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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF KERN

14 BRING BACK THE KERN, WATER AUDIT
CALIFORNIA, KERN RIVER PARKWAY
15 FOUNDATION, KERN AUDUBON
SOCIETY, SIERRA CLUB, AND CENTER
16 FOR BIOLOGICAL DIVERSITY,

17 Plaintiffs and Petitioners,

18 v.

19 CITY OF BAKERSFIELD, AND DOES 1-
20 500,

21 Defendants and Respondents,

22 BUENA VISTA WATER STORAGE
DISTRICT, KERN DELTA WATER
DISTRICT, NORTH KERN WATER
23 STORAGE DISTRICT, ROSEDALE-RIO
BRAVO WATER STORAGE DISTRICT,
24 KERN COUNTY WATER AGENCY; J.G.
BOSWELL COMPANY, and DOES 501 – 999,
25 inclusive,

26 Real Parties in Interest.

Case No. BCV-22-103220

**BRING BACK THE KERN'S
OPPOSITION TO BUENA VISTA
WATER STORAGE DISTRICT'S
MOTION TO QUASH DEPOSITION
SUBPOENA**

Date: March 23, 2026
Time: 8:30 a.m.
Judge: Gregory A. Pulskamp
Div. J, 1215 Truxtun Ave., 3rd Floor

Action Filed: November 30, 2022
Trial Date: February 8, 2027

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I. INTRODUCTION

Douglas Littlefield is a professional historian who specializes in the history of water rights and water resources. He has written a book on the history of the Kern River and provided testimony on the historical availability of water in the Kern River. He has also provided extensive testimony about the history of the Kern River on behalf of Buena Vista Water Storage District (“Buena Vista”) before the State Water Resources Control Board (SWRCB).

Three years into this case, BBTK seeks to depose Dr. Littlefield as a fact witness on matters directly relevant to this litigation: his knowledge and research regarding the Kern River and the history of its usage, flows, and water rights. This request is both reasonable and consistent with California’s liberal discovery standards. The law entitles parties to broad discovery of any nonprivileged, relevant information, and courts consistently resolve doubts in favor of permitting discovery. BBTK does not intend to ask Dr. Littlefield about expert witness work he may be doing in this case. BBTK agrees that discovery into expert witness work for this case would be premature. But the fact that Buena Vista has retained Dr. Littlefield as a consultant or potential expert in this matter does not immunize him from discovery regarding his book, his prior testimony, and his knowledge of Kern River history.

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II. BACKGROUND

A. Procedural History

This case was filed in November 2022, with trial scheduled for February 2027. The parties are now more than three years into the litigation and need to proceed with discovery to prepare for trial. In September 2025, this Court denied the Real Parties’ request to stay all further proceedings, including discovery, thereby ordering that discovery must continue. (Order Granting Motion to Continue Trial at 3.)

To streamline discovery in this case, including making depositions more efficient, BBTK initially proposed to stipulate with Defendant City of Bakersfield and the Real Parties in Interest, including Buena Vista, that the SWRCB Proceeding materials, including Dr. Littlefield’s testimony, be admissible in this case. (Declaration of Bryan Wilson (“Wilson Decl.”) at ¶ 2.) None of them were interested in such a stipulation. (*Ibid.*) BBTK then notified Buena Vista of

1 its intent to depose Dr. Littlefield. Buena Vista replied that Dr. Littlefield had been retained as an
2 expert for this matter and asserted that his deposition would be premature at this time. (Wilson
3 Decl. Exh. 1 at 8-9.) BBTK agreed his deposition as an expert in this matter would be
4 inappropriate and clarified its intent to take his deposition as a fact witness with a focus on his
5 testimony at the SWRCB proceeding. (*Id.* at 8.) This did not change Buena Vista’s view. (*Id.* at
6 7-8.) BBTK then served a subpoena for the deposition of Dr. Littlefield. (Motion to Quash
7 Deposition Subpoena and For Protective Order (“Motion”), Exh. A.) Buena Vista moved to
8 quash the subpoena and for a protective order with this Court as set forth in the Motion. (Motion
9 at 4.)

10 **B. Dr. Littlefield’s Former Testimony**

11 Dr. Littlefield provided testimony in the State Water Resources Control Board
12 (“SWRCB”) Proceeding, which followed from the litigation that led to *North Kern Water Storage*
13 *Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555 [54 Cal.Rptr.3d 578]. To make a
14 very long story short, the court case resulted in a finding that the Kern Delta Water District had
15 forfeited certain water rights because it was not using those rights. (*Id.* at 558.) Pursuant to the
16 court’s order, the SWRCB (rather than the court) will determine whether that decision resulted in
17 unappropriated water in the Kern River, and if so, who can appropriate that water. (*Id.* at 583-
18 84.)

19 A separate proceeding was initiated in the SWRCB to make that determination. (*In The*
20 *Matter of The Kern River Stream System, Pending Applications to Appropriate Water*, State
21 Water Resources Control Board, Office of Administrative Hearings (“SWRCB Proceeding,”
22 Wilson Decl. Exh. 2).) The SWRCB Proceeding was phased. Buena Vista described the question
23 to be answered in Phase 1B as “how much unappropriated water, if any, is available in the Kern
24 River?” (SWRCB Proceeding, Wilson Decl. Exh. 2 at 1.) Buena Vista offered “copious
25 evidence” from Dr. Littlefield about the history of Kern River water use in support of its
26 arguments in the SWRCB Proceeding. (*Id.* at 3-4.) As Buena Vista explained, Dr. Littlefield has
27 written a book about the history of Kern River water rights and is an expert in Kern River history.
28 (*Ibid.*)

1 In addition to referring to Dr. Littlefield’s book, Buena Vista offered into evidence
2 extensive testimony from Dr. Littlefield about the history of the Kern River and the use of its
3 water. This included written direct testimony (Wilson Decl. Exh. 3), written rebuttal testimony
4 (Wilson Decl. Exh. 4), written surrebuttal testimony (Wilson Decl. Exh. 5), and dozens of
5 exhibits in support of that testimony (Wilson Decl. ¶ 4.).

6 All of Dr. Littlefield’s testimony is available in the public record. It is not confidential or
7 otherwise restricted from access by anyone who wishes to read it. Nor does it rely on or analyze
8 any information that is unique to Buena Vista. The testimony instead focuses on factual
9 questions about the Kern River, specifically:

10 **Question 1:** What were historical water uses in the area that
11 became the Buena Vista Water Storage District—including
irrigation, water sales, livestock watering, and other uses?

12 **Question 2:** Where were historical water diversion points for areas
13 that became BVWSD and how did those points change over time?

14 **Question 3:** What is the history of water storage uses for lands that
15 became BVWSD, including surface storage and groundwater
storage?

16 **Question 4:** What is the maximum volume of annual water use
17 under the Second Point of Measurement right on which the State
Water Rights Board (“SWRB”), and then the State Water
18 Resources Control Board, relied on in Decision 1196 in 1964 and
its subsequent WR Order 89-25 in 1989? What materials did the
SWRB consider in reaching that decision and that order?

19 (Wilson Decl. Exh. 3 at ¶ 6.) These are all factual matters relevant to this case, and do not
20 implicate any opinions or hypothetical questions in this case.

21 III. LEGAL STANDARD

22 California law provides for broad discovery, allowing parties to obtain any and all
23 nonprivileged, relevant information. (*Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 541 [220
24 Cal.Rptr.3d 472, 480, 398 P.3d 69, 76]; Cal. Code Civ. Proc. § 2017.010; *Nativi v. Deutsche*
25 *Bank Nat’l Trust Co.* (2014) 223 Cal.App.4th 261, 317 [167 Cal.Rptr.3d 173, 219].)

26 Admissibility is not required at the discovery stage, and courts resolve doubts in favor of
27 permitting discovery into relevant, nonprivileged matters. (*Ibid.*) Courts may quash, modify, or
28 set conditions on a deposition subpoena to prevent unreasonable or oppressive demands. (Cal.

1 Code Civ. Proc. § 1987.1, subd. (a).)

2 Substantiating a motion for a protective order to set conditions or restrictions on discovery
3 requires a high burden of proof. Under § 2025.420, good cause must be shown by the moving
4 party and the discovery must cause “unwarranted annoyance, embarrassment, or oppression, or
5 undue burden and expense.” (Cal. Code Civ. Proc. § 2025.420, subd. (b).) Section
6 2019.030 requires that the discovery sought be unreasonably cumulative or duplicative, or
7 obtainable from a more convenient source (Cal. Code Civ. Proc. § 2019.030, subd. (a)(1)), or that
8 the selected method of discovery is unduly burdensome or expensive (Cal. Code Civ. Proc.
9 § 2019.030, subd. (a)(2)). A protective order under § 2017.020(a) requires that “the burden,
10 expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information
11 sought will lead to the discovery of admissible evidence.” (Cal. Code Civ. Proc. § 2017.020,
12 subd. (a).)

13 Work product protection applies to writings reflecting an attorney’s impressions, opinions,
14 or legal theories. (Cal. Code Civ. Proc. § 2018.030, subd. (a).) Communications with consulting
15 experts may be privileged, but statements and reports from testifying experts are not protected
16 once the expert is designated to testify. (*DeLuca v. State Fish Co., Inc.* (2013) 217 Cal.App.4th
17 671, 688-689 [158 Cal.Rptr.3d 761, 774].)

18 IV. ARGUMENT

19 A. Plaintiffs Are Entitled to Depose Dr. Littlefield Now Because Discovery Is 20 Broad and the Subpoena Seeks Relevant, Nonprivileged Information.

21 Buena Vista argues that Dr. Littlefield’s deposition would be “premature.” (Motion at 6.)
22 However, the deposition comes *three years* into the fact discovery period and the deposition is
23 focused on his role as a fact witness in this matter. This deposition may also lead to other
24 relevant information or witnesses. Delaying the deposition would reduce the amount of time
25 available for Plaintiffs to conduct any necessary follow-up investigation.

26 Deposition discovery is a matter of right unless the moving party makes a specific
27 showing of good cause for restriction. (Cal. Code Civ. Proc. § 2019.010, subd. (a); Cal. Code
28 Civ. Proc. § 2025.420, subd. (b).) Buena Vista’s attempt to shift the burden onto Plaintiffs to

1 show good cause as a prerequisite for the deposition of Dr. Littlefield as a fact witness is
2 misplaced and contrary to law. A showing of good cause by the party seeking a deposition is
3 only required for early *expert* depositions, so this standard is not applicable here. (*See Sanders v.*
4 *Super. Ct.* (1973) 34 Cal.App.3d 270, 278 [109 Cal.Rptr. 770, 776].) Despite Buena Vista's
5 assertion that it intends to do so at the appropriate time, Dr. Littlefield has not been designated as
6 an expert in this matter. His prior testimony in the SWRCB litigation has already been publicly
7 disclosed and no longer has any protection under expert discovery procedures.

8 Plaintiffs seek to depose Dr. Littlefield about his testimony in the SWRCB hearing,
9 related facts, and his knowledge of Kern River history. His expertise and public opinion on
10 historical water availability and water rights are directly relevant to the subject matter of this
11 litigation: water use in the Kern River. Any doubts about relevance at this stage should be
12 resolved in favor of permitting discovery. (*Williams v. Super. Ct., supra*, 3 Cal. 5th at 542.) In
13 *Williams*, the employee identification information in *Williams* was an inferential first step to
14 determining whether the employer had conducted systemic violations of the labor code. (*Id.* at
15 544.) Discovery regarding historic water availability and river conditions is an important first
16 step in addressing key questions about how much water was available in the full length of the
17 river historically, current water usage, and public access, making Dr. Littlefield's deposition
18 relevant to this case.

19 Buena Vista argues that Dr. Littlefield's prior expert testimony before the SWRCB is
20 inadmissible hearsay and should not be discoverable. (Motion at 9.) But admissibility at trial is
21 not the standard for discovery; therefore, Buena Vista's claims regarding the inadmissibility of
22 the prior testimony are irrelevant. Further, the fact that Dr. Littlefield's former testimony may be
23 hearsay undermines Buena Vista's Motion rather than supports it. Buena Vista cannot in good
24 faith attempt to block Dr. Littlefield's former testimony as inadmissible hearsay while
25 simultaneously objecting to a deposition that would resolve hearsay objections in this case.

26 **B. Retention as an Expert Does Not Immunize a Witness from Deposition**
27 **Regarding Independent, Preexisting Testimony.**

28 Buena Vista's argument that the work product doctrine shields Dr. Littlefield's prior

1 expert work from discovery lacks basis in the law. Buena Vista argues that his role as a
2 consultant and potential expert witness creates a risk of infringing on Buena Vista's work
3 product, but no such risk exists. Courts have consistently held that statements to or reports from a
4 testifying expert are not protected by attorney-client privilege or work product once the expert is
5 designated to testify. (*See Odyssey Reinsurance Co. v. Nagby*, No. 16-CV-3038-BTM(WVG)
6 (S.D. Cal. Apr. 26, 2018) WL 1963665, at *3; *DeLuca v. State Fish Co., Inc.*, *supra*, 217
7 Cal.App.4th at 689; *Armenta v. Super. Ct.* (2002) 101 Cal.App.4th 525, 534 [124 Cal.Rptr.2d
8 273, 279]; *Shadow Traffic Network v. Super. Ct.* (1994) 24 Cal.App.4th 1067, 1079 [29
9 Cal.Rptr.2d 693, 699].) When an expert is expected to testify, their report becomes discoverable,
10 and there is no concern about confidentiality, especially when the expert has already testified.
11 (*DeLuca v. State Fish Co., Inc.*, *supra*, 217 Cal.App.4th at 691.)

12 In *Odyssey*, the court rejected the plaintiff's objection to deposing a former testifying
13 expert and held that work product protection was waived because in the previous matter, the
14 expert had been formally designated, testified in depositions and declarations, and testified at
15 trial. (*Odyssey*, *supra*, 2018 WL 1963665 at *3.) Similarly, Dr. Littlefield was designated as an
16 expert in the SWRCB Proceeding, provided extensive written testimony, and even testified at the
17 hearing, so his prior testimony is not protected by work product. His current role as a consultant
18 or expert does not change this. Knowledge does not become privileged simply because it is later
19 shared with an attorney, and a litigant cannot silence a witness by this method. (*DeLuca*, *supra*,
20 217 Cal.App.4th at 687.)

21 Buena Vista did not and cannot provide case law establishing the proposition that the
22 public opinion of a former testifying expert is not discoverable, because it does not exist. Instead,
23 it cites inapposite authority concerning expert work in the instant litigation rather than former
24 public expert opinion. (*See, e.g., Sanders v. Super. Ct.*, *supra*, 34 Cal. App. 3d 270; *Armenta v.*
25 *Super. Ct.*, *supra*, 101 Cal.App.4th 525; *Shadow Traffic Network v. Super. Ct.*, *supra*, 24
26 Cal.App.4th 1067.) In fact, two of the cases Buena Vista cites in the Motion acknowledge the
27 universal truth that any work product protection is lost upon mere *designation*—and is necessarily
28 lost following the disclosure of actual testimony by an expert witness. (*See, e.g., Shadow Traffic*

1 *Network v. Super. Ct.*, *supra*, 24 Cal.App.4th at 1079; *Armenta v. Super. Ct.*, 101 Cal.App.4th at
2 534.) Further, unlike *Armenta*, where there was a reasonable expectation that communications
3 made to the expert in the instant suit would remain confidential, no such expectation exists here,
4 where the expert opinion was already prepared and ultimately publicly disclosed several years
5 before the present litigation was initiated. (*Id.* at 535.)

6 The only cited case involving prior expert work, *National Steel Products Co. v. Super. Ct.*
7 (1985) 164 Cal. App. 3d 476, is not applicable. In *National Steel*, the expert's prior work was
8 never disclosed, and the expert was neither deposed nor identified as a witness. (*Id.* at 481-482.)
9 Here, Dr. Littlefield's expert opinion and testimony were publicly disclosed in the SWRCB
10 Proceeding. The court in *National Steel* distinguished between advisory expert reports, which are
11 generally not discoverable, and reports qualifying an expert witness, which contain findings
12 relevant to the case. (*Id.* at 489-490.) Dr. Littlefield's disclosed opinion in the SWRCB
13 Proceeding is not advisory work and no longer enjoys work product protection.

14 Reviving protection over publicly disclosed expert work would unreasonably allow
15 litigants like Buena Vista to avoid fact discovery into past expert opinions by employing
16 witnesses in future cases or by speculating that they will be designated as legal experts, contrary
17 to California's liberal discovery policy. A complete bar to Dr. Littlefield's deposition at this
18 phase would establish a precedent that repeat litigants can avoid fact discovery into a witness's
19 prior expert work and thus deny their opponents a meaningful opportunity to seek relevant, non-
20 privileged discovery.

21 **C. Buena Vista Has Not Met the Burdens for the Broad Relief Requested.**

22 The Motion relies on speculation about the content of Dr. Littlefield's deposition. The
23 party seeking a protective order bears the burden of proving good cause with a factual showing.
24 (*Nativi v. Deutsche Bank Nat'l Trust Co.*, *supra*, 223 Cal.App.4th at 318 [167 Cal.Rptr.3d 173,
25 219].) Plaintiffs have already informed Buena Vista that questions will be limited to Dr.
26 Littlefield's opinions and findings from the prior case, not his current expert work (Wilson Decl.
27 ¶ 5.) Buena Vista's argument assumes, without evidence, that the deposition will risk disclosure
28 of current expert work due to overlapping subject matter. Buena Vista's objections are premature

1 and should be addressed after the deposition, if necessary. Buena Vista has not shown that Dr.
2 Littlefield's prior expert work is confidential or entitled to protection, and thus has not met the
3 burden of proving good cause. Any overlap between Dr. Littlefield's prior testimony and his
4 current consulting work is a risk Buena Vista assumed by retaining him after his public SWRCB
5 expert opinion, and Plaintiffs should not be penalized for it.

6 Buena Vista has not met the higher burden required for a motion to quash. Such motions
7 are intended to protect the deponent from unreasonable or oppressive demands. (Cal. Code Civ.
8 Proc. § 1987.1, subd. (a).) As established in *West Pico*, oppression requires a showing of intent to
9 create an unreasonable burden or that the burden is disproportionate to the result sought. (*W.*
10 *Pico Furniture Co. of Los Angeles v. Super. Ct.* (1961) 56 Cal. 2d 407, 417, 364 P.2d 295, 300.)
11 Buena Vista has shown neither. Plaintiffs offered to stipulate to the admissibility of Dr.
12 Littlefield's prior testimony and agreed to limit deposition questions to the contents of that
13 testimony, demonstrating good faith and negating any claim of unreasonable burden. The Motion
14 lacks a factual basis to show that Dr. Littlefield's testimony about his prior public expert work is
15 disproportionate to the discovery sought.

16 **D. Any Legitimate Privilege or Work Product Concerns Can Be Addressed**
17 **Through Narrow Protective Orders Rather than Quashing the Deposition**
18 **Entirely.**

19 Discovery rules offer alternatives to barring Dr. Littlefield's deposition. Under § 1987.1,
20 the Court may modify the subpoena or set conditions for compliance. To address work product
21 concerns, the Court can prohibit questions about Dr. Littlefield's expert work in the present
22 litigation or his communications with counsel. BBTK agrees to that. As the Supreme Court
23 stated in *West Pico*, objections based on burden should not result in a total bar unless absolutely
24 necessary. (*W. Pico Furniture Co. v. Super. Ct., supra*, 56 Cal. 2d at 418.) Courts generally
25 prefer to tailor discovery rather than deny it outright, and Buena Vista offers no reason to deviate
26 from this practice. (*Williams v. Super. Ct., supra*, 3 Cal. 5th at 540.) Moreover, there is another
27 alternative to the draconian remedy of completely barring the deposition: Buena Vista may object
28 to questions during Dr. Littlefield's deposition and may instruct him not to answer if it believes
that the response would risk revealing privileged information. The parties may further litigate the

1 contours of the work product protection and the attorney-client privilege as needed—after the
2 deposition is concluded, not now.

3 Finally, Buena Vista’s request for monetary sanctions should be denied. Sanctions are not
4 available against parties who acted with substantial justification. (Cal Code Civ. Proc. §§ 1987.2,
5 subd. (a), 2025.420, subd. (d), 2023.030, subd. (a).) Buena Vista has not met the burden for a
6 protective order or cited any authority barring the deposition of a former testifying expert.
7 Plaintiffs have substantial justification for serving the subpoena and have cited relevant case law
8 supporting their position. (*Diepenbrock v. Brown* (2012) 208 Cal.App.4th 743, 749 (holding that
9 substantial justification existed where there was conflicting legal authority on an unsettled issue,
10 and reversing the sanctions award).) Therefore, sanctions against Plaintiffs are not warranted.

11 **V. CONCLUSION**

12 In conclusion, Plaintiffs respectfully request that the Court deny Movant’s Motion or, in
13 the alternative, set appropriate conditions for compliance.

14
15 Dated: March 10, 2026

MORRISON & FOERSTER LLP

17 By: /s/ Bryan Wilson

18 Bryan Wilson

19 *Attorneys for Plaintiffs*
20 BRING BACK THE KERN