

O'Melveny & Myers LLP
1999 Avenue of the Stars
8th Floor
Los Angeles, CA 90067-6035

T: +1 310 553 6700
F: +1 310 246 6779
omm.com

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Matt Kline
D: +1 310 246 6840
mkline@omm.com

VIA E-MAIL TO CLERK OF THE BOARD

Board of Directors
Fox Canyon Groundwater Management Agency
800 S. Victoria Ave.
Ventura, CA 93009-1610

Re: *Implementation of the Las Posas Adjudication Judgment*

Dear Board Members:

We write to schedule a meeting this coming week to move forward with implementation of the Judgment and Phase 3 Settlement to which the FCGMA is a party.

In February, the FCGMA agreed to serve as Watermaster for the Las Posas Basin and to perform the duties assigned to it under the Phase 3 Settlement and Judgment.¹ In recent weeks, the FCGMA took the erroneous position that its duties to enforce the Judgment and fulfill its obligations under the Settlement were stayed—not by an order of the Court, but because the FCOP parties noticed an appeal. Key deadlines were thus missed and others approach. *E.g.*:

- 35 days after the Judgment: Send notice to each Water Right Holder, Landowner, Mutual Shareholder, Mutual Water Company, Calleguas Mutual Water District, and Ventura County Waterworks Districts to organize initial meetings for Landowner Constituency Group. J'ment Ex. A ("Watermaster Rules") § 3.1.2.
- 60 days after the Judgment: Hold organizational meetings of the constituency groups to form the PAC 60 days after approval of the Judgment. *Id.* § 3.1.2.
- Sept. 7, 2023: Draft scope of work and budget for the 2025 Basin Optimization Yield Study. *Id.* § 2.10.1.
- 90 days after the Judgment (October 9, 2023): PAC will be fully constituted. *Id.* § 3.1.2.
- Dec. 8, 2023: Watermaster shall, following Committee Consultation, approve a scope of work and budget for a technical study to assess and establish the Basin Optimization Yield. J'ment § 4.10.1.1.

¹ *Las Posas Valley Water Rights Coal. v. Fox Canyon Groundwater Mgmt. Agency*, No. VENC100509700 (S.B. Super. Ct.).

As we said repeatedly prior to the Phase 3 trial and reiterate today, our clients want to work with the FCGMA as Watermaster to address practical concerns and get implementation on track. The first matter to be addressed is the election of the PAC, which should be completed within the next 14 days. We understand there is concern about some of the dates in the Judgment and our clients are willing to discuss those and make reasonable compromises as need be. We made that offer in April, May, and June, and repeat it now.

Any further delay in implementing the Judgment is a very real concern, given that the FCGMA took upon itself to determine, without confirmation from any court, that there was a stay in place that shut down implementation of the *entire* Judgment.² That decision followed on the heels of FCGMA's (unsuccessful) motion to stop the Phase 1 trial from happening and (failed) writ to stay the Phase 2 trial. Delay is counter-productive here, and the Settling Parties urge the FCGMA to focus on implementing the Judgment as ordered by the Court rather than spending resources on further ill-fated litigation opposed by the large majority of its constituents.³

Like the rest of the Basin, the FCGMA has known for a year now that the FCOP Parties would file their appeal. The FCGMA signed the Phase 3 Settlement knowing that fact, and the Judgment has been in place since June 2023—yet the FCGMA never sought a stay or emergency writ relief. The Court's adopting the Phase 3 Settlement to which the FCGMA openly bound itself is not an "axis-tilting" event, as the FCGMA argued yesterday. The Phase 3 Settlement and Judgment address a specific, pressing harm in the Basin, and these solutions are the culmination of years of work by scores of parties agreeing on lawful, evidence-based, reasonable ways to move forward. Nothing in that Phase 3 Settlement or Judgment permits scrapping all of that needed work for whatever number of months or years an appeal will take.

Now that the Court has ordered implementation to proceed (and found that the FCGMA breached its contractual obligations and failed to adhere to the Judgment), our clients have


² For instance, the FCGMA: posted on the Watermaster website a "Notice of Stay of Las Posas Valley Groundwater Adjudication" asserting that the Judgment "is currently stayed due to the filing of appeals of the Judgment"; stated at the August 23, 2023 Board meeting that "the Judgment right now is stayed"; and stated at the Five-year Groundwater Sustainability Plan Evaluation Workshop on August 30 that it had not established the PAC and TAC because the Judgment "is currently stayed" and "in a paused state." The Superior Court rejected the FCGMA's arguments as a breach of its contractual obligations and contrary to governing law. See Order on Mot. to Confirm Stay Pending Appeal (Sept. 13, 2023).

³ Such an appeal poses many problems. Among them, the FCGMA lacks standing to pursue an appeal based on "increases in the administrative costs and burdens associated with" its obligations under the Judgment as Watermaster. *Dow v. Lassen Irr. Co.*, 75 Cal. App. 5th 482, 489 (2022). Were there any question whether *Dow* applied, the FCGMA began its oral argument yesterday noting it was pushing for a stay as *Watermaster*, i.e., as an agent of the Superior Court, whose very ruling it would be challenging. Moreover, we know of not a single precedent (and the FCGMA has never cited one) that has ever held that Code of Civil Procedure section 916(a)—the statute the FCGMA cited in its stay papers—stays any and all implementation of a judgment in a groundwater adjudication. At most, such a stay would apply to the FCGMA's efforts to collect, for example, on a Basin Assessment levied against an FCOP party while that party's appeal is pending. No one is asking for that relief.

every hope that the FCGMA will act without delay as a good-faith partner, fulfill the promises it made to the groundwater users in the Basin, and comply with Court orders. A good step in this direction would be promptly setting the PAC elections and drafting the scope of work and budget for the 2025 Basin Optimization Yield Study.

Please let us know when you or your representatives can meet with our clients next week to address these matters, including any need to make adjustments to the extant schedule.

With all rights reserved,

A handwritten signature in blue ink, appearing to read 'Matt Kline'.

Matt Kline
Counsel for the Las Posas Farming Group Parties

Joined by:

Brian Hamilton
Counsel for Plaintiffs Las Posas Valley Water Rights
Coalition, et al.

Steven Hagemann
Counsel for Culbert Farms LLC, et al.

Robert Kwong
Counsel for Rancho Canada Water Company, LLC, et al.

Keith Lemieux
Counsel for Berylwood Heights Mutual Water Company, et al.

cc: Las Posas Valley Watermaster
All Counsel in Adjudication