which significantly impact the Watershed, its water

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

8
9 There are many different ways to divide the Watershed for purposes of establishing
10 Baseline Conditions and efficient management of the system. Historically, and as a matter of
11 convenience, the Ventura River has been described as having the five reaches that are identified
12 earlier in this Physical Solution. Other methods have described the River as having more than
13 twenty reaches, and the Report uses sixteen reaches. This Physical Solution uses the seven
14 reaches and associated functions and habitat assessment described below, in which reaches are
15 defined based on the habitat requirements of the Watershed and the specific lifecycle needs of the
16 steelhead associated with that habitat. These seven reaches are described in Table 1 and depicted
17 in Exhibit E to this Physical Solution at page E-2, and the Baseline Conditions of each reach at
18 the time of this Physical Solution are described as follows:

19
20 **7.2.1 Reach V1**

21
22 Reach V1 begins at the Pacific Ocean and extends to the Main Street bridge crossing.
23 Reach V1 includes the Ventura River lagoon and estuary. All adult steelhead entering the
24 Ventura River from the Pacific Ocean, and all steelhead out-migrants (juvenile smolts and post-
25 spawning adults) must pass through Reach V1. Steelhead smolts that can reach the estuary from
26 upstream rearing habitats may also continue rearing in the estuary where prey items are generally
27 abundant. However, the area of the historic estuary has been reduced and habitat degraded by
28

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

3
4 **7.2.2 Reach V2**

5
6 Reach V2 begins at the Main Street Bridge from the top end of the Estuary and ends
7 where the Shell Road Bridge crosses over the Ventura River. A major limiting factor in Reach
8 V2 is the presence of extremely dense stands of *Arundo donax* (“**Arundo**”), primrose, and other
9 non-native aquatic macrophytes that choke the river channel and riparian zone, precluding the
10 presence of native plants (especially willows) and blocking both upstream and downstream
11 passage of steelhead. *Arundo* removes surface water (through evapotranspiration) at higher rates
12 (three times the rate) than native plants. Combined with the abundance of non-native common
13 carp that degrade habitat and water quality for steelhead, potential rearing habitat (pools) is
14 severely degraded in Reach V2 at this time. Therefore, under Baseline Conditions, there is no
15 spawning habitat within this reach, and the sole steelhead lifecycle function of Reach V2 is for
16 migration.

17
18 **7.2.3 Reach V3**

19
20 Reach V3 begins at Shell Road bridge and ends at the confluence of San Antonio Creek
21 and the Ventura River. Under Baseline Conditions, reach V3 suffers from *Arundo* infestation,
22 degraded stream habitats, and an absence of boulder clusters. Reach V3 includes Foster Park.
23 The subsurface dam and related facilities in the vicinity of Foster Park sometimes act as barriers
24 or impediments to steelhead migration under certain conditions. Under Baseline Conditions, this
25 reach is primarily a passage corridor for upstream and downstream migrating steelhead.
26 However, spawning and rearing may be supported in certain portions of Reach V3, including in
27 the area of Casitas Springs and at the confluence of San Antonio Creek. The general pattern is
28 that fish that spawn in San Antonio Creek (Reach SA1) move to the confluence of the Ventura

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

3
4 **7.2.4 Reach SA 1**

5
6 Reach SA 1 includes that portion of San Antonio Creek from its confluence with the
7 Ventura River upstream to Fox Canyon. Under Baseline Conditions, San Antonio Creek contains
8 good spawning habitat, and relatively good habitat for young-of-the-year juvenile rearing.
9 However, under Baseline Conditions there is a lack of rearing habitat for older juveniles due to
10 the lack of pools throughout San Antonio Creek. The absence of pool habitat forces rearing
11 juveniles to an early outmigration into the mainstem rearing habitat in Reach V3 adjacent to and
12 downstream from the confluence with the Ventura River. There is also an absence of boulder
13 clusters that would provide velocity refuges and cover, juvenile and adult steelhead holding and
14 foraging sites, substrate for algal and macroinvertebrate production that are important to the food
15 resources for juvenile *O. mykiss* growth and survival and also promote pool formation. The
16 presence of *Arundo* is another limiting factor in this reach. An additional limiting factor in San
17 Antonio Creek is the presence of livestock that, when unconstrained, trample the stream banks,
18 causing sedimentation in the stream channel and spawning beds and reducing riparian vegetation
19 as well as increased nutrient and coliform loading to the creek.

20
21 **7.2.5 Reach V4**

22
23 Reach V4 is located between the confluence with San Antonio Creek and the Robles
24 Diversion Facility. Under Baseline Conditions, this reach includes what is commonly referred to
25 as the “dry reach” downstream of the Robles Diversion Facility that often has intermittent flows
26 or is dry during the summer and fall months. Under dry conditions, adult steelhead are unable to
27 migrate to upper Watershed spawning and rearing habitat, and smolts that are produced in the
28 upper Watershed (Reach V5 and Reach NF 1) are unable to out-migrate through this reach.

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

6
7
8
9
10
11 **7.2.6 Reach V5**

12
13 Reach V5 extends upstream from the Robles Diversion Facility to the confluence of
14 Matilija Creek and North Fork Matilija Creek, including the section below Matilija Dam. Under
15 Baseline Conditions, Reach V5 contains some rearing and spawning habitat. Its primary
16 functions under Baseline Conditions are for migration, spawning, and juvenile rearing, but the
17 presence of non-native predatory largemouth bass in this reach may reduce juvenile steelhead
18 survival.

19
20 **7.2.7 Reach NF 1**

21
22 Reach NF 1 extends from the confluence of North Fork Matilija Creek to the upstream
23 reaches of North Fork Matilija Creek where a complete barrier to upstream migration exists at the
24 Wheeler Gorge Campground. Under Baseline Conditions, Reach NF 1 has good steelhead
25 spawning and rearing habitat where available, with higher densities of *O. mykiss* spawners and
26 both young-of-the-year and older juveniles than reaches in the lower Watershed. This reach has
27 good pool rearing habitat. This reach also includes the presence of residualized
28 steelhead/rainbow trout that support the overall steelhead population. Limiting factors under

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

3
4 **7.2.8 Continuing Jurisdiction is Reserved for Coyote Creek and Cañada**
5 **Larga Tributaries**

6
7 Although no management actions are presently recommended for two tributaries of the
8 Ventura River, they are nevertheless included in this Physical Solution, and the Court retains
9 continuing jurisdiction over them. First, Coyote Creek from Lake Casitas to the confluence with
10 the Ventura River is dry much of the year due to the Lake Casitas Dam, and the habitat in this
11 reach is severely degraded. In addition, on the Cañada Larga tributary, the Highway 33 bridge
12 creates a barrier to steelhead passage, but it cannot reasonably be removed. The adaptive
13 management process in this Physical Solution will allow for the reconsideration of management
14 actions for these two tributaries in the future.

15
16 **7.3 Management Plan Fisheries Management Plan/Mandatory Plan Elements**

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

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

12
13 The required elements of this Plan are set forth in this Section 7.3 of the Physical
14 Solution. During the Adoption Phase, the Parties will create more specific mandatory
15 implementation actions and details to achieve the required elements and adopt the final Plan,
16 subject to Court oversight. During the Implementation and Adaptive Management Phases, the
17 Parties will implement the Plan and regularly measure its success. The Court will retain
18 jurisdiction to ensure Plan implementation and to address material excursions below Baseline
19 Conditions, following the procedures outlined in this Physical Solution. The Plan must include
20 the mandatory elements described in this section.

21
22 **7.3.1 Management Objectives**

23
24 The Plan shall include management objectives, one of which must be to develop and
25 implement actions that are intended to move the condition of the Fishery in the Watershed from
26 the Baseline Conditions to Good Condition, as defined in the Plan and this Physical Solution.

27
28 **7.3.2 Baseline Conditions Refined**

1 The Plan shall provide a more detailed assessment of Baseline Conditions that will include
2 the definition contained herein but shall include additional metrics to assist with determining
3 material excursions below Baseline Conditions and improvements above Baseline Conditions.
4

5 **7.3.3 Healthy Fishery/Good Condition Defined**
6

7 The Plan shall establish detailed criteria to be used to define and measure what constitutes
8 a healthy Fishery and Good Condition in the Watershed. The Plan shall, at a minimum, use the
9 following approach to Good Condition. The recognized method for determining whether a
10 fishery is in good condition is to assess the condition of the fishery at the individual, population,
11 and community level or tiers. Under this method, the Fishery in the Watershed will be considered
12 to be in a Good Condition when the qualitative individual, population, and community conditions
13 described below are being achieved. The naturally high variability in the dynamics of the
14 Ventura River *O. mykiss* population makes quantitative metrics infeasible, and hence this
15 Physical Solution uses qualitative metrics to assess the condition of the Fishery. The qualitative
16 metrics established in the Plan will be assessed based on the weight of the evidence and on the
17 specific functions served by each reach of the Watershed. The general conditions that the Plan
18 must use to assess the condition of the *O. mykiss* population within the Watershed are as follows:
19

20 **7.3.3.1 *O. Mykiss* Population**

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

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

6
7
8
9 **7.3.3.2 *O. Mykiss* Population Diversity**

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

14
15 **7.3.3.3 Condition of Individual *O. Mykiss***

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

20
21 **7.3.3.4 Condition of Overall Watershed *O. Mykiss* Population**

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

26
27 **7.3.4 Habitat Enhancements and Other Specific Watershed Improvement**
28 **Projects**

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

6
7 **7.3.4.1 Fish Passage Improvements 1 – Sub-Surface Interceptor Wall**
8 **at Foster Park**

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

15
16 **7.3.4.2 Fish Passage Improvements 2 – Improvement of the Fraser**
17 **Street Road Crossing**

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

23
24 **7.3.4.3 Gravel Enhancement in Matilija Creek and North Fork**
25 **Matilija Creek**

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

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

5
6 **7.3.4.4 Boulder and Large Woody Material Augmentation in San**
7 **Antonio Creek**

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

11
12 **7.3.4.5 Large Woody Material Augmentation in the Mainstem Ventura**
13 **River at the Confluence with San Antonio Creek**

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

18
19 **7.3.4.6 Arundo Removal**

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

25
26 **7.3.4.7 Reduction of Predator and Non-Native Fish**

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

1 quality (e.g., carp), and are predators (e.g., largemouth bass) on juvenile steelhead. This measure
2 would, subject to permitting, implement some or all of the numerous existing and proven non-
3 native fish removal techniques (e.g., electrofishing, netting, hook and line, spearfishing, etc.).
4
5
6

7 **7.3.4.8 Additional Projects for Further Consideration**

8 The Plan shall describe how the Parties will participate and support other Watershed
9 projects that will help improve on Baseline Conditions and move the Fishery toward Good
10 Condition. For example, long-term plans exist for the removal of Matilija Dam. Removal of the
11 Dam would open access to major historical spawning and rearing grounds for the Fishery.
12 Consistent with the continuing provision of water for existing reasonable and beneficial
13 municipal, agricultural, industrial, or other consumptive uses, the Parties shall support efforts to
14 remove Matilija Dam. This support shall include, but not be limited to, consideration of the
15 adoption of resolutions of support for Dam removal or submission of written letters of support.
16

17 The Plan will also consider other proposed or ongoing Watershed projects, including, but
18 not limited to, improvements to the Live Oaks and Casitas Springs levees, removal of the
19 Wheeler Gorge Campground passage barrier, replacement of the current Grand Avenue fair
20 weather crossing with a free span bridge, addressing various pipeline crossings that could present
21 barriers such as the Casitas pipeline that crosses San Antonio Creek and the Ojai Valley
22 Sanitation District pipeline that crosses San Antonio Creek, brownfield remediation projects,
23 conservation easements or livestock exclusion projects, and land protection projects.
24

25 **7.3.5 Protection of Historical Flow Conditions and Site-Specific Flow**
26 **Enhancement**
27
28

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

12
13 Because the decline in the Fishery is linked most directly to loss of habitat and access
14 thereto, the main actions required by the Plan will focus on improvements to Fishery habitat and
15 Fishery access to habitat. At the same time, however, the Plan must also include specific steps to
16 maintain and, if feasible and consistent with applicable GSPs, enhance Historical Flow
17 Conditions critical to the Fishery. At a minimum, the Plan will address three high priority
18 juvenile steelhead rearing reaches and will protect Historical Flow Conditions in these reaches as
19 follows:

20
21 (1) Foster Park Flow Protocols. The Plan will recognize and include the City's existing
22 water management protocols at Foster Park that meet or exceed requirements to protect Historical
23 Flow Conditions in this reach. The City's implementation of these Foster Park Flow Protocols
24 does not determine or limit its water rights in any way, consistent with this Physical Solution.
25 The City will be responsible for continuing its existing Foster Park Flow Protocols, as described
26 below:

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

4
5 (b) If daily average flows as measured at the VR-1 gage fall below 3.0 cfs on any
6 day of the time period in Section (a) above, the City will also shut down the subsurface
7 intake at the same time as the shutdown in Section (a) above;

8
9 (c) If the daily average flows as measured by the VR-1 gage fall below 4.0 cfs for
10 3 consecutive days, but stay above 3.0 cfs during that period, the City would shut down
11 wells Nye 7 and 8 but would be permitted to continue to operate the subsurface intake
12 until the daily average flows fall below 3.0 cfs for three consecutive days, at which time
13 the City will cease all water extraction at Foster Park until flows return to levels above
14 these thresholds.

15
16 (d) The City shall monitor the impact of pumping on instream flows using the
17 VR1 and VR2 gages. The City shall specifically evaluate the impact of continued
18 pumping at the subsurface intake after the shutdown of wells Nye 7 and 8 pursuant to
19 Sections (a) to (c) above. If monitoring at station VR-2 downstream demonstrates a
20 sustained impact on instream flows after the shutdown of wells Nye 7 and 8, or after the
21 shutdown of the subsurface intake, the City and Channelkeeper shall meet and confer on
22 or before 30 June of the following year to discuss whether continuing to pump
23 groundwater when instream flows fall below 4.0 cfs may occur or whether all Production
24 should stop at 4.0 cfs. If the City and Channelkeeper are unable to agree, either may
25 pursue any available legal remedy they have related to the sole question of whether
26 production should stop at 4.0 cfs by seeking resolution of the issue via the Court pursuant
27 to this Physical Solution.

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

10
11 (f) If the City seeks to modify the Foster Park Flow Protocols pursuant to Section
12 (e) above because it is unable to obtain replacement water from Casitas, the City shall
13 provide Channelkeeper with 30 days written notice, if such notice is feasible in light of
14 water management plans or testing trends, or as much advance notice as is feasible when
15 the inability results from an unexpected event. If the modification is based on the inability
16 to obtain replacement water from Casitas, the City shall implement the following specific
17 water conservation measures in the impacted service area during the emergency period of
18 modification or suspension:

19
20 (i) City Actions

- 21 a. Encourage maximum conservation by all customers and users in
22 the impacted area.
23 b. No outdoor irrigation using potable water will be allowed.
24 c. All water use not required for health and safety is prohibited.
25 d. Suspend the issuance of any new development approvals and
26 new water connections in the impacted area other than those
27 required to be processed by state law. Building permits which do
28 not create new demand for water or which are for emergencies,

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

3 (ii) Water Customer Actions

- 4 a. Comply with mandatory water conservation regulations.
5 b. Prohibition of all outside water use unless necessary for the
6 preservation of health and safety and the public welfare.
7 c. Watering with hand-held five gallon maximum bucket, filled at
8 exterior hose bib or interior faucet (not by hose) shall be allowed at
9 any time. This will assist in preserving vegetable gardens or fruit
10 trees.
11 d. The filling of swimming and wading pools is prohibited;

12
13 (2) San Antonio Creek. The Plan shall identify Historical Flow Conditions and measures
14 to prevent degradation of flows in San Antonio Creek, as measured at the gage at San Antonio
15 Creek (USGS gage 11117500; VCWPD Station 605), and implement monitoring measures to
16 determine whether it is feasible to enhance flows and/or habitat in San Antonio Creek. This will
17 include, but not be limited to, providing incentives and legal certainty to encourage voluntary
18 projects or actions by landowners that have a documented in-stream flow enhancement benefit.
19 Examples of these efforts include projects identified as part of the Ventura River Watershed
20 Instream Flow Enhancement and Water Resiliency Framework; and

21
22 (3) North Fork Matilija Creek. The Plan shall identify Historical Flow Conditions and
23 measures to prevent degradation of Historical Flow Conditions in North Fork Matilija Creek, as
24 measured at the gage at North Fork Matilija Creek (USGS gage 11116000; VCWPD Station 604),
25 and implement monitoring measures to determine whether it is feasible to enhance flows and/or
26 habitat in North Fork Matilija Creek.

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

15
16 **7.3.6 GSP Processes**
17

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

1 ~~further the requirements and objectives of the GSPs. By implementing the Plan to maintain the~~
2 ~~Fishery in a Good Condition, the Parties are avoiding any significant and unreasonable adverse~~
3 ~~impacts to instream beneficial uses that may be associated with Production in the Basins. In~~
4 ~~addition, participation by the Parties in the implementation of the GSPs, once adopted and~~
5 ~~enforced by the GSAs, will assist in the implementation of this Physical Solution.~~ This Physical
6 Solution and the GSPs will therefore complement each other and collectively assist in achieving
7 the goals of both the Physical Solution and SGMA.
8
9
10

11 **7.3.7 Monitoring and Reporting**

12
13 The Plan shall include a specific monitoring and reporting program, including the
14 monitoring of hydrology, precipitation, in-stream flow, surface water-Groundwater interaction,
15 water quality, and Fishery and habitat. At a minimum, the general condition of the Fishery and
16 the Watershed shall be assessed and reported annually as compared to Baseline Conditions. The
17 Plan shall establish a schedule for more detailed monitoring that is based on snorkel surveys or
18 other similar evidence, and could include fish tracking or tagging systems, which shall occur at a
19 minimum every five years. The Plan shall also establish a schedule for more detailed reporting
20 based on these more detailed monitoring efforts. [The Plan shall be developed in a manner that](#)
21 [prevents duplication of efforts for groundwater and surface water monitoring with the GSAs](#)
22 [within the Regulated Basins.](#)
23

24 **7.4 Phasing**

25 The Parties are obligated to implement the Physical Solution to move the conditions in the
26 Watershed from the Baseline Conditions toward Good Condition. Implementation of the Physical
27 Solution will take place in the following three phases:
28

1 **7.4.1 Adoption Phase**

2
3 **7.4.1.1 Term**

4 The period from entry of this Physical Solution through adoption of the Plan shall be
5 defined as the “**Adoption Phase,**” and shall be no longer than eighteen (18) months, unless
6 otherwise extended by the Court upon motion of any Party for good cause shown.
7

8 **7.4.1.2 Required actions during Adoption Phase**

9 During the Adoption Phase, the Parties must perform all the actions listed below
10 (**Adoption Phase Requirements**). Failure to implement the Adoption Phase Requirements will
11 be a violation of this Physical Solution. Adoption Phase Requirements shall be implemented by
12 individual Parties, or through action of the MC to be funded by the Parties.
13

14 **7.4.1.2.1 Formation and Funding of the MC**

15 During the Adoption Phase, certain Parties will organize the MC and provide sufficient
16 funding for the MC and the **Technical Advisor**.
17

18 **7.4.1.2.2 Adoption of the ~~Management Plan~~ Fisheries**

19 **Management Plan**
20 During the Adoption Phase, the Parties must finalize and have the MC adopt the Plan,
21 subject to the Court’s review and approval.
22

23 **7.4.1.2.3 Foster Park Flow Management**

24 The City shall implement the Foster Park Flow Protocols described in Section 7.3.5.
25

26 **7.4.1.2.4 Fish Passage Improvements 1**

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

1 **7.4.1.2.5 Arundo removal**

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

7
8 **7.4.1.2.6 Initiation of Monitoring Program**

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

13
14 **7.4.1.3 Objectives for the Adoption Phase**

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

20
21 **7.4.2 Implementation Phase**

22
23 **7.4.2.1 Term**

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

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

3
4 **7.4.3.2 Required Actions During Adaptive Management Phase**

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

13
14
15
16 **7.4.3.3 Objective for the Adaptive Management Phase**

17 During the Adaptive Management Phase, the Parties anticipate that implementation of the
18 Adaptive Management Phase Requirements will result in improvements above the revised
19 Baseline Conditions, as defined in the updated Plan, and ultimate achievement of Good
20 Condition. If, during each Adaptive Management Phase and subject to Uncontrollable
21 Conditions, there are material excursions below the revised Baseline Conditions as defined in the
22 then current updated Plan, the Court may exercise its continuing jurisdiction pursuant to Section
23 7.5 and, for good cause shown, may require additional actions beyond the Adaptive Management
24 Phase Requirements. Otherwise, achievement of the Adaptive Management Phase Requirements
25 shall be compliance with the Physical Solution.

26
27 **7.5 Role of Court to Enforce Physical Solution**

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

10
11 **7.6 Uncontrollable Conditions**

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

1 **7.7 Management Committee (MC)**

2 **7.7.1 Appointment**

3

4 The Court hereby establishes the MC, which shall be a ~~five-six~~ member board composed

5 of one representative each from the (1) City, (2) Casitas, (3) the Special District Group

6 (consisting of rotating members of VRWD and MOWD), (4) the Agricultural/Mutual Water

7 Company Group (as they may designate in their discretion), ~~(5) Upper Ventura River~~

8 ~~Groundwater Agency~~ and (5) the ~~Groundwater Sustainability Agency Group (consisting of~~

9 ~~rotating members of the Upper Ventura River Groundwater Agency and~~ Ojai Basin Groundwater

10 Management Agency). There shall be two non-voting ex officio members of the MC composed

11 of (1) one representative from the County of Ventura and (2) one environmental stakeholder

12 representative. Each representative shall be an employee, board member, group member, or other

13 qualified designated representative of the designated entity and shall have knowledge of the

14 Watershed, the Fishery, and existing water management activities in the Watershed.

15 Appointments to the MC shall be for provisional terms of five (5) years, subject to the discretion

16 of the Bound Party to substitute designees. This means, each member of the MC is subject to re-

17 designation by the Bound Party subject to this provision, a reappointment a minimum of every

18 five (5) years. An Agricultural/Mutual Water Company representative must be a designee of a

19 Bound Party that has produced an amount equal to or greater than an average of one-hundred

20 (100) AFY in the five (5) year period immediately preceding the appointment. The MC, subject

21 to Court oversight, shall be primarily responsible for implementing this Physical Solution.

22

23 **7.7.2 Assessment to Fund Plan Development and Implementation**

24

25 The MC shall adopt an annual budget each year for the purpose of implementing and

26 administering this Physical Solution. Any portion of the budgeted costs not funded by Party

27 grants, third party grants, parcel taxes and benefit assessments will be funded by an assessment

28 levied upon those Parties to the Judgment that produce water in quantities greater than *De*

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

10
11 The MC shall base its Annual Assessment on the five-year average usage of all Producers
12 above *De Minimis*. The budgeted costs to implement the Plan and the Physical Solution shall be
13 apportioned pro rata in an amount equal to each Producer’s percentage share of the total
14 Watershed water production in five-year increments. This means that the initial Annual
15 Assessment will be based upon the use in the five years immediately preceding the
16 commencement of the Implementation Phase and will continue to be the basis for levying
17 assessments during the first five-year period (the “**Producer’s Percentage**”). Thereafter, the
18 Producer’s Percentage shall be recalculated every five years and will be an amount equal to the
19 Producer’s average annual percentage share of the total Watershed water production as measured
20 over the immediately preceding five-year period.

21
22 The Producers are encouraged to propose measures that will reduce the individual and
23 cumulative costs of implementing the Plan and the Physical Solution. The MC shall develop,
24 within six (6) months of its establishment, procedures for Producers to apply for credits as off-
25 sets against the Annual Assessments for verified in-kind contributions that are approved in
26 advance by the MC and implement approved elements of the Plan or actions required by the
27 Physical Solution, including but not limited to Arundo, debris, and trash removal. In addition, the
28 MC shall develop procedures for Producers to apply for credits against the assessment for the

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

7
 8 In order to insure that sufficient funding exists to implement the Adoption Phase, and
 9 subject to subsequent pro-rata reimbursement derived through Annual Assessments levied upon
 10 other unnamed Producers, the following Producer parties shall advance funding in excess of their
 11 Producer's Percentage as needed to implement the Adoption Phase based on the following
 12 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%

21
 22
 23 The MC shall develop an equitable process by which the funding advanced by these initial
 24 parties during the Adoption Phase shall be reimbursed or credited against future assessments
 25 during the Implementation and Adaptive Management Phases. As noted above, however, the
 26

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

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

3
4 In addition, the MC will exercise good faith in considering and supporting reasonable
5 efforts of any one or more public agencies who may, in their discretion, wish to use their
6 individual powers through existing legal processes to seek to finance some or all of the
7 implementation costs through a special parcel tax or a property-based benefit assessment. The
8 Parties acknowledge that under existing law, a special parcel tax is a tax levied against property
9 within the Watershed, as authorized under article XIII A of the California Constitution, article
10 XIII D, section a(2) of the California Constitution, California Government Code section 37100.5,
11 Government Code section 50075 *et seq.*, and any other provision of law authorizing such public
12 agency to impose a parcel tax (including, for example, the Mello-Roos Community Facilities Act
13 of 1982, Government Code section 53311 *et seq.*). Subject to limitations existing in applicable
14 law authorizing such parcel tax, a public agency may determine a methodology for allocating the
15 costs of watershed management to parcels within the watershed, provided that the parcel tax may
16 not be based on the assessed value of any parcel. A parcel tax may not be levied by any public
17 agency until that tax is submitted to the electorate and approved by a two-thirds vote.

18
19 The Producers further acknowledge that public agencies may also levy a property-based
20 benefit assessment on property within the Watershed. Assessments are subject to the provisions
21 of article XIII D of the California Constitution, and Government Code section 53750 *et seq.*
22 (commonly known as Proposition 218). Assessments may not exceed the proportional specific
23 benefit conferred on any parcel subject to the assessment, and the methodology for allocating
24 such specific benefit in a proportionate manner must be supported by a detailed engineer's report
25 prepared by a registered professional engineer certified by the State of California. Special
26 benefits include benefits to parcels that are distinct and separate from general benefits conferred
27 to the public at large. The public agency may not levy an assessment on property unless the
28 public agency has first held a notified public hearing and balloting proceeding, and received

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

3
4 Following the expiration of the eighteen (18) month Adoption Phase, the ten (10) year
5 Implementation Phase, and the first eighteen (18) months of the Adaptive Management Phase
6 (being a total period of fifteen (15) years), a Producer may make application to the MC, and
7 thereafter to the Court, to have the amount of their annual per acre foot assessment derived from
8 their Producer's Percentage reduced by an amount equal to their pro rata share of monitoring
9 costs incorporated into their Producer's Percentage on the grounds that the percolating
10 Groundwater they pump is not hydrologically interconnected to the Ventura River. The Producer
11 making this request bears the burden of proof of demonstrating by a preponderance of the
12 evidence that there is no material hydrologic connection between their pumping of Groundwater
13 and flow in the Ventura River. The reduction is applicable to the cost of monitoring only. The
14 ongoing administrative costs, including legal expenses, incurred by the MC are not subject to this
15 provision. The initial demonstration will be made to the MC and reviewable, *de novo*, by the
16 Court.

17
18 This cost allocation methodology provided herein is the result of a compromise for
19 purpose of agreed funding and is not an admission, express or implied, that there is a hydraulic
20 interconnection between percolating Groundwater and water flowing within a known and defined
21 channel of the Ventura River. Moreover, by agreeing to this method of cost-allocation for the
22 purpose of funding the Physical Solution and the Plan, the Producers are expressly reserving all
23 rights, whatever they may be, concerning whether there is a hydrologic interconnection between
24 the Ventura River – including subsurface flow in a known and defined channel – and percolating
25 Groundwater. This reservation includes the Party's right to oppose further measures not
26 expressly authorized by the Physical Solution and Plan on the grounds there is no actual
27 hydrologic interconnection between the production of percolating Groundwater and the Ventura
28

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

3
4 Imposition of the cost allocation methodology provided herein is expressly subject to the
5 condition precedent of the Court ordering the imposition of this Physical Solution and Plan,
6 inclusive of this methodology being binding on all Producers of water from the Watershed in
7 amount greater than or equal to five (5) AFY (non *De Minimis* Producers).

8
9 **7.7.3 Powers and Duties**

10
11 The MC shall carry out its powers, duties, and responsibilities in an impartial manner
12 without favor or prejudice to any Bound Party. Subject to the continuing supervision and control
13 of the Court, the MC shall have and may exercise the following express powers and duties,
14 together with any specific power and duties set forth elsewhere in this Physical Solution or
15 ordered by the Court:

16
17 **7.7.3.1 Selection of the Technical Advisor**

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

21
22 **7.7.3.2 Adoption of Rules and Regulations**

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

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

3
4 **7.7.3.3 Consideration and Adoption of the Plan and Amendments to**
5 **the Plan**

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

7
8 **7.7.3.4 Voting Requirements**

9 All decisions of the MC shall be by simple majority of its Voting Members (as defined
10 below) provided that, to be valid and binding, the following decisions of the MC set forth in
11 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
12 Parties with greater than one hundred (100) AFY annual average water production during the five
13 years immediately preceding the vote (notwithstanding that a Bound Party may have no designee
14 on the MC) or (ii) a volume vote of 80% of the Bound Parties based upon the cumulative
15 production of water in the Watershed that occurred in the five years immediately preceding the
16 vote. The vote will be conducted by written ballot pursuant to rules and regulations promulgated
17 by the MC. ~~For the avoidance of doubt, T~~he presence of the two non-voting ex officio members
18 shall not be counted for purposes of determining whether a quorum exists for MC meetings and
19 actions taken.

20
21 Voting by the Voting Members shall be made on the basis of one vote for each Member,
22 provided however that if the matter to be voted on exclusively concerns one of the Regulated
23 Basins and not the other, the Voting Member appointed by the GSA representing an unaffected
24 Basin may participate in Board discussions of the matter but shall not vote on the matter.
25 Examples of matters that exclusively concern one of the Basins and not the other include, without
26 limitation, management activities located in one Basin and not the other, monitoring activities in
27 one Basin and not the other, assessments adopted pursuant to Section 7.7.2 applicable to one
28

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

3
4 **7.7.3.4.1 Execution of Agreements**

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

7
8 **7.7.3.4.2 Approval of Proposed Modifications to the**
9 **Implementation and Adaptive Management Measures Set forth in the Physical Solution and**
10 **the Plan**

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

18
19 **7.7.3.4.3 Increases in Annual Assessments within a Phase**

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

23
24 **7.7.3.5 Employment of Experts and Agents**

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

1 **7.7.3.6 Notice List**

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

8
9 **7.7.3.7 Annual Budget**

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

16
17 **7.7.3.8 Unauthorized Actions**

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

20
21 **7.7.3.9 Meetings and Records**

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

1 **7.7.3.10 Coordination with Groundwater Sustainability Agencies**

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

7
8 **7.7.4 Technical Advisor**

9
10 The Technical Advisor shall be appointed by the MC and shall report to the MC and the
11 Court. The Technical Advisor shall have the following duties.

12
13 **7.7.4.1 Monitoring Condition of the *O. mykiss* Population**

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

16
17 **7.7.4.2 Monitoring Implementation of Required Management**
18 **Measures**

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

21
22 **7.7.4.3 Measuring Devices**

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

26
27 **7.7.4.4 Production Reports; Current Production Baseline**

September 15, 2020

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

14
15 *De Minimis* Producers shall file an annual report under penalty of perjury pursuant to
16 Section 7.7.4.6 below sufficient to demonstrate that they qualify as *De Minimis* Producers. *De*
17 *Minimis* Producers may also elect to file annual Production Reports with the MC to document
18 their historical water Production.

19
20 Non-Producers owning inactive Production wells shall file with the MC evidence of their
21 inactive Production well status on a form to be developed and promulgated by the Technical
22 Advisor. Non-Producers claiming an unexercised right to Produce water from the Watershed
23 may also elect to provide the MC with evidence of such a claim. In evaluating notices of **New**
24 **Production**, the MC shall consider such prior claims filed with the MC.

25
26 The Technical Advisor shall also pursue State Board designation in accordance with
27 Water Code section 5009 such that Producers must only file Production Reports with the MC. In
28 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.

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

8
9 **7.7.4.5 New Production**

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

23
24 **7.7.4.6 De Minimis Producer**

25 Except as set forth below, a *De Minimis* Producer shall be defined as any existing and
26 New Production that is limited to less than five (5) AFY. To qualify as a *De Minimis* Producer, a
27 Producer shall file an annual *De Minimis* production report with the MC, in a form consistent
28

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.

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

3
4 Pursuant to Water Code Section 10737.2, *De Minimis* Producers in a Regulated Basin
5 shall be defined as any existing and New Production that is limited to less than two (2) AFY. The
6 qualifications for *De Minimis* producers shall be set forth on the GSP for each Regulated Basin.

7
8 **7.7.4.7 Diversion of Flow**

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

16
17 **7.7.4.8 Data, Estimates, and Procedures**

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

23
24 **7.7.4.9 Status Reports**

25 **7.7.4.9.1 Contents of the Annual Report**

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

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

9
10 **7.7.4.9.2 Long Term Reporting**

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

15
16 **7.7.4.9.3 Filing of Reports**

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

Comment [B3]: Report should be aligned with SGMA reporting schedule, which follows the water year. SGMA annual reports are due on April 1.

1 **7.7.5 Removal of the MC**

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

11
12 **7.7.6 Court Review of MC Actions**

13
14 Any action, decision, rule, regulation, or procedure of the MC or the Technical Advisor
15 pursuant to this Physical Solution shall be subject to review by the Court on its own motion or on
16 the timely motion by any Bound Party as follows:

17
18 **7.7.6.1 Effective Date of MC Action**

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

21
22 **7.7.6.2 Notice of Motion**

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

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

3
4 **7.7.6.3 Time for Motion**

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

8
9 **7.7.6.4 Standard of Review**

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

16
17 **7.7.6.5 Decision**

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

21
22 **7.8 Dispute Resolution**

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

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

14
15 **7.9 Need for Flexibility**

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

19
20 **8. FINDINGS**

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

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

5
6 The Court finds, in accordance with Code of Civil Procedure section 830(a)(4), that this
7 Physical Solution is intended to be consistent with the achievement of Groundwater sustainability
8 within the timeframes of SGMA. Specifically, GSPs are designed to attain sustainability by
9 avoiding “undesirable results.” Water Code section 10721 defines “undesirable results” as
10 including “depletions of interconnected surface water that have significant and unreasonable
11 adverse impacts on beneficial uses of surface water.” Because the imposition of the Physical
12 Solution will coordinate actions by water right holders in a manner that avoids adverse impacts to
13 beneficial uses of surface water, it will-is anticipated that it will assist in the avoidance of
14 undesirable results and aid in the development and implementation of GSPs.

15
16 The Court has considered existing water management plans and programs, and also finds
17 that the Physical Solution is consistent with the water management and conservation goals
18 contained in the following Water Management Plans:

- 1 • The March 2015 Ventura River Watershed Management Plan adopted by the
2 Ventura River Watershed Council, available at [http://venturawatershed.org/the-](http://venturawatershed.org/the-watershed-plan)
3 [watershed-plan](http://venturawatershed.org/the-watershed-plan).
- 4
- 5 • Groundwater Management Plan – 2018 Update, Ojai Valley Groundwater Basin
6 adopted by the Ojai Basin Groundwater Management Agency, available at
7 [http://obgma.com/wp-content/uploads/2018/09/OBGMA-GMP-2018-Update-](http://obgma.com/wp-content/uploads/2018/09/OBGMA-GMP-2018-Update-Final-8-30-18s.pdf)
8 [Final-8-30-18s.pdf](http://obgma.com/wp-content/uploads/2018/09/OBGMA-GMP-2018-Update-Final-8-30-18s.pdf).
- 9

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

18

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

1 use must be undertaken consistent with the Physical Solution and the management measures that
2 will ensure the availability of water for consumptive uses, regardless of water right, while
3 simultaneously maintaining the Fishery in Good Condition and for the protection of public trust
4 resources as provided herein consistent with *National Audubon Society v. Superior Court* (1983)
5 33 Cal.3d 419. However, while the quantification of individual rights and declaration of relative
6 priorities among Bound Parties is not needed at the present time, it is expressly reserved, without
7 prejudice for future determination as may be required by the Court at a later date, as necessary to
8 maintain and implement the Physical Solution or as may be requested by a Party upon a showing
9 that the Physical Solution is injurious to a Party's water right, the priority of that right, or for
10 other good cause. The Court reserves its discretion within its continuing jurisdiction to issue
11 further orders in furtherance of the Physical Solution including the quantification of use and
12 declaration of relative rights among some or all of the Bound Parties.

13
14 Through this Physical Solution, the Bound Parties are obligated to implement the
15 ~~Management Plan~~ Fisheries Management Plan that is designed to maintain the Southern California
16 Steelhead population inhabiting the Ventura River Watershed in Good Condition, consistent with
17 Article X, section 2 of the California Constitution and the public trust doctrine. The Bound
18 Parties will implement this obligation through the Physical Solution to manage the steelhead
19 population described below. The Physical Solution is based on the existing scientific literature
20 addressing steelhead in the Watershed, including information contained in the Report, and the
21 following reach-by-reach assessment of the Watershed.

22
23 **9. ENFORCEMENT**

24 **9.1 Production in Compliance with Physical Solution**

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

1 **9.2 Continuing Jurisdiction**

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

20
21 **10. MISCELLANEOUS PROVISIONS**

22 **10.1 Actions Not Subject to CEQA**

23 Nothing in this Physical Solution, or in the implementation thereof, or the decisions of any
24 entity acting under the authority of this Physical Solution, including the MC, shall be deemed a
25 “project” subject to the California Environmental Quality Act (“CEQA”). (See e.g., *California*
26 *American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, and *Hillside Memorial Park &*
27 *Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534). No Board, committee, or
28

1 entity formed pursuant to this Physical Solution shall be deemed a “public agency” subject to
2 CEQA. (See Public Resources Code §21063.)
3

4 **10.2 Designation for Notice and Service**

5 Each Bound Party shall designate a name, address, and email address to be used for
6 purposes of all subsequent notices and service herein, either by its endorsement on this Physical
7 Solution or by a separate designation to be filed within thirty (30) days after entry of this Physical
8 Solution. A Bound Party may change its designation by filing a written notice of such change
9 with the MC. If no designation is made, a Bound Party’s designee shall be deemed to be, in order
10 of priority: i) the Bound Party’s attorney of record; ii) if the Bound Party does not have an
11 attorney of record, the Bound Party itself at the address specified on the MC’s list.
12

13 **10.3 Transfer of Real Property**

14 Any Bound Party transferring any real property subject to this Physical Solution shall
15 notify the transferee of the existence of the Physical Solution and its binding effect on the real
16 property; provide grantee with a copy of the Physical Solution; and notify the MC of the transfer
17 and file a written notice of transfer within ten (10) days after the transfer of the real property,
18 stating the name, address, email address, and other contact information of the transferee.
19 Transferee shall become a Bound Party, and if necessary, City shall substitute the transferee as
20 Cross-Defendant pursuant to Code of Civil Procedure section 368.5.
21

22 **10.4 Service of Documents**

23 Unless otherwise ordered by the Court, delivery to or service to any Bound Party by the
24 Court or any Bound Party of any document required to be served upon or delivered to any Bound
25 Party pursuant to this Physical Solution shall be deemed made if by electronic service. All
26 notices or service of documents pursuant to this Physical Solution by MC or any Bound Party will
27 be made by electronic mail to the greatest extent feasible.
28

1 **10.5 No Abandonment of Rights**

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

7
8 **10.6 Intervention after Entry of Physical Solution**

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

14
15 **10.7 Physical Solution Binding on Successors**

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

19
20 **10.8 Costs and Fees**

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

23
24 **10.9 Heading and Section References**

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

1 **10.10 No Third Party Beneficiaries**

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

4
5 **10.11 Severability**

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

8
9 **10.12 Cooperation and Further Acts**

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

13
14 **10.13 Exhibits and Other Writings**

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

18
19 **10.14 No Limitation on Statutory Authority.**

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

23
24
25 Dated: _____

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

September 15, 2020

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Exhibit A – Defined Terms

Exhibit A

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.

- 1 12. **Bound Parties**. The Parties and property bound by this Physical Solution and
2 their successors. This includes persons served a summons or a notice, owners of
3 real property overlying the Basins, the State Water Resources Control Board, the
4 California Department of Fish and Wildlife, Santa Barbara Channelkeeper, and
5 any other Person joining this adjudication.
- 6 13. **Casitas**. Cross-Defendant Casitas Municipal Water District.
- 7 14. **Casitas Biological Opinion**. An opinion issued by the National Marine Fisheries
8 Service for operation of the Robles Diversion and Fish Passage Facility.
- 9 15. **Casitas License**. The license issued by the State Board for operation of the
10 Robles Diversion and Fish Passage Facility.
- 11 16. **CEQA**. The California Environmental Quality Act, Public Resources Code,
12 section 21000, *et seq.*
- 13 17. **Cfs**. Cubic feet per second.
- 14 18. **Channelkeeper**. Plaintiff Santa Barbara Channelkeeper.
- 15 19. **City**. Defendant and Cross-Complainant City of San Buenaventura.
- 16 20. **City Settlement**. The settlement agreement executed by Channelkeeper and the
17 City on September 30, 2019, as amended on August 20, 2020.
- 18 21. **Complaint**. The Complaint and Petition for Declaratory Relief and a Writ of
19 Mandate filed by Channelkeeper in the County of San Francisco Superior Court
20 (Case No. CPF-14-513875), and as thereafter amended in this Action.
- 21 22. **Comprehensive Adjudication Statutes**. Code of Civil Procedure sections 830
22 through 852.
- 23 23. **Conditional Waiver**. The Conditional Waiver of Waste Discharge Requirements
24 for Discharges from Irrigated Lands in the Los Angeles Region.
- 25 24. **Cross-Defendants**. Those Parties named as defendants in the Amended Cross-
26 Complaint and those Persons who filed an answer to the Amended Cross-
27 Complaint.
- 28

- 1 25. ***De Minimis*** Producer or Production. Any existing or New Production that is
2 limited to less than five (5) AFY.
- 3 26. **Department**. The California Department of Fish and Wildlife.
- 4 27. **DWR**. The California Department of Water Resources.
- 5 28. **Endangered Species Act**. The Endangered Species Act, 16 U.S.C. section 1531,
6 et seq.
- 7 29. **ESU**. The Southern California Steelhead Evolutionarily Significant Unit listed as
8 endangered under the federal Endangered Species Act in 1997.
- 9 30. **Fishery**. The Southern California Steelhead population in the Ventura River
10 Watershed.
- 11 **31. Fisheries Management Plan or Plan. The Management Plan described in**
12 **Section 7.3 of this Physical Solution.**
- 13 31.32. **Good Condition**. The condition of the Fishery in the Watershed when the
14 qualitative individual, population, and community conditions described in the
15 Physical Solution and in the Plan are being achieved.
- 16 32.33. **Groundwater**. Water beneath the surface of the earth within the zone below the
17 water table in which the soil is completely saturated with water, but not including
18 water that flows in known and definite channels.
- 19 33.34. **GSA**. Groundwater Sustainability Agency as that term is defined in Water Code
20 section 10721(j).
- 21 34.35. **GSP**. Groundwater Sustainability Plan as that term is defined in Water Code
22 section 10721(k).
- 23 35.36. **Historical Flow Conditions**. Flows in the Watershed in the pre-development
24 period generally before 1958 as determined from gages at Foster Park (gage 8500),
25 San Antonio Creek (gage 7500), and North Fork Matilija Creek (gage 6000).
- 26 36.37. **Implementation Phase**. The period commencing after adoption of the Plan and
27 concluding ten years thereafter.
- 28

1 37.38. **Implementation Phase Requirements.** The actions required to be taken by the
2 Parties during the Implementation Phase as described further in Section 7.4.2 of
3 this Physical Solution.

4 38.39. **Judgment.** The Judgment entered by the Court in this Action that imposes the
5 Physical Solution.

6 39.40. **Long Term Report.** The report prepared by the Technical Advisor to be filed
7 with the Court, as more particularly described in Section 7.7.4.9 of this Physical
8 Solution.

9 40.41. **Lower Ventura River Basin.** The Groundwater Basin designated as Number 4-
10 302 by DWR Bulletin 118 and as more particularly described in Section 4.3.1 of
11 this Physical Solution.

12 41.42. **MC.** The Management Committee, which is a five member board composed of
13 one representative each from the (1) City, (2) Casitas, (3) the Special District
14 Group (consisting of rotating members of VRWD and MOWD), (4) the
15 Agricultural/Mutual Water Company Group (as they may designate in their
16 discretion) and (5) the Groundwater Sustainability Agency Group (consisting of
17 rotating members of the Upper Ventura River Groundwater Sustainability Agency
18 and Ojai Basin Groundwater Management Agency). There shall be two non-
19 voting ex officio members of the MC composed of (1) one representative from the
20 County of Ventura and (2) one environmental stakeholder representative. Each
21 representative shall be an employee, board member, group member, or other
22 qualified designated representative of the designated entity and shall have
23 knowledge of the Watershed, the Fishery and existing water management activities
24 in the Watershed. The MC, subject to Court oversight, shall be primarily
25 responsible for causing the Parties to implement this Physical Solution.

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

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

- 1 44. **New Production.** Any Production from the Watershed by a Person who did not
2 Produce water from the Watershed prior to January 2, 2020.
- 3 45. **Non-Producer(s).** A Person who owns real property within the Watershed who is
4 not presently Producing water and did not do so any time during the five years
5 preceding January 2, 2020 and who may claim the right to Produce water from the
6 Watershed.
- 7 46. **Ojai GMA.** The Ojai Basin Groundwater Management Agency.
- 8 47. **Ojai Valley Basin.** The Groundwater Basin designated as Number 4-2 in DWR's
9 Bulletin 119 and as more particularly described in Section 4.3.3 of this Physical
10 Solution.
- 11 48. **Party (Parties).** The parties to this Action and their successors. This may be a
12 subset of Bound Parties depending on context and intent in the judgment or
13 Physical Solution.
- 14 49. **PCEs.** Primary constituent elements.
- 15 50. **Person.** Any natural person, firm, association, organization, joint venture,
16 partnership, business, trust, corporation, or public entity.
- 17 51. **Physical Solution.** Stipulated Physical Solution and Judgment contained herein.
- 18 52. **Produce (Production).** To pump, extract, or divert water.
- 19 53. **Production Report.** A Production Report is an annual report required to be
20 submitted by the certain Parties consistent with Water Code section 4999 et seq.,
21 and providing the information on historical water use required by Water Code
22 section 5002, as set forth in Section 7.7.4.4.
- 23 54. **Producer(s).** A Person who Produces water.
- 24 55. **Report.** The Department's Instream Flow Regime Criteria on a Watershed Scale
25 for the Ventura River dated March 2020 (Watershed Criteria Report No. 2020-01).
- 26 **56. Regulated Basins. The two Basin that are regulated under SGMA: the Upper Ojai**
27 **Valley Basin and the Upper Ventura River Basin.**

1 56.58. **SGMA**. The Sustainable Groundwater Management Act, Water Code section
2 10720, *et seq.*

3 57.59. **Southern California Steelhead or Steelhead**. The particular anadromous life
4 history form of *O. mykiss* in the Ventura River Watershed.

5 58.60. **State Board**. The California State Water Resources Control Board.

6 59.61. **Status Reports**. The Annual Report and Long Term Reports prepared by the
7 Technical Advisor to be filed with the Court, as more particularly described in
8 Section 7.7.4.9 of this Physical Solution.

9 60.62. **Technical Advisor**. The advisor selected by the MC with the necessary training,
10 experience, and education to provide technical oversight of the implementation
11 and performance of the Fishery management program outlined in this Physical
12 Solution and to make recommendations to the MC.

13 61.63. **Uncontrollable Conditions**. Any circumstance beyond the Parties' control,
14 including without limitation, any act of God, war, fire, earthquake, flood,
15 windstorm, drought or natural catastrophe, including climate change; the need to
16 provide a minimum amount of reasonable and beneficial consumptive use of water
17 from the Watershed; criminal acts; civil disturbance, vandalism, sabotage, or
18 terrorism; restraint by court order or public authority or agency; or action or non-
19 action by, or inability to obtain the necessary authorizations or approvals from any
20 governmental agency.

21 62.64. **Upper Ojai Valley Basin**. The Groundwater Basin designated as Basin Number
22 4-1 in DWR's Bulletin 118 and as more particularly described in Section 4.3.4 of
23 this Physical Solution.

24 63.65. **Upper Ventura River Basin**. The Groundwater Basin designated as Basin
25 Number 4-3.01 in DWR's Bulletin 118 and as more particularly described in
26 Section 4.3.2 of this Physical Solution.

27 64.66. **VCAILG**. The Ventura County Agricultural Irrigation Lands Group.

28 65.67. **VRWD**. The Ventura River Water District.

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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

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Exhibit B

September 15, 2020

Exhibit C – List of Parcels

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Exhibit C

September 15, 2020

Exhibit D – List of Defaulted Cross-Defendants –
To be Completed with Court Confirmation

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Exhibit D

September 15, 2020

Exhibit E – Watershed and Basin Maps

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Exhibit E

Item 7

Attachment C

**Ventura River Water District UVRGA Director Appointment
Resolution**

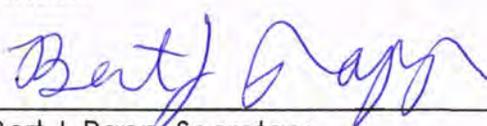
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WE, THE UNDERSIGNED, do hereby certify that the above and foregoing Resolution No. 2020 - 328 was duly adopted and passed by the Board of Directors of the Ventura River Water District at a regularly scheduled meeting held on the 21ST day of October, 2020, by the following vote:

AYES: E. Lee, J. Curtis, N. Rosser, B. Kuebler
NOES: None
ABSENT: P. Wiles



Ed Lee, President
Ventura River Water District

ATTEST:


Bert J. Rapp, Secretary

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

DATE: November 12, 2020

TO: Board of Directors

FROM: Executive Director

SUBJECT: Adjudication Coordination Update

SUMMARY

Due to budget concerns, Director Spandrio requested this item during the October 8, 2020 Board meeting. The following is a summary of adjudication coordination activities and estimated costs to date.

During the August 13, 2020 Board meeting, Director Rungren told the Board that the City of Ventura was planning to meet with the Executive Director to review the forthcoming physical solution proposal. Director Rungren indicated a desire to avoid duplication of efforts with the Agency.

The City scheduled a web meeting with the Executive Director and Agency Counsel on September 14, 2020 to provide an overview of the proposed physical solution. The City requested feedback on the proposed physical solution and offered to have Agency staff attend a series of physical solution presentations to learn more. The presentations were held as part of the litigation meet and confer process.

The proposed physical solution was released to the public on September 15, 2020.

The Executive Director and Agency Counsel executed the confidentiality agreements required as a condition of participation in the meet and confer process presentations (Exhibit A of Attachment A). The Executive Director and/or Agency Counsel then attended four on-line presentations concerning the proposed physical solution. Three were held prior to the October 8, 2020 Board meeting. The fourth presentation took place on October 15, 2020.

The Executive Director and Agency Counsel prepared draft comments on the proposed physical solution for Board review during the October 8, 2020 Board meeting. Pursuant to Board direction, the Executive Director and Agency Counsel finalized the comments and submitted them on October 13, 2020 (see Item 7, Attachment B).

No further coordination activities have taken place since October 15, 2020. Staff anticipates additional discussions may be required after the proposing parties have had an opportunity to consider the Agency's comments. Staff also proposes to request certain information from the proposing parties that it feels will be helpful for GSP development. This request may require additional coordination. No other activities are planned at this time.

Estimated costs for adjudication coordination are as follows:

- September 2020
 - Agency Counsel: \$2,240
 - Executive Director: \$1,365

- October 2020
 - Agency Counsel: Not yet billed (assume ~ \$1,800)
 - Executive Director: \$1,170

During the October 8, 2020 Board meeting, Director Spandrio expressed concerns about unbudgeted adjudication coordination expenses. Although the coordinate activities are not explicitly listed in the budget, they may be considered to fall within the general duties of Agency Counsel and the Executive Director. Based on the information obtained to date, staff believes coordination efforts will help streamline the GSP development process and reduce Agency costs in the long run. Therefore, staff recommends continued coordination, where feasible and as appropriate.

RECOMMENDED ACTIONS

Receive an update concerning staff and counsel efforts to coordinate with the adjudication process and consider providing feedback to staff.

ATTACHMENTS

- A. Notice of Scheduling of Meet and Confer Conferences

Action: _____

Motion: _____ Second: _____

B. Kuebler ___ D. Engle ___ A. Spandrio ___ S. Rungren ___ G. Shephard ___ E. Ayala ___ L. Rose ___

Item 8a

Attachment A

Notice of Scheduling of Meet and Confer Conferences

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

5 CHRISTOPHER M. PISANO, Bar No. 192831
christopher.pisano@bbkllaw.com
6 SARAH CHRISTOPHER FOLEY, Bar No. 277223
sarah.foley@bbkllaw.com
7 Best Best & Krieger LLP
300 South Grand Avenue, 25th Floor
8 Los Angeles, California 90071
Telephone: (213) 617-8100
9 Facsimile: (213) 617-7480

10 Attorneys for Respondent and Cross-Complainant

11 CITY OF SAN BUENAVENTURA

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 SPRING STREET COURTHOUSE

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

17 Petitioner,

18 v.

19 STATE WATER RESOURCES CONTROL
BOARD, a California State Agency; CITY OF
20 SAN BUENAVENTURA, a California
municipal corporation, etc.,

21 Respondents.

22
23 CITY OF SAN BUENAVENTURA, a
California municipal corporation,

24 Cross-Complainant

25 v.

26 DUNCAN ABBOTT, an individual, et al.

27 Cross-Defendants.
28

Case No. 19STCP01176

Exempt From Filing Fees Pursuant to Cal.
Gov't Code § 6103

**NOTICE OF DISSEMINATION OF
PROPOSED PHYSICAL SOLUTION
AND JUDGMENT**

Action Filed: September 19, 2014
Trial Date: Not Set

FAC Filed: September 7, 2018

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TO ALL PARTIES AND TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 15, 2020, Cross-Defendants Ventura River Water District, Meiners Oaks Water District, Rancho Matilija Mutual Water Company and the Wood-Claeysens Foundation, and Cross-Complainant and Respondent City of San Buenaventura (“City”) (collectively “Proposing Parties”) disseminated a proposed Physical Solution and Judgment for the Ventura River watershed in accordance with the schedule set forth in the August 10, 2020 Status Report.

The Proposing Parties commit that between September 15 and October 30, 2020, they will meet and confer with all parties to this action regarding the Proposed Physical Solution. During this time the Proposing Parties will make their expert consultants available once per week for a telephone call or other virtual meeting during which time the other parties will be able to ask questions regarding the scientific bases for the terms in the Physical Solution, provided that such parties must sign the attached written agreement, which provides that all such communications will be for settlement purposes only, and that the communications with the Proposing Parties or their consultants shall not be deemed a waiver of the attorney-client privilege, attorney work product doctrine or any other applicable privilege.

Dated: September 15, 2020

BEST BEST & KRIEGER LLP

By: 
SHAWN HAGERTY
CHRISTOPHER M. PISANO
SARAH CHRISTOPHER FOLEY
Attorneys for Respondent and
Cross-Complainant CITY OF
SAN BUENAVENTURA

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Dated: September 15, 2020

BROWNSTEIN HYATT FARBER SCHRECK
LLP

By: 

SCOTT SLATER
BRADLEY HERREMA
CHRISTOPHER GUILLEN

Attorneys For Cross-Defendant
WOOD-CLAEYSSSENS FOUNDATION

Dated: September 15, 2020

HERUM CRABTREE SUNTAG

By: _____
JEANNE ZOLEZZI

Attorneys For Cross-Defendants
MEINERS OAKS WATER DISTRICT
AND VENTURA RIVER WATER
DISTRICT

Dated: September 15, 2020

FERGUSON CASE ORR PATTERSON LLP

By: _____
NEAL P. MAGUIRE

Attorneys For Cross-Defendants
RANCHO MATILJA MUTUAL
WATER COMPANY; BETTINA
CHANDLER, TRUSTEE OF THE
BETTINA CHANDLER TRUST

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Dated: September 15, 2020

BROWNSTEIN HYATT FARBER SCHRECK
LLP

By: _____

SCOTT SLATER
BRADLEY HERREMA
CHRISTOPHER GUILLEN

Attorneys For Cross-Defendant
WOOD-CLAEYSSSENS FOUNDATION

Dated: September 15, 2020

HERUM CRABTREE SUNTAG

By: _____



JEANNE ZOLEZZI
Attorneys For Cross-Defendants
MEINERS OAKS WATER DISTRICT
AND VENTURA RIVER WATER
DISTRICT

Dated: September 15, 2020

FERGUSON CASE ORR PATTERSON LLP

By: _____

NEAL P. MAGUIRE

Attorneys For Cross-Defendants
RANCHO MATILIJA MUTUAL
WATER COMPANY; BETTINA
CHANDLER, TRUSTEE OF THE
BETTINA CHANDLER TRUST

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Dated: September 15, 2020

BROWNSTEIN HYATT FARBER SCHRECK
LLP

By: _____

SCOTT SLATER
BRADLEY HERREMA
CHRISTOPHER GUILLEN

Attorneys For Cross-Defendant
WOOD-CLAEYSSSENS FOUNDATION

Dated: September 15, 2020

HERUM CRABTREE SUNTAG

By: _____

JEANNE ZOLEZZI

Attorneys For Cross-Defendants
MEINERS OAKS WATER DISTRICT
AND VENTURA RIVER WATER
DISTRICT

Dated: September 15, 2020

FERGUSON CASE ORR PATTERSON LLP

By:  _____

NEAL P. MAGUIRE

Attorneys For Cross-Defendants
RANCHO MATILJA MUTUAL
WATER COMPANY; BETTINA
CHANDLER, TRUSTEE OF THE
BETTINA CHANDLER TRUST

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ATTACHMENT

AGREEMENT FOR CONFIDENTIAL SETTLEMENT COMMUNICATIONS

This Agreement for Confidential Settlement Communications (“Agreement”) is entered into and effective as of September 15, 2020 (the "Effective Date"), by and between the City of San Buenaventura (“City”), Ventura River Water District (“VRWD”), Meiners Oaks Water District (“Meiners Oaks”), Rancho Matilija Mutual Water Company (“Rancho”), and the Wood-Claeyssens Foundation (“Foundation”), (collectively “Proposing Parties”), and any other Party that agrees to be bound by the terms of this Agreement, as evidenced by their signatures to this Agreement. The parties that execute this Agreement shall be referred to herein as a (“Party”) or collectively as (“Parties”).

WHEREAS, on September 19, 2014, Santa Barbara Channelkeeper (“Channelkeeper”) filed a Complaint for Declaratory Relief and Petition for Writ of Mandate against the City and the State Water Resources Control Board (“State Board”) in a lawsuit entitled Santa Barbara Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura, Los Angeles County Superior Court, Case No. 19STCP01176, and whereas the City filed a Cross-Complaint on May 14, 2015.

WHEREAS, Channelkeeper has filed a First Amended Complaint (“FAC”), which is the operative complaint, and the City has filed a Second Amended Cross-Complaint (“SACC”), which is the operative cross-complaint.

WHEREAS, the FAC and SACC are together referred to herein as the (“Action”), and whereas the Parties to this Agreement are all parties to the Action.

WHEREAS, on September 15, 2020, the Proposing Parties disseminated a proposed Physical Solution for the Ventura River watershed in accordance with the schedule set forth in the August 10, 2020 Status Report.

WHEREAS, the Proposing Parties have committed that between September 15 and October 30, 2020 (the “Meet and Confer Period”), they will meet and confer with all parties to this Action to see if all parties to the Action can reach a consensus as to the application of the Physical Solution to the Ventura River watershed.

WHEREAS, the Proposing Parties have agreed that during this meet and confer period, they will make their expert consultants available once per week for a telephone call or other virtual meeting, during which time the expert consultants will discuss the scientific bases for the proposed Physical Solution, will respond to questions from other Parties regarding the scientific bases for the proposed Physical Solution, and will consider disclosing additional materials regarding the bases for the proposed Physical Solution (collectively “Expert Consultant Information”), provided that any such Party wishing to participate in this meet and confer process or receive such Expert Consultant Information must first agree that all such communications with the Proposing Parties and their consultants shall be deemed confidential settlement communications, and not be deemed a waiver of the attorney-client privilege, attorney work product doctrine or any other applicable privilege.

THEREFORE, the Parties agree as follows:

1. The foregoing recitals are incorporated by this reference as part of this Agreement.
2. The term “Counsel” shall include outside, personal, and in-house counsel for the Parties, including any attorneys that any of the Parties retain or employ presently, have retained or employed in the past, or may retain or employ in the future, as well as any non-testifying experts, consultants, or investigators that outside or in-house counsel for the Parties may retain in connection with the Action.
3. References to the terms "Party" or "Parties" in this Agreement shall include not only the Parties but also, to the extent applicable, their officers, directors, members, employees, agents, subcontractors, and Counsel whose duties or responsibilities on behalf of a Party encompass representation in, analysis of, advice about, or work concerning the Action, and who have a legitimate need to analyze and understand the Expert Consultant Information in an effort to reach an agreement on a proposed Physical Solution. It is the intent of the Parties that this Agreement shall bind all such persons and both Counsel and clients.

4. The Parties agree that the Expert Consultant Information that is shared and otherwise disclosed pursuant to this Agreement shall be treated as confidential settlement communications pursuant to California Evidence Code Sections 1152 and 1154, and none of the information provided may be used by any Party to this Action for any purpose in any subsequent motion, hearing, trial, arbitration or otherwise. The Parties further agree that in sharing Expert Consultant Information, the Proposing Parties shall not be deemed to have waived any privileges applicable to the Expert Consultant Information, including but not limited to the attorney/client privilege, the attorney work product doctrine, the deliberative process privilege, and/or the common interest privilege.

5. The Parties agree that all such Expert Consultant Information shall be held in confidence by each Party to this Agreement, and all such Expert Consultant Information shall not be disseminated to any person or entity other than the Party to whom it was presented, unless the Party that received the Expert Consultant Information has first obtained the written consent of an authorized representative of the Party which provided such Expert Consultant Information. Each Party agrees to make reasonable efforts to ensure that the confidentiality of all Expert Consultant Information is maintained at all times and will avoid making any disclosure which would result in a waiver or loss of any otherwise available protection. No Party shall disclose any Expert Consultant Information received from any of the Proposing Parties to any consulting or testifying expert without the written consent of an authorized representative of the Party which provided such Expert Consultant Information, and each such consulting or testifying expert must likewise agree to be bound by the terms of this Agreement by signing the Consent Form attached hereto as Exhibit "A."

6. If any party, person or entity not a Party to this Agreement requests or demands the disclosure of any Expert Consultant Information, by subpoena or otherwise, from any Party to this Agreement, counsel for such Party shall (a) immediately give written notification to counsel for all Proposing Parties, and (b) assert a written objection to the disclosure of such Expert Consultant Information on the ground that such disclosure would constitute a violation of the attorney/client privilege, the attorney work product doctrine, the deliberative process privilege, and/or the common interest privilege. Each such Party shall take all necessary and appropriate steps to assure that the

requested or demanded information or material is kept confidential and is not disclosed to any party not authorized by this Agreement to receive it. The Party from whom such Expert Consultant Information is sought shall not disclose such information unless one of following conditions is met: (a) the Party that provided the Expert Consultant Information gives its written consent to disclose such information, or (b) the Party is required to disclose the information by formal court order.

7. Nothing contained in this Agreement shall be deemed to create or reflect an attorney/client, agency, or similar relationship between any attorney and anyone other than the client(s) expressly retaining such Counsel. The fact that any attorney is treated as the attorney for a Party under this Agreement shall not (a) in any way preclude the attorney or his or her firm from continuing to represent the client on whose behalf he or she has entered into this Agreement, even if the client's interest may be construed to be adverse to any other Party (whether with respect to the defense against or the pursuit of claims in the Action, inter-Party Disputes, or otherwise), or (b) be used as a basis for seeking to disqualify any counsel from representing any Party to this Agreement in any other present or future proceeding whether or not related to the defense against or the pursuit of claims in the Action, including any inter-Party Disputes. Each Party hereby waives any actual, perceived or potential conflict of interest arising out of the sharing of Expert Consultant Information under this Agreement.

8. No Party shall have authority to waive any applicable privilege or doctrine on behalf of any other Party; and any waiver of an applicable privilege or doctrine by the conduct of a Party shall not be construed to apply to any other Party.

9. Any notice or other communication required or permitted hereunder shall be deemed sufficiently given if (a) hand delivered, (b) transmitted by commercial overnight delivery service, or (c) sent by email to the appropriate email addresses set forth below, addressed to the Party's representatives. Any such notice shall be effective, respectively, as of (a) the date of delivery established by proof of service as provided by law, (b) the date of delivery reflected in the records of such delivery service, or (c) the date and time of confirmed transmission report on the sender's equipment.

10. Unless otherwise extended in writing, this Agreement shall terminate at the conclusion of the Meet and Confer Period. At such time, all Parties receiving Expert Consultant Information shall either return or destroy all such Expert Consultant Information received from the Proposing Parties, and all Parties shall provide a declaration to the Proposing Parties confirming the return or destruction of all Expert Consultant Information. Regardless of the obligation to return or destroy the Expert Consultant Information, all Parties agree that all Expert Consultant Information shall remain confidential, and that the obligations under the Agreement shall survive the termination of this Agreement.

11. Except for the rights created or expressly preserved by this Agreement as between the Parties, neither this Agreement nor any performance by any Party shall be construed as an admission of any liability or waiver, impairment or modification of any right or remedy, with respect to any person, firm or entity, nor shall this Agreement be construed to confer upon any person, firm or entity other than the Parties or their respective successors and assigns, any right, claim or benefit.

12. This Agreement may be executed in counterparts and delivered by electronic mail, and shall thereupon become a single agreement in accordance with its terms, and a photocopy of any such counterpart showing signature pages for all Parties may be used as a duplicate original of this Agreement for all purposes.

13. The provisions of this Agreement may be modified only by a written agreement signed by each of the Parties that expressly references this Agreement.

14. Any waiver in any particular instance of any right, provision or limitation contained in this Agreement shall not be deemed and is not intended to be a general waiver of any rights or limitations contained in this Agreement and shall not operate as a waiver beyond the particular instance.

15. Each Party and Counsel for each Party acknowledges on its own and its client's behalf, that disclosure of any communication in violation of this Agreement will cause the Parties hereto to suffer irreparable harm for which there is not adequate remedy at law. Each Party hereto acknowledges that immediate injunctive relief is an appropriate and necessary remedy for violation of this Agreement.

16. The undersigned represent that they have the authority to execute this Agreement and, respectively as Party and Counsel, to carry out all their obligations imposed hereunder. The undersigned have read, understand, and agree to the terms of this Agreement and have had the opportunity to consult with their independent counsel regarding this Agreement.

17. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without reference to principles of choice or conflict of laws.

18. Nothing herein shall be construed as an agreement or acknowledgment by any Party regarding the apportionment of any judgment or settlement.

19. Nothing in this Agreement shall be deemed to create a partnership, joint venture, agency, or fiduciary relationship between or among the Parties, between or among counsel, or between a Party and legal counsel for another Party, and any such relationship is specifically disclaimed and denied.

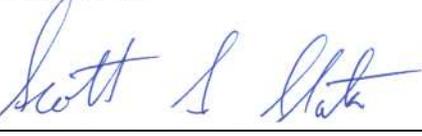
20. If any term or provision in this Agreement is determined to be illegal or unenforceable, all other terms and provisions in this Agreement shall remain effective and shall be enforced to the fullest extent permitted by applicable law.

21. The Parties agree that this Agreement was jointly drafted by each Party, that the Agreement shall not be deemed prepared by any one of the Parties, and no inference or rule of construction shall be applied based upon the assumption that any individual Party or subset of Parties drafted any provision in this Agreement. Each Party waives the doctrine of *contra proferentum* as it may otherwise apply to the interpretation of this Agreement.

22. WHEREFORE, the Parties, intending to be legally bound, have caused this Agreement to be executed by their counsel as of the date written.

<p>Dated: September 15, 2020</p>	<p>BEST BEST & KRIEGER LLP</p> <p></p> <p>By: _____</p> <p>SHAWN HAGERTY CHRISTOPHER M. PISANO SARAH CHRISTOPHER FOLEY</p> <p>Attorneys for Respondent and Cross-Complainant CITY OF SAN BUENAVENTURA</p>
<p>Dated: September 15, 2020</p>	<p>BROWNSTEIN HYATT FARBER SCHRECK LLP</p> <p>By: _____</p> <p>SCOTT SLATER BRADLEY HERREMA CHRISTOPHER GUILLEN</p> <p>Attorneys For Cross-Defendant WOOD-CLAEYSSSENS FOUNDATION</p>
<p>Dated: September 15, 2020</p>	<p>FERGUSON CASE ORR PATTERSON LLP</p> <p>By: _____</p> <p>NEAL P. MAGUIRE</p> <p>Attorneys For Cross-Defendants RANCHO MATILJA MUTUAL WATER COMPANY; BETTINA CHANDLER, TRUSTEE OF THE BETTINA CHANDLER TRUST</p>

22. WHEREFORE, the Parties, intending to be legally bound, have caused this Agreement to be executed by their counsel as of the date written.

<p>Dated: September 15, 2020</p>	<p>BEST BEST & KRIEGER LLP</p> <p>By: _____ SHAWN HAGERTY CHRISTOPHER M. PISANO SARAH CHRISTOPHER FOLEY</p> <p>Attorneys for Respondent and Cross-Complainant CITY OF SAN BUENAVENTURA</p>
<p>Dated: September 15, 2020</p>	<p>BROWNSTEIN HYATT FARBER SCHRECK LLP</p> <p>By:  _____ SCOTT SLATER BRADLEY HERREMA CHRISTOPHER GUILLEN</p> <p>Attorneys For Cross-Defendant WOOD-CLAEYSSSENS FOUNDATION</p>
<p>Dated: September 15, 2020</p>	<p>FERGUSON CASE ORR PATTERSON LLP</p> <p>By: _____ NEAL P. MAGUIRE</p> <p>Attorneys For Cross-Defendants RANCHO MATILJA MUTUAL WATER COMPANY; BETTINA CHANDLER, TRUSTEE OF THE BETTINA CHANDLER TRUST</p>

22. WHEREFORE, the Parties, intending to be legally bound, have caused this Agreement to be executed by their counsel as of the date written.

<p>Dated: September 15, 2020</p>	<p>BEST BEST & KRIEGER LLP</p> <p>By: _____ SHAWN HAGERTY CHRISTOPHER M. PISANO SARAH CHRISTOPHER FOLEY</p> <p>Attorneys for Respondent and Cross-Complainant CITY OF SAN BUENAVENTURA</p>
<p>Dated: September 15, 2020</p>	<p>BROWNSTEIN HYATT FARBER SCHRECK LLP</p> <p>By: _____ SCOTT SLATER BRADLEY HERREMA CHRISTOPHER GUILLEN</p> <p>Attorneys For Cross-Defendant WOOD-CLAEYSSSENS FOUNDATION</p>
<p>Dated: September 15, 2020</p>	<p>FERGUSON CASE ORR PATTERSON LLP</p> <p>By:  _____ NEAL P. MAGUIRE</p> <p>Attorneys For Cross-Defendants RANCHO MATILJA MUTUAL WATER COMPANY; BETTINA CHANDLER, TRUSTEE OF THE BETTINA CHANDLER TRUST</p>

<p>Dated: September 15, 2020</p>	<p>HERUM CRABTREE SUNTAG</p> <p>By:  JEANNE ZOLEZZI</p> <p>Attorneys For Cross-Defendants MEINERS OAKS WATER DISTRICT AND VENTURA RIVER WATER DISTRICT</p>
<p>Dated: _____, 2020</p>	<p>By: _____</p> <p>Attorneys For</p>
<p>Dated: _____, 2020</p>	<p>By: _____</p> <p>Attorneys For</p>

EXHIBIT A

CERTIFICATION RE RECEIPT OF EXPERT CONSULTANT INFORMATION

I hereby acknowledge that I, [NAME], [POSITION AND EMPLOYER], am about to receive Expert Consultant Information supplied in connection with the Action, *Santa Barbara Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura*, Los Angeles County Superior Court, Case No. 19STCP01176. I certify that I understand that the Expert Consultant Information is provided to me subject to the terms and restrictions of the Agreement for Confidential Settlement Communications (“Agreement”) executed by and between the Parties. I have been given a copy of the Agreement; I have read it, and I agree to be bound by its terms.

I understand that confidential nature of the Expert Consultant Information as defined in the Agreement, including any notes or other records that may be made regarding any such materials, shall not be disclosed to anyone except as expressly permitted by the Agreement. I will not copy or use, except solely for the purposes set forth in the Agreement, any Expert Consultant Information obtained pursuant to the Agreement.

I further understand that I am to retain all copies of all materials containing Expert Consultant Information provided to me in a secure manner, and that all copies of such materials are to remain in my personal custody until termination of the Agreement, whereupon the copies of such materials will be returned to counsel who provided me with such materials.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this _____ day of _____, 20__, at _____.

DATED: _____, 2020

BY: _____

Signature

Title

Address

City, State, Zip

Telephone Number

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the action herein; my business address is Best Best & Krieger LLP, 2001 N. Main St. Suite 390, Walnut Creek, CA 94596. On September 15, 2020, I served the following document(s):

NOTICE OF DISSEMINATION OF PROPOSED PHYSICAL SOLUTION AND JUDGMENT

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
- I caused such envelope to be delivered via overnight delivery. Such envelope was deposited for delivery by United Parcel Service following the firm's ordinary business practices.
- by transmission via **E-Service to File & ServeXpress** to the person(s) set forth below. Local Rules of Court 2.10 (P).
- By e-mail or electronic transmission.** I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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14 Rood, Trustees of the Rood Family Trust

Attorneys for Cross-Defendant Michael
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Charles L. Ward III, as Co-Trustees of the
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Oriana Marie Fedele, Trustee
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Via First Class Mail
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Attn. Tim Carey, Managing Member
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Torrance, CA 90505
Tel. (310) 787-6569

17 I declare under penalty of perjury under the laws of the State of California that the
18 above is true and correct.

19 Executed on September 15, 2020 at Walnut Creek, California.

20
21 

22 Irene Islas

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

DATE: November 12, 2020

TO: Board of Directors

FROM: Executive Director

SUBJECT: Rincon Consultants Work Order No. 3 for Camino Cielo Stream Flow Gauge Installation and 2021 Stream Flow Monitoring

SUMMARY

As discussed during prior board meetings, the Agency’s field services are being transitioned to Rincon Consultants. Proposed Rincon Consultants Work Order No. 3 addresses installation of a stream gauge (stilling well) during the fall 2020 low flow period and stream flow monitoring during 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. 3 for an amount not to exceed \$18,050 for stilling well installation and 2021 stream flow monitoring at the Camino Cielo Ventura River crossing.
2. Approve up to \$1,800 for potential unanticipated costs, to be authorized at the discretion of the Executive Director.

BACKGROUND

Please see summary.

FISCAL SUMMARY

Monitoring costs are included in the Fiscal Year 2020/2021 and long range budgets.

ATTACHMENTS

- A. Draft Rincon Consultants Work Order No. 3

Action: _____

Motion: _____ Second: _____

B. Kuebler ___ D. Engle ___ A. Spandrio ___ S. Rungren ___ G. Shephard ___ E. Ayala ___ L. Rose ___

Statement of Work

Work Order No. 3: Camino Cielo Stream Flow Gauge and Gauging

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: Stream gauge installation and dry season stream flow monitoring at the Camino Cielo Ventura River crossing during spring 2021 through transducer demobilization prior to first major storm in late 2021 or early 2022. 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 and permits obtained by UVRGA.

SCOPE OF SERVICES: Install stream flow gauge (stilling well) in Fall 2020, develop and maintain rating curve beginning spring 2021, remove/reinstall transducer before/following high flow season, and prepare annual data transmittal, as further described in the attached proposal. This Work Order covers gauge installation in fall 2020. Rating curve development and dry season monitoring will be performed during spring 2021 through transducer demobilization prior to first major storm in late 2021 or early 2022, depending on timing of storms. Prepare an annual data transmittal covering data collected through end of water year 2020-2021 (i.e. September 30, 2021), which shall be provided by December 31, 2021. *(Note: data collected after September 30, 2021 and prior to transducer removal will be reported in the water year 2021-2022 annual report, which will be covered under a future work order.)*

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 \$18,050, without prior written authorization.

Contingency: An additional 10% in the amount of \$1,800 is reserved for 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.

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Ventura, California 93003

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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. 3): Surface Water Stream Gage Installation and Surface Water Monitoring at Camino Cielo Culvert

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 install a stream gage at the County-owned Camino Cielo Culvert on the Ventura River and develop and maintain a rating curve for the location. 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. Stilling Well Installation at Camino Cielo Culvert

Rincon will install one stream gage at the County-owned culvert at the Camino Cielo crossing on the Ventura River. To complete this installation, two field staff will visit the site to confirm site conditions, installation procedure, and necessary hardware. While a preliminary installation location has been identified by UVRGA, Rincon will confirm the appropriate location during the site visit. Note that this location should target an area that is hydrologically connected to the low flow portion of the cross section to assure dry season/low flow gaging capabilities.

This task includes the procurement of a pressure transducer and installation equipment (e.g., stilling well pipe and hardware). Based on experience using continuous data loggers in the Ventura River and throughout southern California, Rincon recommends purchasing either the HOBO 13-Foot Fresh Water Level Data Logger¹ or the Solinst Level Logger 5.² These loggers provide data accuracy, ample memory for data storage, and feature long lasting battery capacity. This task includes cost estimates for pressure transducer and hardware, as well as time for ordering and acquiring this equipment.

Task 2. Rating Curve Development and Maintenance

In accordance with United States Geological Survey (USGS) protocol, Rincon will implement standard practices for rating curve development. This includes surveying channel cross sections, surveying slopes

¹ <https://www.onsetcomp.com/products/data-loggers/u20-001-04/>

² <https://www.solinst.com/products/dataloggers-and-telemetry/3001-levellogger-series/levellogger/>



of the cross-section's reach, and completing discharge calculations. Survey information will be developed during one site visit, during which Rincon will also collect instantaneous flow measurements to inform rating curve calculations. This field effort will be followed by desktop calculations and analysis of the data to calibrate inputs. Note that this rating curve will be maintained and calibrated during routine visits to the site to collect flow measurements at varying discharge rates throughout the year.

For the first year of monitoring, we recommend a minimum of 4 maintenance events throughout the dry season (approximately April through October) to capture site flow conditions to refine the rating curve and corresponding discharge data. In addition to cross section survey and instantaneous flow estimation, this task includes data downloads from the pressure transducer.

Task 3. Demobilization of Pressure Transducer

Prior to the first stormflow event each year, Rincon will demobilize the pressure transducer at the Camino Cielo stilling well. This activity will be completed by one field technician and will consist of pressure transducer recovery and data download. Note that the pressure transducer will be redeployed in the Spring as part of a rating curve maintenance event. In addition, Rincon may complete this activity as part of the last rating curve maintenance event to realize cost savings.

Task 4. Annual Data Transmittal

Rincon will provide UVRGA surface monitoring data annually and will include continuous data recorded by the pressure transducer, as well as rating curve data including cross section surveys and instantaneous flow measurements. Continuous data will be reviewed for quality control purposes, and level will be converted to flow. This deliverable includes calibration of the rating curve using multiple instantaneous flow measurements and cross section surveys.

Assumptions and Deliverables

- Rincon will confirm the pressure transducer selection with UVRGA, and assumes barometric data will be provided from UVRGA's existing monitoring network to compensate level data.
- We assume UVRGA has proper permits and authorization for stream gage installation.
- Rincon assumes equipment can be installed directly to the culvert and does not require concrete work or other structural modification.
- We estimate pressure transducer, equipment procurement, pressure transducer programming, and mobilization will require up to 12 hours. Installation will require up to 18 hours including site reconnaissance and deployment.
- Rincon assumes rating curve development and maintenance activities will require up to 18 hours per event. This includes preparation, data collection (cross section survey and multiple instantaneous flow measurements), discharge calculations, data management, and rating curve calibration.
- We assume annual data preparation and transmittal will require up to 16 hours. This includes data compilation, data quality assurance and control activities, and transmittal. This estimate also assume up to 2 hours of edits following UVRGA's review to incorporate any edits or comments.
- Rincon will provide the following deliverables within 2 weeks following the close of each water year:
 - Rating curve data including cross section surveys, instantaneous flow measurement data, and the calibrated stage-to-flow table, provided in Microsoft Excel format.
 - Continuous level data recorded by the pressure transducer including a conversion of stage to flow, provided in Microsoft Excel format.



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 our 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.

Table 1. Cost Estimate

Tasks	Labor Cost	Direct Expense	Hours	Cost (Per Event)	Cost (Annual)
Task 1 Stilling Well Installation at Camino Cielo Culvert ¹	\$3,800	\$1,600	30	\$5,400	\$5,400
Task 2 Rating Curve Development and Maintenance	\$2,200	\$300	18	\$2,500	\$10,000
Task 3 Demobilization of Pressure Transducer ²	\$450	\$50	4	\$500	\$500
Task 4 Annual Data Transmittal	\$2,150	\$-	16	\$2,150	\$2,150
First Year Total³					\$18,050
Subsequent Annual Total⁴					\$12,650

Notes:

- ¹ Equipment procurement and installation occurs once during the first year of the monitoring program.
- ² Redeployment of transducer would be completed during a Spring rating curve maintenance event (Task 2).
- ³ First year total includes costs for stilling well installation and procurement of pressure transducer and installation equipment.
- ⁴ Subsequent years following the first year excludes equipment procurement and stilling well installation.

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 install the stream gaging equipment prior to the start of the rainy season. 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.

Klerman 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

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

DATE: November 12, 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.
 - b. The Executive Director met with the Ad Hoc Funding Committee to work on developing estimates of historical agricultural groundwater pumping. Committee members are reaching out to agricultural well owners for data and information.
 - c. The Executive Director evaluated the proposed physical solution and requested information from the proposing parties that could potentially be used to aide in GSP development.
2. **Outreach:** No activity in October.
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:** Groundwater level data were downloaded in October. The third, and final, water year annual report required under the grant will be prepared submitted in early 2021.
 - 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

Action: _____

Motion: _____ Second: _____

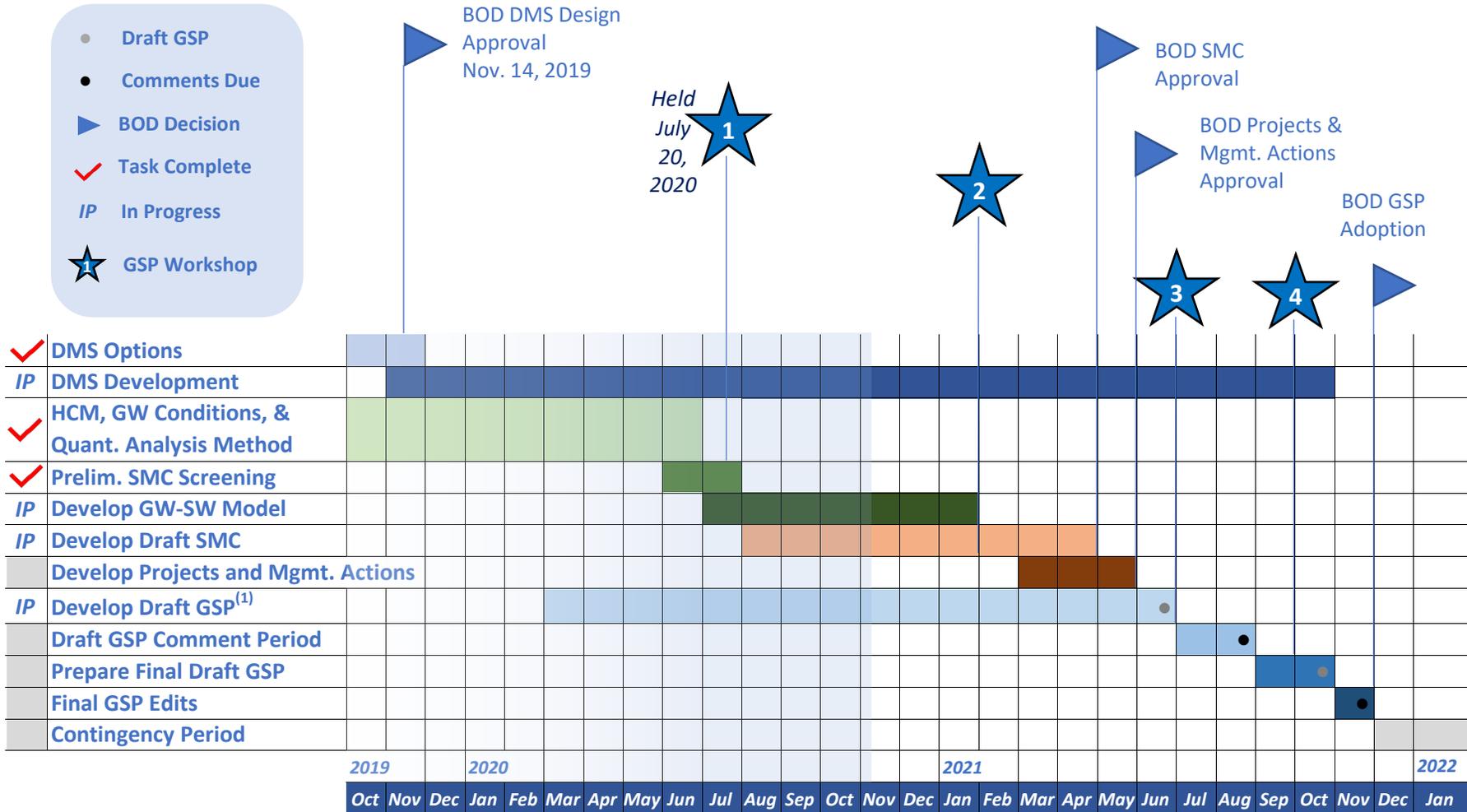
B. Kuebler ___ D. Engle ___ A. Spandrio ___ S. Rungren ___ G. Shephard ___ E. Ayala ___ L. Rose ___

Item 9a

Attachment A

GSP Development Schedule

Upper Ventura River Groundwater Agency GSP Development Schedule Updated November 7, 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