

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA**

Dated and Entered:	09/30/2022	Time:	10:00 AM
Judicial Officer:	Donna D Geck		
Deputy Clerk:	Kristi Temple	Dept:	SB Dept 4
Deputy Sheriff:	n/a		
Court Reporter:	Michelle Sabado	Case No:	VENCI00555357

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**OPV Coalition et al vs Fox Canyon Groundwater Management Agency**

Parties Present:

Jeff Yost	Plaintiff's Attorney
Russell McGlothlin	Plaintiff's Attorney
Tim Taylor	Defendant's Attorney
William Chisum	Defendant's Attorney
Brian Wheeler	Intervenor's Attorney
Gregory Newmark	Attorney for City of Oxnard
Wendy Wang	Attorney for City of San Buenaventura

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**NATURE OF PROCEEDINGS: Hearing on Petition for Coordination**

The following hearing was scheduled:

October 28, 2022 10:00 AM  
Case Management Conference  
Geck, Donna D  
SB Dept 4

The Court adopted the tentative ruling as follows:

**RULING:**

For the reasons set forth herein, the petition, filed by petitioner Fox Canyon Groundwater Management Agency with the Chair of Judicial Council and assigned to this court for disposition, for coordination of this action (case No. VENCI0055357) with *City of Oxnard v. Fox Canyon Groundwater Management Agency, et al.*, Los Angeles County Superior Court Case No. 20STCP00929, is denied. Petitioner Fox Canyon shall file, serve, and submit notice of this order as required by California Rules of Court, rule 3.529(a).

**Background:**

This is a petition for coordination of this action (OPV Adjudication Action, case No. VENCI0055357) with *City of Oxnard v. Fox Canyon Groundwater Management Agency, et al.*, Los Angeles County Superior Court Case No. 20STCP00929 (Oxnard Action).

(1) OPV Adjudication Action

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As alleged in the OPV Adjudication Action: The OPV Adjudication Action seeks a comprehensive adjudication pursuant to Code of Civil Procedure section 830 et seq. to determine all rights to extract groundwater in the Santa Clara River Valley – Oxnard Groundwater Subbasin and the Pleasant Valley Groundwater Subbasin (collectively, Basins). (OPV Adjudication Action Complaint, ¶¶ 3, 41.) Plaintiffs each own land overlying the Basins, and each grows commercial crops that are irrigated with groundwater derived from the Basins. (OPV Adjudication Action Complaint, ¶ 9.)

Agriculture in the Basins is a key industry and dependent upon groundwater supplies. (OPV Adjudication Action Complaint, ¶ 17.) The Basins are in a state of critical overdraft and face significant seawater intrusion. (OPV Adjudication Action Complaint, ¶ 4.) There have been multiple efforts to address this problem: Intervenor United Water Conservation District manages regional water enhancement efforts, but does not have regulatory authority over pumpers or diverters. (OPV Adjudication Action Complaint, ¶¶ 18-19.) Defendant Fox Canyon Groundwater Management Agency (FCGMA) is the groundwater sustainability agency for the Basins. (OPV Adjudication Action Complaint, ¶ 20.) FCGMA passed an allocation ordinance in October 2019 (Allocation Ordinance). (OPV Adjudication Action Complaint, ¶ 26.) FCGMA also adopted groundwater sustainability plans (a GSP) for the Basins in December 2019. (OPV Adjudication Action Complaint, ¶¶ 3, 32.) Throughout this process stakeholders have negotiated among themselves and with FCGMA to reach a comprehensive resolution. (OPV Adjudication Action Complaint, ¶¶ 23-25, 30, 38.) None of these efforts have resulted in a comprehensive resolution satisfactory to the parties as a whole, and in particular, the plaintiffs here object to the Allocation Ordinance and the GSPs. (OPV Adjudication Action Complaint, ¶¶ 26-30.) Plaintiffs assert that a comprehensive adjudication is the only path forward to reach an equitable water rights allocation that can assist stakeholders to prepare reliably for the future and to manage the Basins. (OPV Adjudication Action Complaint, ¶ 30.)

On June 15, 2021, plaintiffs filed their complaint in the OPV Adjudication Action asserting six causes of action: (1) declaratory relief – comprehensive groundwater adjudication (Code Civ. Proc., § 830 et seq.); (2) quiet title (as to defendants other than FCGMA); (3) writ of mandate against FCGMA (Allocation Ordinance); (4) writ of mandate against FCGMA (GSP – Oxnard Subbasin); (5) writ of mandate against FCGMA (GSP – Pleasant Valley); and (6) violation of California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) as to Allocation Ordinance.

## (2) Oxnard Action

In the Oxnard Action, petitioner City of Oxnard (Oxnard) alleges that it operates a water utility to serve its residential, commercial, industrial, institutional, and agricultural customers. (Oxnard Action Petition, ¶ 12.) Historically, approximately half of its supply is obtained from groundwater. (Oxnard Action Petition, ¶ 13.) As asserted by Oxnard, the Allocation Ordinance adopted by FCGMA arbitrarily restricts Oxnard's historical allocation of water in violation of FCGMA's enabling legislation. (Oxnard Action Petition, ¶¶ 3, 22, 31.)

On December 2, 2019, Oxnard filed its petition for writ of mandate and complaint for declaratory and injunctive relief. The petition asserts causes of action against FCGMA to avoid the Allocation Ordinance on the grounds that: (1) the Allocation Ordinance violates FCGMA's enabling legislation; (2) the Allocation Ordinance arbitrarily provides for preferential treatment to other operators violating FCGMA's enabling legislation, the Water Code, and the California Constitution; (3) the adoption of the Allocation Ordinance violates CEQA; and (4) the Allocation Ordinance fails to include legally sufficient general plan consistency findings.

## (3) Procedural History

As noted above, the Oxnard Action was filed on December 2, 2019, in Ventura County Superior Court. The Oxnard Action was transferred to, and remains pending in, the Los Angeles County Superior Court.

The OPV Adjudication Action was filed on June 15, 2021, in Ventura County Superior Court.

On July 9, 2021, the Los Angeles County Superior Court (LASC), Hon. Mary H. Strobel, Judge, presiding, entered its minute order following an informal telephone status conference in the Oxnard Action. The LASC identified that it had on June 17, not related the Oxnard Action and the OPV Adjudication Action. The LASC also did not relate the Oxnard Action to other actions now pending in the Santa Barbara County Superior Court, *Las Posas Valley Water Rights Coalition, et al., v. Fox Canyon Groundwater Management Agency, et al.*, case No. VENC100509700, and *Las Posas Basin Water Rights Coalition v. Fox Canyon Groundwater Management Agency*, case No. 20CV02036 (collectively, the Los Posas Actions). In determining that none of these cases should be related to the Oxnard Action, the LASC noted: “The Los Angeles action [the Oxnard Action] is set for trial on November 18, 2021. The Ventura action [the OPV Adjudication Action] is less than one month old. Based on that timing, as well as other arguments made in the responses to the notice of related case, the court concludes a formal or informal coordination of the proceedings is not feasible and desirable.”

Also on July 9, 2021, FCGMA filed its petition for coordination with the Chair of the Judicial Council seeking to coordinate the OPV Adjudication Action and the Oxnard Action by transfer of the OPV Adjudication Action to the Los Angeles County Superior Court.

On September 29, 2021, the Ventura County Superior Court entered its order, pursuant to the Order of the Chief Justice of California as Chair of the Judicial Council, transferring the OPV Adjudication Action to Hon. Thomas P. Anderle of the Santa Barbara County Superior Court.

On February 11, 2022, Judge Anderle was disqualified pursuant to Code of Civil Procedure section 170.1.

On July 8, 2022, by Order of the Chief Justice of California as Chair of the Judicial Council, Hon. Donna D. Geck of the Santa Barbara County Superior Court was assigned to sit as a Judge of the Ventura County Superior Court in the OPV Adjudication Action and “to determine whether coordination of the included actions is appropriate pursuant to Code of Civil Procedure section 838 and/or section 404 et seq. Judge Geck may consider the preclusive effect, if any, of the Superior Court of Los Angeles County’s July 9, 2021, Minute Order declining to relate these included actions and concluding that formal coordination of the proceedings is not feasible and desirable.”

FCGMA’s petition for coordination is joined by United Water Conservation District, City of San Buenaventura, Oxnard, and Marathon Land, Inc. The Petition is opposed by the OPV Adjudication Action plaintiffs (OPV Plaintiffs).

(The above summary is intended to provide context to the court’s ruling. The court has considered all of the papers and arguments submitted by the parties, including joinders and responses, in reaching its determination herein.)

### **Analysis:**

“The Chairperson of the Judicial Council shall assign a judge to preside in all proceedings in the comprehensive adjudication.” (Code Civ. Proc., § 838, subd, (a)(1).) “The judge assigned by the Chairperson of the Judicial Council pursuant to subdivision (a) shall determine if transfer, coordination, or consolidation is appropriate.” (Code Civ. Proc., § 838, subd. (e).)

“When civil actions sharing a common question of fact or law are pending in different courts, a petition for coordination may be submitted to the Chairperson of the Judicial Council, by the presiding judge of any such court, or by any party to one of the actions after obtaining permission from the presiding judge, or by all of the parties plaintiff or defendant in any such action. . . . On receipt of a petition for coordination, the Chairperson of the Judicial Council may assign a judge to determine whether the actions are complex, and if so, whether coordination of the actions is appropriate, or the Chairperson of the Judicial Council may authorize the presiding judge of a court to assign the matter to judicial officers of the court to make the determination in the same manner as assignments are made in other civil cases.” (Code Civ. Proc., § 404.)

“Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied.” (Code Civ. Proc., § 404.1.)

There are two preliminary issues discussed by the parties. The first issue is whether the provisions of Code of Civil Procedure section 404 et seq. apply to these actions. The OPV Plaintiffs argue that section 404 does not apply because the Oxnard Action is not designated as “complex.” However, CEQA actions are by their nature complex. (See Pub. Resources Code, § 21167.1; Cal. Rules of Court, rule 3.400, subds. (a), (c)(4).) These actions are no exceptions. The Oxnard Action includes a CEQA challenge and issues regarding the authority of a groundwater management agency. Whether the LASC formally designates the Oxnard Action as “complex,” this court deems the Oxnard Action “complex” for purposes of this coordination proceedings and determines that the coordination procedures of Code of Civil Procedure section 404 et seq. apply. (See Cal. Rules of Court, rule 3.502.)

The second preliminary issue is whether the LASC determination not to relate the OPV Adjudication Action to the Oxnard Action is preclusive. It does not appear by the LASC minute order that it was intending to foreclose consideration of coordination under Code of Civil Procedure section 404 et seq., which was not an issue before that court. This court therefore considers the LASC’s determination in making this ruling, but does not find that the LASC’s determination is binding on this court.

The first factor of Code of Civil Procedure section 404.1 is “if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation.” There are important differences between the OPV Adjudication Action and the Oxnard Action. While it is true that the CEQA and writ of mandate issues in the Oxnard Action are substantially the same as the CEQA and writ of mandate issues in the OPV Adjudication Action with respect to the Allocation Ordinance, these issues are not predominating in the OPV Adjudication Action. The comprehensive groundwater adjudication claim predominates and overwhelms the CEQA and writ of mandate issues in complexity and significance.

The resolution of the OPV Adjudication Action will ultimately provide an underlying determination of water rights that will likely affect in some manner future groundwater management. But not now. The CEQA and writ of mandate issues with respect to the Allocation Ordinance are distinct from the comprehensive groundwater adjudication issues as they are presented in the respective complaints and petitions. There may be some judicial efficiencies in having one judge resolve both types of issues in a generic sense, but those efficiencies are lost when the delay and complexity of a coordinated action including a

comprehensive groundwater adjudication are taken into account. Overall, the court concludes that having one judge hearing all of the actions will not promote the ends of justice.

The second factor of section 404.1 is the convenience of parties, witnesses, and counsel. The parties have provided conflicting evidence as to how situating this litigation in Los Angeles County Superior Court, in Los Angeles, as opposed to Santa Barbara County Superior Court, in Santa Barbara, would be more or less convenient to counsel or to the various litigants. Geographically, neither court is particularly convenient or inconvenient to this litigation. In terms of court hearings, hearings in Santa Barbara civil actions may generally be done by video conference, for which geography is not a factor for convenience. Apart from court hearings and trial, the parties can arrange meetings, depositions, or other gatherings at their own convenience regardless of where the action is pending. With respect to trial, the aspect of the actions for which there are common issues of fact and law are writ matters. Trial in writ matters is conducted on the administrative record with predominantly written argument. Convenience is only a minor factor in that regard. On the other hand, trial of the groundwater adjudication may involve numerous witnesses, including the OPV Plaintiffs themselves, for whom Santa Barbara may be more convenient. Overall, this factor is as a practical matter neutral.

The third factor of section 404.1 is the relative development of the actions and the work product of counsel. The Oxnard Action is reported as essentially ready for trial. The OPV Adjudication Action is relatively new and at the beginning stages of litigation. The relative development of the actions and the work product of counsel do not favor coordination as requested in the petition.

The fourth and fifth factors of section 404.1 are the efficient utilization of judicial facilities and manpower and the calendar of the courts. These two factors weigh against coordination. The Oxnard Action is reported as essentially ready for trial. The most efficient utilization of judicial facilities and manpower would be to permit the Oxnard Action to proceed to a prompt resolution rather than to bring into the Oxnard Action the OPV Adjudication Action, which would inevitably delay resolution of the important issues raised in the Oxnard Action. At the same time, there is no showing that the court calendars make either court preferable for an efficient resolution of these matters.

The sixth factor of section 404.1 is the disadvantages of duplicative and inconsistent rulings, orders, or judgments. The potential for duplicative or inconsistent rulings, orders, or judgments exists, but the risk is not significant. The overlapping issues relate to the CEQA and writ of mandate issues only. These matters are resolved on the administrative record and do not, and should not, involve discovery. Consequently, there is no apparent danger of inconsistent pretrial rulings. There is, of course, the potential for inconsistency in the judgments on these issues. However, this concern is substantially mitigated by the advanced stage of the Oxnard Action. Resolution of the Oxnard Action, including any following appeal, may result in collateral estoppel, or may otherwise inform or determine the disposition of those issues in the OPV Adjudication Action. The court in the OPV Adjudication Action has many tools available to avoid conflicts with what will certainly be the earlier disposition of the Oxnard Action. The benefits from an expeditious resolution of the Oxnard action far outweighs any disadvantage from potential conflicts or duplication in rulings, orders, or judgments.

The seventh factor of section 404.1 is the likelihood of settlement of the actions without further litigation should coordination be denied. The court does not find that the likelihood of settlement would be significantly affected should coordination be denied. The nature of the CEQA and writ of mandate issues, and the parties' respective positions, makes settlement unlikely prior to at least an initial judicial disposition. Indeed, the prompt trial court disposition of the Oxnard Action as separate from the OPV Adjudication Action could potentially make settlement of the corresponding issues in the OPV Adjudication Action more likely.

Coordination resulting in the transfer of either action to the other court because of the overlapping issues of the CEQA and writ of mandate claims concerning the Allocation Ordinance would result in the “tail wagging the dog” in the OPV Adjudication Action. The LASC is essentially ready to resolve the Oxnard Action. As the above factors demonstrate, coordination would impede that expeditious resolution, whether the OPV Adjudication Action were transferred to the LASC or the Oxnard Action were transferred here. In any event, the overlaying coordination procedures would impose an additional unnecessarily burden and delay disposition of all of these matters. The most efficient approach to resolution of these matters is to permit them each to proceed separately. Case management tools in both courts amply provide a guard against conflicting or duplicative orders or judgments. Based upon all of the evidence and arguments of the parties, the court finds that the section 404.1 factors, combined with the underlying policies behind prompt adjudication of CEQA matters and behind comprehensive groundwater adjudications, do not weigh in favor of coordination.

Accordingly the petition for coordination will be denied.

All counsel waived notice.

DARREL E. PARKER, EXECUTIVE OFFICER

Minutes Prepared by:

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Kristi Temple, Deputy