MEMORANDUM
COUNTY OF VENTURA
COUNTY COUNSEL'S OFFICE

December 18, 2023

TO: Directors, Fox Canyon Groundwater Management Agency

FROM: Alberto Boada, Principal Assistant County Counsel AB

RE: ALTERNATIVES FOR STAFFING FOX CANYON GROUNDWATER MANAGEMENT AGENCY

QUESTION PRESENTED

What alternatives does Fox Canyon Groundwater Management Agency (FCGMA) have for hiring staff?

ANSWER

FCGMA may contract for staff with either the County of Ventura (County) or United Water Conservation District (United). Authority to hire staff other than through the County or United would require legislation to amend section 408 of the FCGMA Act.

DISCUSSION

Since its creation in 1982, FCGMA has relied on the County for staffing. At the September 27, 2023, board meeting, staff was directed to agendize a discussion of FCGMA's future staffing needs. That discussion took place at a special meeting on December 1, 2023, and included consideration of whether FCGMA should investigate hiring "independent staff." As explained below, FCGMA has no authority to hire independent staff or hire employees to provide staff services under current law. Its staffing options are limited to contracting with the County or United. Absent an amendment of FCGMA's enabling legislation, any other arrangement would be without statutory authority.[1/]

[1/]At the December 1st meeting, it was stated that prior counsel for FCGMA provided a legal opinion which concluded that FCGMA may hire a consultant to provide staff services. While it is correct that prior counsel gave that opinion, prior counsel also (continued...)

A. FCGMA'S ENABLING LEGISLATION LIMITS ITS STAFFING OPTIONS

FCGMA was created in 1982 to preserve the groundwater resources within its territory for agricultural and municipal and industrial uses. (Fox Canyon Groundwater Management Agency Act (Stats. 1982, ch. 1023), codified in the Water Code Appendix §§ 121-102 - 121-1105.) As a creation of state law, FCGMA may exercise those powers expressly granted to it under its enabling legislation, as well as "such other powers as are reasonably implied and necessary and proper to carry out the objectives and purposes of the agency." (Cal. Wat. Code App., §§ 121-102.)

FCGMA's formation was prompted by a State Water Board investigation into seawater intrusion beneath the Oxnard Plain Basin. The investigation yielded the Oxnard Plain Groundwater Study which was completed in 1979. The study found that, despite local efforts, seawater intrusion into the Oxnard Plain was continuing and affected 20 square miles of the basin. In response to the study, the State Water Board scheduled a hearing on the necessity for restricting groundwater pumping or for a physical solution in order to protect the water quality of the basin from destruction or irreparable injury.

At the same time, the State Water Board took steps to promote the development of a local solution to the seawater intrusion problem. Those steps included the approval of an $8 million grant from the Clean Water and Water Conservation Bond Act of 1978 for construction of the Improved Vern Freeman Diversion and Pumping Trough Pipeline. As a condition of grant approval, the State Water Board required the County and United to immediately seek legislative approval to establish FCGMA.

FCGMA's express power to hire staff is set forth in section 408 of its enabling legislation which provides in its entirety: "The agency may contract with the county or

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[1/](...continued)
wrote another legal opinion in which he reached the opposite conclusion, i.e., that FCGMA is limited to contracting with the County or United. He then issued a third opinion in which he returned to his original position but for a different reason than given in his first opinion. Based on these conflicting conclusions and their lack of supporting legal analyses, these prior opinions are not entitled to much weight and cannot be relied upon.

United for staff and other services and may hire such other contractors and consultants as it considers appropriate." (Cal. Wat. Code App., §§ 121-408.) FCGMA's enabling legislation provides no authority to hire employees or otherwise appoint staff. FCGMA is unique in this regard; each one of its member agencies has express statutory authority to hire employees or appoint staff.[2/]

Section 408 grants FCGMA two separate types of contracting authority: (1) it may contract with the County or United for "staff and other services;"[3/] and (2) it may hire "other contractors and consultants." It has been suggested that section 408 may be interpreted as granting FCGMA authority to hire "other consultants" to provide staff services. Such a reading is contrary to the plain language of the statute which restricts FCGMA's staffing choices then authorizes the hiring of other contractors and consultants to provide something other than staff services.[4/]

It is also noteworthy that this restrictive language does not appear in the enabling legislation for Ojai Basin Groundwater Management Agency (OBGMA) which was enacted in 1991 and largely based on FCGMA's enabling legislation. In contrast to section 408, OBGMA's enabling legislation provides: "The agency may contract for staff and other services and may hire other contractors and consultants." (Cal. Wat. Code, §§ 131-409.) The absence of language restricting OBGMA's options for staff services

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[2/] See, California Government Code section 25300 (County); California Water Code sections 74501-74503 (United); California Government Code section 45001 (Cities); California Water Code sections 71340-71341 (Calleguas Municipal Water District); California Water Code section 30540, 30544 (Camrosa Water District; Pleasant Valley County Water District).

[3/] The use of the permissive term "may" permits FCGMA to exercise either of the staffing options (County or United) authorized by section 408 and does not mandate a specific choice between the two options. (See *Compton College Federation of Teachers v. Compton Community College Dist.* (1982) 132 Cal.App.3d 704, 711-712.)

[4/] An example of the proper use of the latter authority is the hiring of the Dudek firm to provide technical consulting services in support of FCGMA's five-year evaluations of its groundwater sustainability plans.

providers demonstrates that the Legislature knows how to express its intent on this subject and is significant to show that a different legislative intent existed with reference to the different statutes. (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 825.) In other words, the Legislature could have granted FCGMA the broader authority given to OBGMA but instead by including the phrase "with the county or United" in section 408, the Legislature intended to limit FCGMA's staffing options.[5/]

An interpretation of section 408 as a limit on FCGMA's staffing options is also consistent with well-established rules of statutory construction. Under those rules, the provision for hiring "other contractors and consultants" is considered a general grant of power which is controlled by the specific limitation on contracting for staff in section 408, the latter being treated as an exception to the former. "A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." (*Service Employees International Union, Local 1021 v. County of Sonoma* (2014) 227 Cal.App.4th 1168, 1178 ("*Service Employees International Union*").)

This interpretation is also consistent with the rule that when reading statutes, as much as possible, every word should add meaning — and no language should serve as mere surplusage. (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038; see also, *Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 386 [statutes should not be read in way that renders meaningless language the Legislature has chosen to enact]; *Larson v. State Personnel Bd.* (1994) 28 Cal.App.4th 265, 277 [every word, phrase, and sentence in a statute should, if possible, be given significance].) To interpret section 408 as allowing FCGMA to hire "other contractors and consultants" to perform staff functions would render meaningless the immediately preceding provision which limits FCGMA's staffing options to the County and United.

The Attorney General's Office has noted that with respect to a statutory grant

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[5/] The legislative history does not shed any light on why the Legislature limited FCGMA's staffing options to the County and United but it may have been related to the active involvement of those agencies in FCGMA's formation, as described above.

of authority, there are two implied negatives. First, no power may be exercised which is in excess of the authority granted. (79 Ops.Cal.Atty.Gen. 128 (1996), citing *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196, and *Safer v. Superior Court* (1975) 15 Cal.3d 230, 236-238.) Second, where the mode by which a power may be exercised is prescribed, the mode prescribed is the measure of the power. (*Ibid*, citing *People v. Zamora* (1980) 28 Cal.3d 88, 98, and *Wildlife Alive v. Chickering, supra*, 18 Cal.3d at p. 196.) By expressly providing that FCGMA may contract for staff services with either the County or United, section 408 both provides a grant of authority and prescribes the mode of exercising that power. Were FCGMA to engage a consultant to provide staff services, it would be disregarding the mode prescribed by the Legislature for hiring staff. (See, *Bottoms v. Madera Irr. Dist*. (1925) 74 Cal.App. 681, 698–699 [statutory grant of power must be exercised in accordance with limitations and restrictions on mode of exercise of granted power].)

B. FCGMA MAY CONTRACT WITH OTHERS FOR "SPECIAL SERVICES" BUT NOT STAFF

Beyond its enabling legislation, FCGMA has authority to contract for services under Government Code section 53060 which provides in pertinent part:

> "The legislative body of any public or municipal corporation or district may contract with and employ any persons for the furnishing to the corporation or district **special services** and advice in financial, economic, accounting, engineering, legal, or administrative matters **if such persons are specially trained and experienced and competent to perform the special services required.** (Emphasis added.)

By its express terms, section 53060's grant of authority is limited to contracting for "special services." This limited grant of authority has been interpreted to prohibit a public entity from contracting with a private entity for non-special services. (*Costa Mesa City Employees' Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 315–316.) Moreover, section 53060 is a general statute applicable to a wide variety of public entities. As such, it must yield to a special statute such as section 408 which applies only to FCGMA. (*Service Employees International Union, supra,* 227 Cal.App.4th at p.

1177.) Further, "special services" has been defined by the courts to mean unique, unusual and out of the ordinary. (*Jaynes v. Stockton* (1961) 19 Cal.App.3d 47, 51.) Whether services are special requires consideration of the qualifications of the person furnishing them and their availability from public sources. (*Darley v. Ward* (1982) 136 Cal.App.3d 614, 627-628 [services may be special because of the outstanding skill or expertise of the person furnishing them].) Staff services involve the day-to-operation of a public agency and are neither unique, unusual nor extraordinary. As such, they would not be considered the type of "special services" contemplated under section 53060. In any event and as explained above, FCGMA may not use the general contracting authority granted under section 53060 to circumvent the restrictive language in section 408.

C. SGMA PROVIDES FCGMA WITH NO ADDITIONAL AUTHORITY TO HIRE STAFF

FCGMA acquired additional powers in 2015 when it elected to become a groundwater sustainability agency (GSA) with authority to carry out the purposes of the Sustainable Groundwater Management Act (SGMA). While SGMA provides a GSA with broad authority to carry out its provisions, nothing therein expressly authorizes a GSA to hire or contract for staff. SGMA was amended in 2019 to allow a GSA to "enter into written agreements and funding with a private party to assist in, or facilitate the implementation of, a groundwater sustainability plan or any elements of the plan." (Cal. Wat. Code, §10726.5.) But the Legislature does not appear to have intended that section 10726.5 would authorize a GSA to contract with a private party for staff services. Instead, its purpose is to allow a GSA to form a public-private partnership to, among other things, provide capital that a GSA alone is unable to raise. (Assem. Com. On Water, Parks and Wildlife, com. on Assem. Bill No. 617 (2015-2016 Reg. Sess., Apr. 14, 2015), pp. 5-6.) Moreover, and as explained above, a general grant of power under SGMA that applies to all GSAs must yield to the restrictive language in FCGMA's enabling legislation.

D. FCGMA'S AUTHORITY AS WATERMASTER MUST CONFORM TO ITS ENABLING LEGISLATION

FCGMA was given additional contracting authority as part of the judgment entered in the comprehensive adjudication of the Las Posas Valley groundwater basin (LPV Basin). In its role as watermaster for the LPV Basin, the judgment provides that FCGMA "shall have the discretion and authority to employ or contract with such administrative personnel, engineering, legal, accounting, or other specialty services and consulting assistants as may be deemed appropriate in carrying out the terms of the judgment, including to employ or contract for its general manager, general counsel, or staff." (Judgment, § 5.2.2.) Elsewhere, however, the judgment states: "Nothing in this Judgment or Watermaster Rules amends or modifies existing law including common law regarding the determination of Groundwater rights, SGMA, or the special act creating the FCGMA." (Judgment, § 3.5.)

Because the judgment neither amends nor modifies FCGMA's enabling legislation, the restrictive language in section 408 applies to FCGMA's role as watermaster and limits its authority for hiring staff. Moreover, the conflict between section 5.2.2. of the judgment [which gives FCGMA authority to employ or contract for staff] and section 3.5 of the judgment [which provides that the judgment does not modify FCGMA's enabling legislation] must be resolved in favor of adhering to the restrictive language in section 408. Under the separation of powers doctrine, the court has no power to grant FCGMA authority that the Legislature saw fit to withhold. (See, *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 597 [court must follow reasonable legislation applicable to the matter before it].)

E. FCGMA MAY NOT USE ITS IMPLIED POWERS TO EXPAND ITS STAFFING OPTIONS

In addition to its express powers, FCGMA has implied powers to carry out its objectives and purposes. But FCGMA's implied powers are limited to those that are essential to the express powers granted by its enabling legislation. (*Water Quality Assn. v. County of Santa Barbara* (1996) 44 Cal.App.4th 732, 746.) Because the Legislature has provided for FCGMA's staffing through section 408, there is no need to resort to implied powers which are recognized only when there is no precise statute covering the

point. (*Podiatric Med. Bd. of California v. Superior Court of City and County of San Francisco* (2021) 62 Cal.App.5th 657, 673.) Moreover, there can be no implied powers in conflict with an express statutory provision. (2A McQuillin Mun. Corp., § 10:13 (3d ed.).) Here, FCGMA's express authority to hire staff limits its options to the County or United. The implied powers doctrine may not be used to circumvent this express restriction on FCGMA's contracting authority.

AB:sg

ec: Jeff Pratt, Executive Officer