

SUSTAINABLE GROUNDWATER MANAGEMENT ACT: COMPREHENSIVE GROUNDWATER ADJUDICATIONS

**Joint Hearing of
Assembly Budget Subcommittee No. 4 (Climate Crisis, Resources,
Energy, and Transportation) and Assembly Water, Parks, and Wildlife
Committee**

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Fox Canyon Groundwater Management Agency

- Special district created by the Legislature in 1982 in response to seawater intrusion (beginning in the 1940s)

Fox Canyon Groundwater Management Agency

- The 1982 GMA has many similarities to the GSAs created by SGMA in 2014
- Examples: Board composition and stakeholder involvement

Fox Canyon Groundwater Management Agency

- FCGMA Act Requirements
 - Eliminate overdraft in all basins
 - Bring all basins to safe yield by 2010
 - Address seawater intrusion
- **FAILED**
- After 40 years, the GMA failed to meet the requirements of the act
 - Safe yield = 100K
 - Pumping continues well in excess of 100K

Sustainable Groundwater Management Act

- Designated FCGMA as exclusive GSA for the three basins within its boundaries
 - Required the development of GSPs for all three basins
- Provided FCGMA new authorities
 - To establish programs and projects to develop new supplies to augment basin yields
 - To acquire water rights/supplies to augment basin yields
 - To impose and collect fees to construct projects and acquire rights/supplies to augment basin yields and groundwater resources

Sustainable Groundwater Management Act

- Preparation of GSPs
 - 4 years in development – complete 2019
 - 73 public meetings
 - 8 public workshops
 - 2 drafts circulated for public comment
- Adoption of GSPs
 - All three GSPs adopted on December 17, 2019 by the Board
 - Of the 8 GSPs approved in round 1, 3 submitted by FCGMA were approved

Las Posas Valley Adjudication

- Overview
 - Timeline
 - Complaint filed October 2018
 - **Three phases** – safe yield determination; water rights trial; governance/management settlement
 - Judgment entered July 2023
 - Reason for initiation
 - Dispute between mutual water companies and their shareholder regarding whether mutual water companies or their shareholders own water rights
 - **Ultimately, scope broadened to include issues related to FCGMA's GSP and regulatory/management authorities – THE PHYSICAL SOLUTION**
 - **LPV Adjudication did not include challenges to LPV GSP and LPV Allocation Ordinances**
 - Separate lawsuits were filed to challenge LPV GSP and to challenge LPV Allocation Ordinance
 - FGMA required to defend three lawsuits

Las Posas Valley Adjudication

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- Phasing
 - Phase 1
 - Determination of LPV Basin safe yield and M&I percentage share
 - Phase 2
 - Trial and decision on individual parties' water rights
 - Phase 3 –
 - Phase 3 was supposed to be FCGMA's opportunity to argue for the preservation of its management/regulatory authority under SGMA
 - FCGMA Board chose to negotiate a settlement agreement which included a judgment and physical solution that resolved the adjudication

Las Posas Valley Adjudication

- Judgment and Physical Solution
 - Determined all water rights in LPV Basin
 - Appointed FCGMA as Watermaster for the LPV Basin
 - Incorporates the LPV GSP and includes SGMA goal of Sustainable Groundwater Management
 - Authorizes FCGMA/Watermaster basin assessments for administration of judgment/physical solution and implementation/construction of projects (\$200)

Las Posas Valley Adjudication

- Judgment & Physical Solution [CONT]
 - Also creates new policy and technical advisory committees (TAC/PAC) – Vehicle for Stakeholder Input Under Water Master (Not Brown Act committees)
 - And requires FCGMA/Watermaster to compensate the TAC members
 - As a result, FCGMA/Watermaster is paying to develop the record that will be used by special interests to challenge its management actions/decisions in court
 - Anticipated that this “committee consultation” process will be used to challenge FCGMA’s science and technical conclusions
 - More specifically, to challenge the LPV GSP’s sustainable yield numbers, measurable objectives and minimum thresholds, and thus need for limiting/reducing extractions

Las Posas Valley Adjudication

- Judgment & Physical Solution [CONT]
 - Allocated 42K AF in contrast to sustainable yield of ~31k
 - Created “Operational Yield” and “Basin Optimization Yield” – different from “Sustainable Yield”
 - Virtually eliminated possibility of open and public Water Market
 - Subjects all FCGMA/Watermaster “basin management actions” to court’s continuing jurisdiction
 - Any party can challenge almost any action/decision made by FCGMA/Watermaster in court
 - Most importantly, all FCGMA/Watermaster actions and decisions subject to **de novo** review
 - **Less deferential standard than “abuse of discretion”** standard than would have applied to FCGMA GSP and sustainable management actions/decisions under SGMA

Overarching Questions/Issues

- Likely to set a precedent for other adjudicated basins
- Scale of the Physical Solution – Administrivia?
 - 850 “cram down” deals
- PAC and TAC Stakeholder Engagement Process
 - Not Brown Act Committees
 - Dominated by Agricultural Interests (7 of 10 voting members)
- Open and Public Water Market Eliminated
- All Water Master/FCGMA actions subject to court review
 - De Novo standard
 - Must be able to pay to play
 - Court decides the science (potential conflict with approved GSP), e.g.:
 - Initial operating 40k/judgement allocates 42k/GSP sustainable yield ~31k
 - BOY = native inflows + return flows + reasonably anticipated projects + new conditions (40k af)
 - Carry over (even if earned on artificially high yield) NOT subject to ramp down



QUESTIONS