

Case Analysis for the Small Farmer Community

Oxnard Subbasin and Pleasant Valley Subbasin Groundwater Adjudication

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Case Name: OPV Coalition v. Fox Canyon Groundwater Management Agency

Case No: VENCI00555357

Date Filed: June 15, 2021

Court: Santa Barbara Superior Court

EXECUTIVE SUMMARY

The rights to pump and store groundwater in the Oxnard Subbasin and Pleasant Valley Subbasin are currently being determined via a comprehensive groundwater adjudication, which was commenced in June 2021. The lawsuit challenges how groundwater has been, and will continue to be, managed in the subbasins. It specifically names the area's Groundwater Sustainability Agency (GSA), Fox Canyon Groundwater Management Agency (FCGMA), as a defendant. The case is being heard in Santa Barbara Superior Court.

It is possible that an agreement reached in the adjudication, if issued or approved by the court, will be binding on landowners who seek to extract water from the Oxnard and Pleasant Valley Subbasins, even if they do not participate in the lawsuit. Small farmers who wish to pump or store groundwater in the subbasins should consider joining the lawsuit, or risk having their water rights diminished without their input.

THE ADJUDICATION

In June 2021, OPV Coalition (OPV), a group of landowners who own land overlying the Oxnard Groundwater Subbasin and Pleasant Valley Groundwater Subbasin, initiated a comprehensive groundwater adjudication to determine *all rights* to extract (or pump) groundwater from those basins. The lawsuit names Fox Canyon Groundwater Management Agency (FCGMA), the Groundwater Sustainability Agency for both basins, as a defendant.

Generally, the lawsuit takes issue with how water is, and will continue to be, managed in the subbasins. More specially, OPV asserts five "causes of action," or claims. The first cause of action seeks to determine all the rights to groundwater within the Oxnard and Pleasant Valley subbasins, and to impose a "physical solution" that will govern groundwater in the basins. A physical solution is a negotiated agreement between water users in a given area that a court may adopt in an adjudication to manage groundwater in that area. OPV's second cause of action asks the court to determine "the priority, amount, purpose of use, extraction location, place of use of the water, and use of storage space in the" subbasins.

OPV's third, fourth, and fifth claims are against FCGMA. These claims collectively challenge elements of the Allocation Ordinance adopted by the FCGMA and ask the court to alter the groundwater sustainability plan (GSP), adopted on December 13, 2019.

FCGMA is also involved in a separate adjudication concerning water rights in the Las Posas Subbasin, which adjoins the Oxnard and Pleasant Valley Groundwater Subbasins. A final judgment was entered in that adjudication on July 10, 2023, which included adoption of a physical solution.

THE OXNARD SUBBASIN AND PLEASANT VALLEY SUBBASIN

The lawsuit is a comprehensive adjudication of the Oxnard Subbasin and the Pleasant Valley Subbasin. Both basins are located entirely within Ventura County and are part of the Santa Clara River Valley Groundwater Basin.

The Oxnard Subbasin encompasses an area of approximately 58,000 acres and borders the Pacific Ocean, while the Pleasant Valley Subbasin encompasses an area of approximately 19,840 acres and is located inland.

HISTORY OF OVERDRAFT AND CURRENT ISSUES FACING THE SUBBASINS

The subbasins are currently in a state of overdraft, meaning more water is being extracted from the ground than replenished. In 2018, the California Department of Water Resources (DWR)

identified both basins as being in a state of “critical overdraft,” triggering the formation of the GSA and expedited development and adoption of its GSP.

Aquifers within the Oxnard subbasin are, and have been, experiencing seawater intrusion— one of the “undesirable results” the Sustainable Groundwater Management Act (SGMA) was designed to address and avoid. Seawater intrusion occurs when groundwater aquifers are contaminated with saline water. Groundwater pumping can cause the water levels in coastal aquifers to lower, allowing seawater to migrate towards the land and contaminate the coastal-most aquifers.

While seawater intrusion generally functions this way (called “lateral intrusion”), due to the variability and unique conditions of a specific area, there are a variety of processes that can result in saltwater intrusion. In the Oxnard and Pleasant Valley subbasins, experts have identified four sources or processes associated with seawater intrusion: Lateral Seawater Intrusion, Cross Contamination, Compaction of Salt-Laden Marine Clays, and Lateral Movement of Brines from Tertiary Formations. More information regarding these processes can be found in a report by UGCD.

While seawater intrusion has only occurred in the Oxnard Subbasin, and not in the Pleasant Valley Subbasin, the subbasins are hydrologically connected. The complaint alleges pumping in the Pleasant Valley Subbasin contributes to seawater intrusion in the Oxnard Subbasin. However, the consulting agency assisting FCGMA in development and implementation of their GSP maintains the data is inconclusive regarding this point. In other words, while the Oxnard Subbasin is experiencing seawater intrusion, and the basin is hydrologically connected to the Pleasant Valley Subbasin, the impact pumping in Pleasant Valley is having on seawater intrusion in Oxnard is disputed.

While SGMA was passed in 2014 and this adjudication began in 2021, these are only the most recent developments aimed at managing the basin’s groundwater within a long history of water management efforts. As early as the 1950s, the area saw seawater intrusion, declining groundwater well levels, and increasingly poor water quality drawn from some wells.

Since 1950, United Water Conservation District (UWCD), which acts as a wholesaler and water management district, has managed regional water enhancement projects in the Santa Clara River Valley and Oxnard Coastal Plain. The complaint alleges that UWCD does not have the authority to regulate pumping of groundwater in the basin. Today, UWCD operates infrastructure to divert surface water from the Santa Clara River to recharge the basins in its jurisdiction, delivers diverted water to offset pumping in the basins, and pumps and delivers water from areas near the river that are more easily recharged to areas where it is more difficult to recharge groundwater—with the goal of offsetting pumping in those harder to recharge areas. UWCD is a party to the ongoing adjudication and aligned themselves with defendants FCGMA’s interests by “intervening” as defendants.

FCGMA, a named defendant in the adjudication, is one of California’s few independent special districts created specifically to manage groundwater, operating separately from the County of Ventura or any city government. It was created by the California legislature in the 1980s to manage groundwater in Ventura County, with the goal of addressing the undesirable impacts—including seawater intrusion—facing the basins in its jurisdiction because of long-term overdraft. Unlike UWCD, the complaint alleges that FCGMA does have the authority to regulate pumping in the basins it manages.

Despite UWCD and FCGMA's efforts to limit pumping in the basins and manage the area's groundwater, overdraft remains a critical problem. In response to the statewide adoption of SGMA in 2015, FCGMA became the Groundwater Sustainability Agency for several areas including the Oxnard and Pleasant Valley Subbasins.

THE ALLOCATION ORDINANCE ADOPTED BY FCGMA

FCGMA adopted an allocation ordinance on October 23, 2019, which went into effect on October 1, 2020. On March 27, 2024, FCGMA amended sections of the October 2019 Ordinance in response to ongoing litigation.

The Allocation Ordinance is currently in effect in both the Pleasant Valley Subbasin and the Oxnard Subbasin. The Ordinance does not alter water right entitlements, but it does place limitations on the amount of groundwater water rights holders can pump and puts in place reporting requirements. It also imposes fees on those who pump water in excess of their allocated amount. The allocation allows water to be transferred or temporarily assigned under certain circumstances.

In the present adjudication, OPV has challenged the Allocation Ordinance. OPV takes issue with two key elements of the ordinance. First, OPV argues that the methodology used in the allocation ordinance allots rights to pump groundwater based exclusively on historical use of groundwater during a period in which there was no minimum allocation per acre. They argue that, over time, this approach will result in individual allocations being reduced to achieve sustainable management. Second, they argue that the Ordinance is in violation of California law because it states it is exempted from CEQA, without providing evidence in support of the purported exemption. CEQA stands for the California Environmental Quality Act and is a law that requires public agencies (such as GSA's) to consider the environmental effects of a project before approving that project.

COURT JURISDICTION

OPV initially filed the adjudication with the Superior Court of Ventura County; However, the California Code of Civil Procedure §838(a)(1) provides in a comprehensive water adjudication, a superior court judge will be disqualified if the county which the judge serves overlies the basin, or any portion of the basin, being adjudicated. The Complaint noted all the Ventura County judges were automatically disqualified. OPV coalition requested that Judge Thomas Anderle of the Santa Barbara Superior Court be assigned to the case, because, at that time, he was overseeing the Las Posas Subbasin adjudication.

In August 2021, the court referred the case to the Judicial Council for assignment to an appropriate judge—meaning one not seated in Ventura County Superior Court—and the Judicial Council assigned the case to Judge Thomas Anderle of Santa Barbara Superior Court. The parties disputed whether the assignment to Judge Anderle also transferred the case to Santa Barbara Superior Court (as opposed to Ventura County Superior Court), which the court later clarified, confirming the case would be heard in Santa Barbara moving forward.

In December 2021, UWCD filed a motion to disqualify Judge Anderle, alleging he owned property overlying the basins being adjudicated, and therefore had a conflict which precluded him from presiding over the case. In February 2022, the Santa Barbara Superior Court ruled to disqualify Judge Anderle.

On February 22, 2022, the court reassigned the case, for all purposes, to the honorable Donna Geck, who is currently presiding over the case in the Superior Court of Santa Barbara County.

NEXT STEPS IN THE ADJUDICATION

Groundwater adjudications can take a long time, and it is not unusual for an adjudication to last a decade or longer. However, the completion of an adjudication can be expedited in some circumstances. An adjudication can end if most of the parties agree to a settlement and the court approves the settlement; however, there are certain limitations as to what a court can approve, even if most of the parties are in agreement as to the terms.

Right now, the adjudication is still in its early stages. OPV Coalition initiated the adjudication in 2021, and since its initiation, the court has only decided a number of procedural matters. At present, the court has issued a “stay” as to certain claims alleged in OPV’s Complaint. This means the court has issued a pause and the parties cannot conduct further litigation or fact-finding (called “discovery”) regarding those claims subject to the stay. The court also has not set a trial date, nor has it adopted a scheduling order, which outlines the timeline and procedures for a legal case.

Most recently, on October 15, the court did take steps to begin the discovery process by appointing a “special master”. The special master will evaluate the discovery needs of the parties with the goal of developing a discovery plan. The special master is not yet authorized to do independent fact-finding or investigation nor are they permitted to engage with third parties to collect, organize, or distribute data.

The Court’s last case management conference was held on November 22, 2024. Case management conferences are held periodically and are an opportunity for the parties to meet with the judge presiding over the case to discuss the case’s status. The Court’s next case management conference is scheduled for January 17, 2025.

IMPACTS FOR SMALL FARMERS

Now that the adjudication has been commenced, *all rights to pump groundwater in the Oxnard and Pleasant Valley Subbasins will be decided*, including any water rights held by small farmers. There is a risk that any order or agreement reached in the adjudication, if issued or approved by the court, will be binding on landowners who seek to extract water from the Oxnard and Pleasant Valley Subbasins, even if they do not participate in the lawsuit. Small farmers who wish to pump or store groundwater in the subbasins should consider joining the lawsuit, or risk having their water rights diminished without their input.

Those who are not already involved in the lawsuit may attempt to join the lawsuit by “intervention,” or asking the court for permission to join.

If you are a small farmer and have questions about the information in this report, please reach out to the UC Davis Small Farmer Clinic at smallfarmerclinic@law.ucdavis.edu.

LINKS TO CASE RELATED DOCUMENTS & RESOURCES

Operative Complaint: <https://opvcoalition.org/wp-content/uploads/2023/01/OPV-First-Amended-Complaint.pdf>

Court Approved Notice of Adjudication: <https://opvcoalition.org/wp-content/uploads/2023/01/2023.01.05-OPV-Court-Approved-Notice-English.pdf>

FCGMA website: <https://fcgma.org/>

Santa Barbara Superior Court Website: <https://www.santabarbara.courts.ca.gov/>

SOURCES REFERENCED

California Department of Water Resources, *Critically Overdrafted Basins*, <https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118/Critically-Overdrafted-Basins> (last visited December 2, 2024).

Fox Canyon Groundwater Management Agency, *An Ordinance Amending Articles 4 and 6 and Rescinding Section 10.2 of An Ordinance to Establish an Allocation System for the Oxnard and Pleasant Valley Groundwater Basins*, https://s42135.pcdn.co/wp-content/uploads/2024/04/OPV-Ordinance-Amendment_20240327.pdf (Adopted March 27, 2024)

Fox Canyon Groundwater Management Agency, *An Ordinance to Establish an Allocation System for the Oxnard and Pleasant Valley Groundwater Basins*, https://fcgma.org/wp-content/uploads/2022/06/Ord_to_Establish_an_Allocation_System_for_the_OPV_Groundwater_Basins_with_Amendments.pdf (Adopted October 23, 2019, last Amended March 24, 2021)

Fox Canyon Groundwater Management Agency, *Brief History Overview*, https://fcgma.org/wp-content/uploads/2022/05/FCGMA_History_Edit_PK.pdf (January 15, 2015).

Gary Pitzer, *Explainer: The Sustainable Groundwater Management Law, The Judge and the Enforcer*, Water Education Foundation, <https://www.watereducation.org/western-water/explainer-sustainable-groundwater-management-act-law-judge-and-enforcer> (January 29, 2021).

Notice of Adjudication, OPV Coalition v. FCGMA, Case No. VENCI00555357, pending in the Supreme Court of the State of California County of Santa Barbara, (Dated December 29, 2022).

Order Appointing Special Master, OPV Coalition v. FCGMA, Case No. VENCI00555357, pending in the Supreme Court of the State of California County of Santa Barbara, (Dated October 15, 2024).

Santa Clara River Valley Groundwater Basin Oxnard Subbasin, California's Groundwater Bulletin 118, https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/4_004_02_OxnardSubbasin.pdf (January 20, 2006).

Second Amended Complaint, OPV Coalition v. FCGMA, Case No. VENCI00555357, pending in the Supreme Court of the State of California County of Santa Barbara, (Filed on March 29, 2024).

United Conservation Water District, <https://www.unitedwater.org/about-us/#special-districts> (last visited December 2, 2024)

United Water Conservation District, 2021, Saline Intrusion and 2020 Groundwater Conditions Update, Oxnard and Pleasant Valley basins, United Water Conservation District Open-File Report 2021-03, <https://www.unitedwater.org/wp-content/uploads/2021/12/UWCD-OFR-2021-03-Saline-Intrusion-and-2020-GW-Conditions-Update-Oxnard-and-PV-Basins.pdf> (last visited December 2, 2024).

USGS, *Sustainable Groundwater, Seawater Intrusion*, California Water Science Center, <https://ca.water.usgs.gov/sustainable-groundwater-management/seawater-intrusion-california.html> (last visited December 2, 2024)

YouTube, *Fox Canyon Groundwater Sustainability Board of Directors Meeting*, <https://www.youtube.com/watch?v=EMJh6AyX7Qc> (October 23, 2024).