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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF VENTURA**

16 CITY OF OXNARD, a California Municipal
Corporation,

17
18 Petitioner/Plaintiff,

19 v.

20 FOX CANYON GROUNDWATER
MANAGEMENT AGENCY, a California
Special District,

21
22 Respondent/Defendant.

Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Cal. Water Code App. § 121-102, *et seq.*
[Fox Canyon Groundwater Management
Agency Act] Cal. Code Civ. Proc. §§ 1085,
1094.5; Cal. Pub Resources Code §§ 21000, *et*
seq. [California Environmental Quality Act];
Cal. Water Code §§ 10720 *et seq.*, Cal. Gov.
Code §§ 65000, *et seq.*
[Sustainable Groundwater Management Act
and California Planning and Zoning Law]

Action Filed:

Trial Date:

None Set

INTRODUCTION

1. Petitioner the City of Oxnard ("Oxnard" or the "City") brings this Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition") to protect itself, and its residents and ratepayers, from restrictive, discriminatory and unfair treatment by Fox Canyon Groundwater Management Agency ("Respondent"), and to enforce the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 *et seq.*) ("CEQA").

2. On October 23, 2019, Respondent adopted An Ordinance to Establish an Allocation System for the Oxnard and Pleasant Valley Groundwater Basins (the "Allocation Ordinance"). The Allocation Ordinance establishes a dual standard by increasing allocations to other operators based on historical supplemental and surface water deliveries, while arbitrarily restricting the City's allocation despite the City's historical use of supplemental water, in direct violation of Respondent's enabling legislation, the Fox Canyon Groundwater Management Agency Act (West's Ann. Wat.-Appen. (1995 ed.) ch. 121, § 121-102 *et seq.*)¹ ("FCGMAA"). The Allocation Ordinance provides Pleasant Valley County Water District ("PVCWD") and United Conservation Water District ("United") with additional groundwater allocations, along with other less stringent regulations, based on their historical surface water deliveries from the Santa Clara River and the Conejo Creek Project. The Allocation Ordinance also provides significant flexibility in how United and PVCWD use those additional allocations. The Allocation Ordinance ignores, on the other hand, the City's supplemental water deliveries, in direct violation of the FCGMAA, which provides that "[t]he availability of supplemental water to any operator shall not subject that operator to regulations more restrictive than those imposed on other operators" (§ 121-702 ("Section 702")). By providing additional allocations and flexibility to United and PVCWD, but then withholding additional allocations and flexibility to the City, the Allocation Ordinance unfairly and arbitrarily penalizes the City for taking aggressive actions to limit groundwater pumping through its acquisition of supplemental water. In addition, the Allocation Ordinance

¹ Much of California's water law is comprised of 'uncodified acts,' also known and referred to as the Water Code Appendix. Unless otherwise stated, all statutory citations in this Petition are to this uncodified law, as reprinted in West's Annotated Water Code Appendix.

1 **PRIVATE ATTORNEY GENERAL DOCTRINE**

2 9. The City brings this Petition pursuant to section 1021.5 of the Code of Civil
3 Procedure, and any other applicable legal theory to enforce important rights affecting the public
4 interest.

5 10. The relief requested in this action will confer a significant benefit on a large class
6 of persons and ratepayers who will otherwise be unfairly burdened by the Allocation Ordinance,
7 and to the general public by requiring Respondent to comply with the legislative mandates of
8 CEQA, the FCGMAA, SGMA and State Planning and Zoning Law.

9 11. The necessity and financial burden of enforcement make an award of attorney's
10 fees appropriate in this proceeding. The City has incurred a significant financial burden in
11 submitting numerous comments, attending numerous hearings, and meeting with interested
12 parties, and will continue to incur a financial burden in preparing and executing this litigation.

13 **STATEMENT OF FACTS**

14 The City's Water Utility

15 12. The City operates a water utility to serve its residential, commercial, industrial,
16 institutional and agricultural customers. As the most populous city in Ventura County, the City
17 delivers, on average, over 22 million gallons per day of potable and recycled water to more than
18 42,000 utility customers.

19 13. The City's water comes from a variety of sources. The City historically obtained
20 approximately half of its supply from groundwater. Groundwater pumping allocations were
21 substantially reduced, however, after Respondent adopted Emergency Ordinance E in 2014, in
22 response to the previous drought. The City obtains additional supplies through imported surface
23 water from the Metropolitan Water District of Southern California via the Calleguas Municipal
24 Water District. The City also operates an advanced water purification facility to produce recycled
25 water, which currently provides a small percentage of the City's supply.

26 14. The City has taken aggressive efforts to reduce its per capita water use. As of 2018,
27 average residential water use per capita was 55 gallons per day, which is lower than all other cities
28 in Ventura County.

1 Respondent's Proceedings to Adopt the Allocation Ordinance

2 15. On October 23, 2019, Respondent adopted the Allocation Ordinance, which sets
3 forth a new groundwater allocation system for the Oxnard and Pleasant Valley Groundwater
4 Basins.

5 16. The Allocation Ordinance establishes a new extraction allocation system for all
6 users in the Oxnard and Pleasant Valley basins.

7 17. The new extraction allocation supersedes the restrictive groundwater allocations
8 contained in Emergency Ordinance E. Although Governor Jerry Brown declared an end to the
9 drought for most of the state pursuant to Executive Order B-40-17 in April 2017, Emergency
10 Ordinance E remained in effect locally, subject to periodic review every 18 months.

11 18. The initial extraction allocation is based, for most users, on the average historical
12 pumping by each extraction facility between 2005 and 2014.

13 19. Initial discussions regarding the Allocation Ordinance commenced in 2015 between
14 Respondent, the City and other stakeholder groups, including United and PVCWD. The City
15 actively participated and addressed its concerns with the Allocation Ordinance to Respondent on
16 numerous occasions, orally and in writing.

17 20. Respondent met with the stakeholder groups and revised the draft Allocation
18 Ordinance. In 2018, Respondent revised the draft Allocation Ordinance to provide United and
19 PVCWD with additional extraction allocations to account for surface water deliveries from the
20 Santa Clara River and the Conejo Creek Project.

21 21. In 2019, Respondent revised the Allocation Ordinance to include an additional
22 4,978 acre-feet to PVCWD's extraction allocation, to account for surface water deliveries from the
23 Conejo Creek Project. In 2019, Respondent included additional language in the Allocation
24 Ordinance, termed the Santa Clara River Water Flex Allocation, to allow both United and
25 PVCWD to increase or decrease annual groundwater extractions, based on the availability of
26 surface water supplies from the Santa Clara River.

27 22. The City raised concerns to Respondent that if additional allocations were to be
28 provided to United and PVCWD to account for surface water deliveries from the Conejo Creek

1 Project and the Santa Clara River Water Flex Allocation allegedly used in-lieu of groundwater
2 pumping, Respondent should likewise take into account the City's historical use of in-lieu or
3 supplemental water from the Calleguas Municipal Water District in-lieu of additional groundwater
4 pumping by the City. The final Allocation Ordinance, however, included no reference to the City's
5 use of supplemental water in-lieu of groundwater production.

6 Summary of the Allocation Ordinance

7 23. The Allocation Ordinance commences with Findings under Article 1. In Sections
8 1.2 and 1.3, the Findings note that Respondent is required to manage its underlying basins
9 pursuant to an adopted groundwater sustainability plan pursuant to SGMA, and that the
10 groundwater sustainability plan must include an estimate of the sustainable yield of the
11 groundwater basins.

12 24. Section 1.4 notes that the sustainable yield "will be less than recent average annual
13 groundwater extractions from the Basins."

14 25. Section 1.9 states, in its entirety: "[t]his Ordinance is exempt from the California
15 Environmental Quality Act (CEQA) pursuant to Water Code section 10728.6 and CEQA
16 Guidelines sections 15061(b)(3), 15307, and 15308." No additional justification or findings are
17 provided in connection with this statement.

18 26. Section 1.10 states, in its entirety, "[t]he extraction allocations established under
19 this ordinance are consistent with the land use elements of the applicable general plans to the
20 extent that there is sufficient sustainable yield in the Basins to serve the land use designations
21 therein." No additional justification or findings are provided in connection with this statement.

22 27. Article 5 establishes General Provisions applicable to each operator, including
23 provisions whereby each operator will be provided an extraction allocation for each groundwater
24 extraction facility located within the Basins.

25 28. Article 6 includes provisions applicable only to PVCWD and United. Section 6.1.1
26 provides, "[i]n recognition of the use of surface water from the Conejo Creek Project and the
27 corresponding reduction in total agricultural extractions within Pleasant Valley's service area
28 during the base-period, Pleasant Valley's base-period allocation shall be increased in an amount

1 equal to base-period Conejo Creek water deliveries, subject to the adjustment described in
2 subsection 6.1.1.1.”

3 29. Section 6.1.1.1 provides, “Pleasant Valley shall include in the Semi-Annual
4 Extraction Statement required under section 2.3 of the Agency Ordinance Code a report on the use
5 of Conejo Creek water during the reporting year. In each year in which Pleasant Valley receives
6 Conejo Creek water deliveries, its base-period allocation for that year shall be reduced in an
7 amount equal to the Conejo Creek water deliveries during the year.”

8 30. Section 6.2 provides, “[i]n order to encourage the coordinated use of groundwater
9 from the Basins and surface water supplies from the Santa Clara River while eliminating overdraft
10 and maintaining the sustainability goals established under SGMA, Pleasant Valley and United
11 may increase groundwater use in years when these surface water supplies are less than normal,
12 provided that a corresponding reduction in extractions occurs in years when surface water supplies
13 from the Santa Clara River are more abundant. The coordinated use of these water supplies shall
14 be implemented through adjustments to the extraction allocation as provided in this section. This
15 extraction allocation flexibility is called ‘Santa Clara River Water Flex Allocation.’”

16 31. The Allocation Ordinance does not provide any other operators or pumpers with
17 additional extraction allocations based on historical deliveries of surface water or supplemental
18 water.

19 32. Sections 6.3 and 6.4 include additional flexibility to United and PVCWD, to adjust
20 extraction surcharges based on cumulative, five-year base-period allocations.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 33. The City provided written comments and oral testimony throughout Respondent’s
23 proceedings regarding the Allocation Ordinance. All comments informing the substantive bases
24 of this Petition were provided to Respondent prior to its adoption of the Allocation Ordinance.

25 34. Respondent’s adoption of the Allocation Ordinance on October 23, 2019, was a
26 final action, with no administrative appeals available to the City.

27 35. The City has no plain, speedy or adequate remedy in the course of ordinary law
28 unless this Court grants the requested writ of mandate, declaratory and injunctive relief. In the

1 absence of such remedies, Respondent's approval of the Allocation Ordinance would proceed to
2 unfairly burden the City in violation of state law.

3 36. The City has complied with Public Resources Code section 21167.7 by filing a
4 copy of this petition with the California Attorney General. A copy of that notice (but not including
5 the attached Petition) is attached hereto as Exhibit A.

6 37. The City has complied with Public Resources Code section 21167.5 by providing
7 Respondent with notice of their intention to commence this action. A copy of that notice is
8 attached as Exhibit B.

9 38. The City elects to prepare the administrative record. A copy of that election is
10 attached as Exhibit C.

11 FIRST CAUSE OF ACTION

12 (Violations of the FCGMAA)

13 39. The City realleges and incorporates, as though fully set forth herein, each and every
14 allegation in paragraphs 1 through 38 of this Petition.

15 40. The California legislature enacted the FCGMAA in 1982, in part based on the
16 finding that "the preservation of the groundwater resources within the territory of the agency for
17 agricultural and municipal and industrial uses is in the public interest and that the creation of the
18 agency pursuant to this act is for the common benefit of water users." (Water Code App. § 121-
19 102.)

20 41. The FCGMAA provides Respondent with a set of enumerated powers for managing
21 the Fox Canyon aquifer, ranging from data collection, the adoption of groundwater management
22 plans, registration of extraction facilities, and the imposition of extraction allocations, charges
23 surcharges. The FCGMAA includes enforcement provisions, by authorizing Respondent to
24 (1) require its users to implement conservation practices, (2) regulate groundwater extractions;
25 (3) enjoin unreasonable uses of water, (4) impose spacing requirements for extraction facilities,
26 and (5) impose reasonable operating regulations. (Water Code App. § 121-701.)

27 42. The FCGMAA includes an important limit to this power, by requiring that "[t]he
28 availability of supplemental water to any operator shall not subject that operator to regulations

1 more restrictive than those imposed on other operators." (§ 121-702.) The FCGMAA defines
2 "supplemental water" as "surface water or groundwater imported from outside the watershed or
3 watersheds of the groundwater basin or aquifer and flood waters that are conserved and saved
4 within the watershed or watersheds which would otherwise have been lost or would not have
5 reached the groundwater basin or aquifers." (§ 121-323.)

6 43. The City is an "operator" under the FCGMAA and the Allocation Ordinance.

7 44. United and PVCWD are each an "operator" under the FCGMAA and the
8 Allocation Ordinance.

9 45. Under the Allocation Ordinance, the City's extraction allocation is based solely on
10 its base-period allocation, which is determined by the City's historical extractions reported to
11 Respondent during the 2005-2014 base period. (Allocation Ordinance, §§ 4.5, 4.7 and 6.1.)

12 46. During the base-period, the City supplemented its water supplies through its
13 purchase of 120,612 acre-feet of imported water from the Calleguas Municipal Water District.
14 This amounts to an average of 12,061 acre-feet annually, during the base-period.

15 47. The City's imported water from Calleguas Municipal Water District constitutes the
16 use of "supplemental water" under Section 702.

17 48. Water deliveries from the Conejo Creek Project constitute the use of "supplemental
18 water" under Section 702.

19 49. The Allocation Ordinance does not include any adjustments to the City's initial
20 extraction allocation due to its significant investment in procuring supplemental water to reduce
21 impacts on the groundwater basin.

22 50. On the other hand, PVCWD's extraction allocation is increased by the average
23 amount of Conejo Creek Project surface water deliveries during the base-period. The Allocation
24 Ordinance also provides significant flexibility to United and PVCWD in connection with their use
25 of surface waters from the Conejo Creek Project and the Santa Clara River. Both United and
26 PVCWD may increase their groundwater extractions in any year that surface water deliveries from
27 the Santa Clara River are less than the base-period deliveries. Although the Allocation Ordinance
28 requires a corresponding reduction in groundwater extraction in years that Santa Clara River

1 surface water deliveries are greater than the base-period, the Allocation Ordinance does not
2 prohibit prolonged reliance on groundwater extractions in the event of prolonged drought, or other
3 factors that may cause prolonged reductions in surface water deliveries.

4 51. Surface water deliveries from the Santa Clara River do not constitute imported
5 water from outside the watershed, and do not constitute "supplemental water" under Section 702.

6 52. Supplemental water is not available to many other operators regulated by the
7 Allocation Ordinance. Those operators received an initial extraction allocation equal to their
8 entire water use during the base-period. The City is subjected to more restrictive regulation than
9 these operators because Oxnard's initial extraction allocation is reduced as a result of the
10 availability of supplemental water to the City during the base-period.

11 53. The Allocation Ordinance subjects the City to regulations more restrictive than
12 those imposed on other operators, including United and PVCWD, in direct violation of Section
13 702, by failing to account for the City's significant investment in supplemental water deliveries
14 during the base-period, while providing additional initial extraction allocations to PVCWD's use
15 of Conejo Creek Project water and both PVCWD and United's use of Santa Clara River surface
16 water.

17 54. In addition to being overly restrictive, the initial extraction allocations under the
18 Allocation Ordinance are arbitrary and capricious where the allocation is adjusted for PVCWD's
19 use of Conejo Creek Project water, which constitutes supplemental water under the FCGMAA,
20 and United's use of Santa Clara River surface water, which does not constitute supplemental water
21 under the FCGMAA, while arbitrarily ignoring the City's use of supplemental water.

22 55. In violating the clear statutory mandate under Section 702, Respondent's adoption
23 of the Allocation Ordinance must be rescinded as an *ultra vires* activity.

24 SECOND CAUSE OF ACTION

25 Violation of the FCGMAA

26 56. The City realleges and incorporates, as though fully set forth herein, each and every
27 allegation in paragraphs 1 through 55 of this Petition.

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1 that the activity in question may have a significant effect on the environment, the activity is not
2 subject to CEQA. The lead agency must provide substantial evidence to support a finding that the
3 action is statutorily or categorically exempt from CEQA.

4 64. In order to rely on a categorical exemption pursuant to CEQA Guidelines section
5 15307, Respondent was required to demonstrate, with substantial evidence, that the Allocation
6 Ordinance constituted an action to assure the maintenance, preservation or enhancement of a
7 natural resource.

8 65. In order to rely on a categorical exemption pursuant to CEQA Guidelines section
9 15308, Respondent was required to demonstrate, with substantial evidence, that the Allocation
10 Ordinance constituted an action to assure the maintenance, preservation or enhancement of the
11 environment.

12 66. Section 1.9 of the Allocation Ordinance summarily concludes, without reference to
13 any other finding, that "[t]his ordinance is exempt from [CEQA] pursuant to Water Code section
14 107.28.6 and CEQA Guidelines sections 15061(b)(3), 15307 and 15308. No additional analysis
15 was included in the staff report or other materials prepared by Respondent in connection with its
16 adoption of the Allocation Ordinance.

17 67. The City, on the other hand, and numerous other parties provided written
18 comments and oral testimony showing that the Allocation Ordinance will in fact cause potentially
19 significant impacts to the environment that must be properly analyzed pursuant to CEQA.

20 68. In the City's comments to the Allocation Ordinance, the City noted that the
21 Allocation Ordinance marks a significant departure from Respondent's longstanding practice for
22 determining historical extraction by unfairly allocating Conejo Creek Project and Santa Clara
23 River Flex Allocations to United Conservation Water District and Pleasant Valley County Water
24 District, while ignoring the reduced pumping by the City and other operators where they met part
25 of their demand with supplemental water.

26 69. Prior to Respondent's adoption of the Allocation Ordinance, the City provided
27 numerous comments regarding the potential environmental impacts of the Allocation Ordinance.
28 For example, the City noted that the Allocation Ordinance will not prevent prolonged periods of

1 increased groundwater extraction if the Santa Clara River Flex Allocation is elevated for many
2 years, i.e., if surface water levels are less than normal for multiple, consecutive years, as is
3 common due to California's climatic fluctuations and more recent trends towards extreme drought.

4 70. The City further commented that groundwater extraction will likely increase if the
5 Conejo Creek Project Allocation does not include any mechanism to ensure that increased
6 groundwater extractions are in fact offset by decreased pumping over a five-year period. The
7 Allocation Ordinance ultimately did not include such a mechanism to ensure decreased pumping.

8 71. The City further commented that the Allocation Ordinance will supersede
9 limitations in place under Emergency Ordinance E. In superseding Emergency Ordinance E, the
10 Allocation Ordinance therefore authorizes significantly more pumping than allowed under the
11 environmental baseline that existed prior to Respondent's adoption of Allocation Ordinance.

12 72. The City further commented that the Allocation Ordinance increases Pleasant
13 Valley County Water District's extraction allocation by 4,978 acre-feet annually, which amounts
14 to 42.9% of the estimated 11,600 annual acre-feet safe yield of the Pleasant Valley Basin, and that
15 this constituted a substantial amount of pumping that should be properly evaluated under CEQA.

16 73. The City further commented that the Allocation Ordinance presumes as much
17 surface water diversion as possible, therefore impacts related to those surface diversions must be
18 properly evaluated under CEQA.

19 74. At the public hearing to consider adoption of the Allocation Ordinance, City
20 representatives provided oral testimony urging Respondent to conduct a proper CEQA review
21 prior to adopting the Allocation Ordinance; in response, former Director Eranio questioned
22 Respondent's legal counsel as to the propriety of the alleged CEQA exemptions:

23 Eranio: We heard over and over again that the CEQA paragraph 1.9 is insufficient in this
24 ordinance because there's no discussion or other challenges to it. Can you respond
25 to that?

26 Legal Counsel: Yes, I can. I believe the findings adequately set forth the basis for
27 the exemptions that are claimed. This is a conservation measure and falls within the
28 resource protection exemptions under the CEQA Guidelines. We've also cited the

1 SGMA exemption, and it is correct that that does not specifically apply to the
2 adoption of an allocation ordinance, but as the findings recite, this ordinance is part
3 of the process of transitioning from our past groundwater management allocation
4 system to this new system under SGMA, and so I would argue that it's, in a sense,
5 part and parcel to the groundwater sustainability plan adoption, SGMA
6 implementation process....

7 75. During this exchange, and throughout all of the proceedings and public hearings to
8 adopt the Allocation Ordinance, Respondent failed to provide any substantial evidence explaining
9 how the Allocation Ordinance constitutes a "conservation measure," especially in light of the
10 comments raised by the City which show that the Allocation Ordinance will significantly increase
11 pumping allocations – albeit only for certain users; Respondent therefore violated CEQA by
12 impermissibly relying on CEQA Guidelines section 15061(b)(3), and by failing to provide
13 substantial evidence to support its reliance on CEQA Guidelines sections 15307 and 15308.

14 76. Lastly, Respondent improperly relied on Water Code section 10728.6, which
15 provides "[n]othing in this part shall be interpreted as exempting from [CEQA] a project that
16 would implement actions taken pursuant to a plan adopted pursuant to this chapter." Respondent's
17 reliance on this provision as an "implementation" of SGMA therefore directly conflicts with the
18 express language of Water Code section 10728.6. In addition, Respondent's purported reliance on
19 section 10728.6 is inconsistent with the clearly established rule that CEQA exemptions must be
20 construed narrowly.

21 **THIRD CAUSE OF ACTION**

22 **(Violations of SGMA and State Planning and Zoning Law)**

23 77. The City realleges and incorporates, as though fully set forth herein, each and every
24 allegation in paragraphs 1 through 76 of this Petition.

25 78. The Allocation Ordinance includes, as a stated purpose in Section 1.7, the intent to
26 "transition from the Agency's current groundwater management program to sustainable
27 groundwater management under SGMA."

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4. Oxnard's costs, and an award of attorney fees pursuant to section 1021.5 of the
Code of Civil Procedure; and

5. Further injunctive, declaratory, or other relief as the Court finds just and proper.

DATED: December 2, 2019

Respectfully submitted,
MEYERS, NAVE, RIBACK, SILVER & WILSON

By: 
GREGORY J. NEWMARK
Attorneys for Petitioner/Plaintiff City of Oxnard

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