

Case Analysis for the Small Farmer Community

Borrego Springs Groundwater Adjudication

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Case Name: Borrego Water District v. All Persons Who Claim a Right to Extract Groundwater in the Borrego Valley Groundwater Subbasin, etc., et al

Case No: 37-2020-00005776

Date Filed: January 30, 2020

Court: Orange County Superior Court

WHAT IS AN ADJUDICATION?

An adjudication is a lawsuit in which a court defines and determines groundwater rights.¹ In an adjudication, a court decides (1) how much water can be used in that region per year, and (2) how much water any individual or entity in the region may pump per year.²

WHY WAS THERE AN ADJUDICATION IN THE BORREGO SPRINGS SUBBASIN?

In 2014, the California legislature passed the Sustainable Groundwater Management Act (SGMA). SGMA is intended to protect groundwater resources over a long term. SGMA requires local agencies to form groundwater sustainability agencies (GSAs) for high and medium-priority basins. After formation, GSAs are meant to develop and implement groundwater sustainability plans (GSPs) to avoid undesirable results (e.g., dry wells, land subsidence, etc.) and to reduce aquifer overuse.

The Borrego Springs Groundwater Subbasin was designated as “critically overdrafted.” This determination triggered the formation of a GSA which initially included the Borrego Water District and the County of San Diego. In December 2019, the County of San Diego withdrew from the GSA. This left the GSA entirely within Borrego Water District’s control.

In April 2021, people and businesses making up 50% of Borrego Springs pumpers and extracting 75% of the region’s groundwater proposed a stipulated judgment seeking the implementation of their physical solution as an alternative to management by the Borrego Water District.³ A physical solution is a court order (judgment) coupled with a Groundwater Management Plan (taking the place of a GSP). The court deemed the physical solution consistent with the directives of SGMA and Article X, section 2 of the California Constitution

¹ *Adjudication FAQs*, OPV COALITION, <https://opvcoalition.org/faqs/> (last visited Sept. 14, 2024).

² *See e.g., id.*

³ This means half of the people or businesses pumping groundwater from the Borrego Springs Subbasin agreed to the proposed judgment—and the agreeing half of Borrego Pumpers account for most groundwater use in the subbasin (75%). This indicates that the 50% of Pumpers who did not agree to the stipulated judgment are likely to be people or businesses that pump small amounts of groundwater in comparison.

(asserting water may only be beneficially and reasonably used). Since the court accepted the physical solution, groundwater is now managed by a “Watermaster” rather than the GSA implementing a GSP in Borrego.

WHAT IS A WATERMASTER?

The Watermaster is a committee of five members that work to execute the agreed upon physical solution. The committee members represent the interests of the Borrego Water District, recreation/ golf, agriculture, the County of San Diego, and the community. There is one chair on the committee dedicated to each of the five represented interest areas. For more information on the Watermaster, or to access related public documents or data, visit [this link](#).

BORREGO SPRINGS SUBBASIN GROUNDWATER ADJUDICATION IMPACTS ON SMALL FARMERS:

Small farmers within the Borrego Springs Subbasin may have interest in reviewing the outcome of the Borrego Springs Subbasin Groundwater Adjudication even if they did not participate in the adjudication.

The stipulated judgment assigned baseline pumping allocations (“BPAs”) to parties active in the lawsuit and established the Watermaster to administer the judgment and groundwater use in the Borrego Springs Subbasin. A baseline pumping allocation is a mandated, maximum pumping quantity allocated to an individual or entity. Because the adjudication “address[ed] all Groundwater rights of the basin,” individuals or entities, including small farmers, who

- (1) did not participate in the adjudication, **and**
- (2) are not assigned a BPA, **but**
- (3) continue to pump groundwater or wish to pump groundwater in the future should be aware of the stipulated judgment and Watermaster activities because pumping without registration with the Watermaster could lead to fees and/ or a lawsuit.

Becoming aware of the stipulated judgment and the assignment of BPAs is important to small farmers because BPA measures impact assessments of fees and allows the Watermaster to track changes in property interests so that fees are directed to the proper parties. The following brief examples demonstrate how BPAs feature in the regulatory scheme arranged in the Borrego Subbasin:

- (1) Pumping of groundwater beyond an individual or entity’s BPA is “overproduction” unless the additional pumping can be offset by “carryover,” “lease,” or “permanent transfer.” If an individual or entity does not have a BPA and pumps groundwater, pumped water will likely be viewed as “overproduction.” By the terms of the stipulated judgment, “the Watermaster has authority to establish an Overproduction Penalty Assessment, which will be no less than \$500 per acre-foot.”
 - a. **Impact:** Small farmers should be aware that the Watermaster could assess a fee of \$500 per acre-foot of water used, even where water use is consistent with historical usage unless action is taken to intervene in the judgment and gain a BPA from the Watermaster.
- (2) Both portions of and baseline pumping allocations (BPAs) in their entirety operate as tradeable units for leasing and permanent transfers. However, leases and permanent transfers are **only** effective according to the stipulated judgment where the parties hoping to lease or transfer land are “parties” to the judgment and are in good standing. A party is in good standing when all applicable pump assessments, fees, and charges have been paid or will be paid prior to the completion of the transfer.

- a. **Impact:** Small farmers who are interested in leasing or transferring water rights, but who are not party to the stipulated judgment, should consider contacting the Watermaster and intervening in the stipulated judgment.

For persons or businesses that were a party to the stipulated judgment, the forms needed to transfer a piece of your allocated water use can be found [here](#). The forms are needed to carry out temporary assignments of annual allocation of BPA rights, transfers of annual allocation or carryover, leases of BPA Rights, and permanent transfers of BPA rights.

EXCEPTIONS TO THE BORREGO STIPULATED JUDGMENT REGULATORY SCHEME:

A. DE MINIMIS PUMPERS:

The stipulated judgment imposed is not intended to impact a person or entity that did not pump more than two-acre feet at the time of the filing of the Complaint (January 30, 2020) and continues to pump less than two-acre feet **and** does not intend to transfer their allocated pumping to another property. However, De Minimis Pumpers who did not pump as of the date of the filed complaint must apply for approval from the Watermaster.

Impact: Small farmers should be aware of this option. However, groundwater use on a small farm may exceed this maximum pumping limit, so some small farmers may not benefit from this exemption.

B. STATE PARK & BORREGO ELEMENTARY SCHOOL:

The State Park and Borrego Elementary School are treated differently than most entities that pump groundwater. Both are limited to a maximum number of acre-feet of groundwater per year, however, their use will not be subject to Rampdown while all other regulated groundwater pumpers will.

HOW TO INTERVENE IN THE BORREGO STIPULATED JUDGMENT & GAIN A BPA:

Parties interested in gaining a BPA either to reflect historic water use or to enact a water transfer will need to “intervene as a Party,” by joining the stipulated judgment as suggested on pages 25-26, lines 25-2. Parties that were provided notice of the adjudication, but that were unable to participate and dropped out of the lawsuit through default will be allowed to rejoin the lawsuit and have their water rights recognized at the discretion of the judge.