

# **LAS POSAS BASIN POLICY ADVISORY COMMITTEE**

## **SPECIAL MEETING**

Thursday, July 11, 2024, 3:00 P.M.

In Person:

Calleguas Municipal Water District, 2100 Olsen Road, Thousand Oaks, CA 91360

Via Zoom:

<https://us06web.zoom.us/j/84816327542?pwd=Y-bN4zt674FOphU6wRyxXw9swYTqvA.9bNuXf3yWWBZyrae>

Webinar ID: 848 1632 7542

Passcode: 400774

### **NOTICE OF MEETING**

NOTICE IS HEREBY GIVEN that the Las Posas Basin Policy Advisory Committee (PAC) will hold a special meeting at 3:00 P.M. on **Thursday, July 11, 2024**, in the Board Meeting Room of the Calleguas Municipal Water District and via Zoom.

### **AGENDA**

**A. Call to Order**

**B. Roll Call**

**C. Agenda Review**

**D. Public Comments**

**E. PAC Member Comments**

**F. Regular Agenda**

**1. Approve the Minutes of the June 6, 2024 regular PAC meeting**

**2. FCGMA Fiscal Committee Update**

PAC members will discuss comments made by the FCGMA/Watermaster Board at the June 10, 2024 Fiscal Committee and the June 26, 2024 Board meeting.

**3. PAC Administrator**

The PAC selected Tony Morgan to be the PAC Administrator. Tony Morgan is also on the TAC and has an existing contract with the FCGMA/Watermaster for that work. The FCGMA/Watermaster needs to amend that contract with a scope of work specific to the PAC Administrator. Once an amended contract is executed, Mr. Morgan can begin his work as PAC Administrator.

**4. Watermaster Basin Management Actions**

Section 2.10.1 of Judgment Exhibit A lists important dates related to Basin Management Actions (see attached). The PAC will discuss progress to date on these actions.

## **5. PAC Directors Liability Insurance**

The Judgment, in 2.7.7 of the Watermaster Rules, states: "Watermaster shall be authorized to obtain and maintain such insurance policies as Watermaster deems appropriate. Watermaster may obtain and maintain directors' liability insurance that includes coverage for PAC and TAC members." It was determined at the June 10 Fiscal Committee that this language did not represent a statutory obligation on behalf of the Watermaster to provide directors' liability insurance to the PAC. However, money is included in the FY24-25 Watermaster budget for directors' liability insurance. Once the FY24-25 budget is adopted, PAC directors' liability insurance can be obtained either by being added to the existing FCGMA/Watermaster policy or through a standalone policy.

## **G. Written Communication**

### **1. Notice of Potential Litigation from LPV Watermaster**

On Friday, June 28, 2024, Watermaster sent an email (attached) to its contact list informing the community that they were in receipt of the attached Notification of Violation of Landowner Notice Requirements and Demand for Preservation of Evidence (Notification and Demand).

## **H. Future Agenda Items**

The PAC will consider items for future agendas.

## **I. Adjourn**

Item F-1

## LAS POSAS VALLEY BASIN POLICY ADVISORY COMMITTEE

### Meeting Minutes for June 6, 2024

The Las Posas Valley Basin Policy Advisory Committee (PAC) held a meeting at 3:00 PM on Thursday, June 6, 2024, in the Board Meeting Room of the Calleguas Municipal Water District Office and via Zoom.

A. Call to Order: Chair Prichard called the meeting to order at 3:02 PM.

B. Roll Call: All PAC members were present unless otherwise noted:

1. Calleguas Municipal Water District – Ian Prichard, Chair
2. Zone Mutual Water Company – John Menne
3. Ventura County Waterworks District Nos. 1 and 19 – Joseph Pope – Not present\*
4. Commercial – Scott Meckstroth – Not present
5. Watermaster (non-voting) – Farai Kaseke – Not present
6. East Las Posas Large Agriculture – David Schwabauer – Via Zoom
7. East Las Posas Small Agriculture – Josh Waters – Not present
8. East Las Posas Mutual Water Company – Laurel Servin – Via Zoom
9. West Las Posas Large Agriculture – Rob Grether, Vice-Chair
10. West Las Posas Small Agriculture – Richard Cavaletto
11. West Las Posas Mutual Water Company – Steven Murata

\*David Fleisch sat in as a non-voting alternate on behalf of Districts 1 and 19 / Ventura County Waterworks in Joseph Pope's absence.

C. Agenda Review: There were no requested changes to the agenda.

D. Public Comments: A realtor addressed the PAC on behalf of his client stating that the client did not receive notice of the adjudication and does not have an allocation; he inquired as to next steps to pursue an allocation on behalf of his client.

E. PAC Member Comments: PAC member Laurel Servin inquired about §9.3 of the Judgment, which states that the Court will hold semi-annual status conferences for the first three years of the Judgment's operation. It is unknown at this time when the first conference will be held; information will be provided as it becomes available.

F. Regular Agenda

1. Approve the Minutes of the May 16, 2024 regular PAC meeting: There was a correction made to the meeting minutes of the May 16, 2024 meeting in Section D. 2. – the name "William Smith" was corrected to "William Miller," and the minutes will be amended accordingly. Vice-Chair Grether made a motion to approve the amended minutes; Richard Cavaletto seconded the motion which passed with a vote of 7 Ayes, 0 Nays, 3 Absent.
2. FCGMA Fiscal Committee Update: Chair Prichard and Vice-Chair Grether provided an update on the key issues that were discussed at the FCGMA/Watermaster Regular Board Meeting on May 22, 2024.

The main issue of concern to the PAC is the fiscal year 2023/2024 Watermaster budget including the handling of \$474,912 in legal fees for FCGMA counsel (Ventura County counsel and external counsel), which are largely related to their ongoing appeal of the Judgment. The PAC provided a

formal response to FCGMA/Watermaster in a letter from Chair Prichard dated May 17, 2024, in which the PAC affirmed its position that no portion of the legal fees related to the appeal should be charged to the LPV Watermaster budget. During the LPV Watermaster Fiscal Committee meeting on May 14, 2024, the Fiscal Committee considered this recommendation, but at the May 22 FCGMA/Watermaster board meeting, discussion took a different direction, with some of the board members wishing to consider some sort of split between FCGMA and Watermaster. No decision was rendered on this topic; it is slated for further discussion at the LPV Watermaster Fiscal Committee Meeting on June 10, 2024.

The LPV Watermaster Fiscal Committee Meeting memo regarding the budget described three scenarios under consideration for the assignment of the legal fees: 100% charged to FCGMA's budget; 100% charged to LPV Watermaster's budget; or a 50/50% split between the two budgets. The PAC discussed the situation and reasserted its position that the legal fees should be charged 100% to FCGMA's budget. There was unanimous agreement that the PAC's original recommendation letter should suffice, and that PAC representatives will continue to represent the PAC's position.

3. TAC/PAC Coordination: The third TAC member contract has been signed and accepted, and the TAC is ready to begin working on assignments. An initial meeting with the TAC and PAC is expected to take place within the next month. Additional participants will be representatives from Dudek and Calleguas' TAC representative who will provide GSP and project updates.
4. PAC Directors' Liability Insurance: The Judgment, in 2.7.7 of the Watermaster Rules, states: "Watermaster shall be authorized to obtain and maintain such insurance policies as Watermaster deems appropriate. Watermaster may obtain and maintain directors' liability insurance that includes coverage for PAC and TAC members." The PAC Chair has been in conversation with Arne Anselm, Interim Executive Director of the FCGMA, regarding necessary steps to secure and fund directors' liability insurance for all PAC members. Arne Anselm will research to determine whether the existing FCGMA policy will cover all PAC members, or if a separate policy will be required; the expense will be added to the budget for fiscal year 2024/2025 as a placeholder until this determination is made.

G. Written Communication: Local farmer William Miller submitted a letter to the PAC.

The PAC discussed the need to develop and publish a policy statement to ensure a consistent response to constituents who come to the PAC with allocation-related questions. All members who were present were in favor of this idea, and it will be included on the PAC's task list.

- H. Future Agenda Items: 1) Vice-Chair Grether will research and report the steps required to assign an alternate or to replace a PAC member in the event that a seat becomes permanently vacant; and 2) There will be no meeting on July 4, 2024, and the adjusted meeting schedule will be announced as soon as possible.
- I. Adjournment: Chair Prichard adjourned the meeting at 3:36 PM, until the next regular PAC meeting on June 20, 2024.

Item F-4

2.10.1 Important Dates. The table below presents important dates related to Basin Management Actions.

<b>Basin Management Actions - Important Dates</b>			
<b>Item</b>	<b>Subtask</b>	<b>Approval or Due Date</b>	<b>Period</b>
<b>Annual Report (§ 5.2.4)</b>	Groundwater Extraction & Use Reports (§ 4.10.1.2)	November 1	
	Interim Draft to PAC & TAC	January 15	
	Revised Draft to PAC & TAC	February 1	
	PAC & TAC Recommendation Reports to Watermaster	February 20	~36 days
	Recommendation Reports Discussed by Watermaster	February Board Meeting	
	Watermaster Board Adoption	March Board Meeting	~36 days
	Final Submitted to DWR	By April 1	
<b>Watermaster Budget (§ 7.4)</b>	Draft Referred to PAC & TAC	March 1	
	PAC & TAC Recommendation Reports to Watermaster	April 30	~60 days
	Recommendation Reports Discussed by Watermaster	May Board Meeting	
	Watermaster Board Adoption	June Board Meeting	~57 days
<b>Initial Basin Optimization Plan (§ 5.3.3)</b>	Draft Referred to PAC & TAC	February 2, 2024	
	PAC & TAC Recommendation Reports to Watermaster	April 15, 2024	73 days
	Recommendation Reports discussed by Watermaster	April 24 and/or May 29, 2024 Board Meeting	
	Watermaster Board Adoption	June 26, 2024 Board Meeting	72 days
<b>Calleguas ASR Project Operations Plan (§ 8.4)</b>	Draft Plan Referred to PAC & TAC	July 1, 2024	
	PAC & TAC Recommendation Reports to Watermaster	September 16, 2024	77 days
	Recommendation Reports discussed by Watermaster	September 25 and/or October 30, 2024 Board Meeting	
	Watermaster Board Adoption of ASR Project Operations Plan	December 6, 2024 Board Meeting	81 days
<b>GSP Update (§ 5.3.4)</b>	Draft Referred to PAC & TAC	June 7, 2024	
	PAC & TAC Recommendation Reports to Watermaster	September 6, 2024	91 days
	Recommendation Reports Discussed by Watermaster	September 25 and/or October 30, 2024 Board Meeting	
	Watermaster Board Adoption	December 6, 2024 Board Meeting	91 days
	Final Submitted to DWR	By December 31, 2024	

Basin Management Actions - Important Dates			
Item	Subtask	Approval or Due Date	Period
<b>2025 Basin Optimization Yield Study (§ 4.10.1)</b>	Draft Scope of Work & Budget for Study Referred to TAC	September 7, 2023	46 days
	PAC & TAC Recommendation Reports to Watermaster	October 23, 2023	
	Recommendation Reports Discussed by Watermaster	October 25, 2023 Board Meeting	46 days
	Approval of Scope of Work & Budget for Study	December 8, 2023 Board Meeting	
	Draft Study Discussed by Watermaster Board	August 28, 2024 Board Meeting	264 days for draft
	Draft Study Referred to PAC and TAC	August 30, 2024	76 days
	PAC & TAC Recommendation Reports to Watermaster	November 14, 2024	
	Recommendation Reports Discussed by Watermaster	December 6, 2024 Board Meeting	76 days
	Watermaster Adoption of Study and 2025 Basin Optimization Yield	January 29, 2025 Board Meeting	

### ARTICLE III

#### POLICY ADVISORY COMMITTEE

3.1. Election. Following entry of Judgment and as set forth herein, elections shall be held for the following Constituency Groups for the Policy Advisory Committee: the Commercial Group, the West Las Posas Large Agricultural Group, the West Las Posas Small Agricultural Group, the West Las Posas Mutual Water Company Group, the East Las Posas Large Agricultural Group, the East Las Posas Small Agricultural Group, and the East Las Posas Mutual Water Company Group (collectively the Landowner Constituency Groups). The remaining Constituency Groups shall select their respective PAC members pursuant to their own internal governance process.

3.1.1 Eligibility. A member of the PAC selected on behalf of any of the Landowner Constituency Groups must be either a Landowner, or the Landowner's officer, employee, agent, director, board member, attorney, representative, affiliate, or subsidiary.

3.1.2 Notice of Initial Organizational Meeting and Election. Within 20 days of the entry of the Judgment, Watermaster will identify all WMIDs in each Landowner Constituency Group and submit to all Landowners a list identifying all Landowners associated with WMIDs in each group. Landowners will have 15 days to seek a correction regarding the placement of their WMID in a Landowner Constituency Group. Upon expiration of the objection period, Watermaster shall send a notice to each Water Right Holder, Landowner, Mutual Shareholder, Mutual Water Company, Calleguas Municipal Water District, and Ventura



Item G-1

## Ian Prichard

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**From:** LPV Watermaster <LPV.Watermaster@ventura.org>  
**Sent:** Friday, June 28, 2024 9:24 AM  
**To:** LPV Watermaster  
**Subject:** LPV WATERMASTER – NOTICE OF POTENTIAL LITIGATION  
**Attachments:** 2024-06-24 Watermaster Public Records Request.pdf; 2024-06-24 Ltr to Watermaster re Notice and Litigation Hold.pdf

**Importance:** High

Dear LPV Adjudication Parties,

In accordance with Section 2.7.9 of the Las Posas Adjudication Watermaster Rules, the Las Posas Valley Watermaster (Watermaster) is providing notice that Watermaster is in receipt of the attached Notification of Violation of Landowner Notice Requirements and Demand for Preservation of Evidence (Notification and Demand).

The Notification and Demand sent by Jackson Tidus provides in part as follows:

We represent landowners asserting overlying water rights in the Las Posas Valley Groundwater Basin (“Basin”) who were not provided mailed or posted notice of the action entitled Las Posas Valley Water Rights Coalition, et al. v. Fox Canyon Groundwater Management Agency, et al., Santa Barbara County Superior Court Case No. VENC100509700 (the “Basin Adjudication”), in violation of the streamlined adjudication statutes (see, e.g., Code of Civil Procedure (“CCP”) § 836(d); Water Code §§ 10720.5(c)).

Nevertheless, the Judgment incorrectly concludes at page 2, Paragraph E:

All holders of fee title to real property in the Basin were identified using the assessors records of the County of Ventura, and were served the Notice, Complaint, and Form Answer by registered mail, return receipt requested as required by Code of Civil Procedure section 836. Where the physical address of the real property differed from the mailing address of the holder of fee title, the Notice, Complaint, and Form Answer were mailed by registered mail, return receipt requested, to the physical address of the real property and the mailing address of the holder of fee title. A notice of completion of mailing was filed with the Court on June 3, 2019, consistent with Code of Civil Procedure section 836.

Plaintiffs’ Notice of Completion of Mailing filed June 3, 2019, and the supporting Declaration of Jennifer M. Keough, CEO of JND Legal Administration LLC (“JND”), do not support the Judgment’s conclusion that the requirements for notice under Code of Civil Procedure section 836 were complied with, and we found no other supporting evidence in the Court Docket. JND did not respond to our informal requests for information about addresses to which the Adjudication Notice Packets were mailed, which return receipts were received, or which parcels were posted with Adjudication Notice Packets.

Additionally, the Judgment entered in the Basin Adjudication fails to allocate groundwater to the Omitted Rights Holders, fails to reflect their water right priorities, does not treat them equitably as compared to the parties who participated in the Basin Adjudication, and

does not take into account the groundwater used by those of our clients who are small farmers, all in violation of CCP section 850(a). Therefore, we are submitting this formal Demand for Preservation of Evidence in an effort to maintain Fox Canyon Groundwater Management Agency ("FCGMA") and Las Posas Valley Watermaster ("Watermaster") Documents and information related to whether notice was provided as required by law for purposes of potential litigation/alternative dispute resolution.

Watermaster is also in receipt of the attached Public Records Act request seeking the following public records:

1. Any and all public records, including internal and external memoranda and communications, containing information relating to any request made by Plaintiffs in the Basin Adjudication pursuant to Code of Civil Procedure, Section 836.5 for the names and addresses of persons reporting extractions within the Las Posas Valley Groundwater Basin ("Basin"), including any response FCGMA made to such request.
2. Any and all public records, including internal and external memoranda and communications, containing information relating to Plaintiffs' identification of assessor parcel numbers and physical addresses of all real property in the Basin and the names and addresses of all landowners in the Basin using the records of the Ventura County Assessor pursuant to Code of Civil Procedure section 836(d)(1)(A).
3. Any and all public records, including internal and external memoranda and communications, containing information relating to notice of the Basin Adjudication mailed by registered or certified mail, return receipt requested, to landowners in the Basin pursuant to Code of Civil Procedure, Section 836(d)(1)(B).
4. Any and all public records, including internal and external memoranda and communications, containing information relating to notice of the Basin Adjudication posted on parcels of land within the Basin pursuant to Code of Civil Procedure, Section 836(d)(1)(C).
5. Any and all public records, including internal and external memoranda and communications, containing information relating to notice of the Basin Adjudication published in newspapers of general circulation in Ventura County pursuant to Code of Civil Procedure, Section 836(d)(1)(D).

Watermaster intends to respond to this request in a manner consistent with the California Public Records Act.

Sincerely,

LPV Watermaster

LPV Watermaster  
c/o Fox Canyon Groundwater Management Agency  
800 S. Victoria Avenue, L#1610  
Ventura, CA 93009

[LPV.Watermaster@ventura.org](mailto:LPV.Watermaster@ventura.org) | <https://fcgma.org/las-posas-valley-watermaster/>



June 24, 2024

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File No:

949.851.7409  
mstaples@jacksontidus.law  
Irvine Office  
10547-128970

**VIA E-MAIL AND U.S. MAIL**

Board of Directors  
Fox Canyon Groundwater Management Agency  
Las Posas Valley Watermaster  
800 South Victoria Avenue  
Ventura, CA 93009-1610  
[FCGMA@ventura.org](mailto:FCGMA@ventura.org)

**Re: *Las Posas Valley Water Rights Coalition, et al. v. Fox Canyon Groundwater Management Agency, et al.*: Public Records Act Request**

Dear Honorable Board Members:

Pursuant to the California Public Records Act (the "Act") (Gov. Code, §§ 7920.000–7931.000), we request that the Fox Canyon Groundwater Management Agency ("FCGMA") and FCGMA in its role as Watermaster under the action entitled *Las Posas Valley Water Rights Coalition, et al. v. Fox Canyon Groundwater Management Agency, et al.*, Santa Barbara County Superior Court Case No. VENCI00509700 (the "Basin Adjudication"), produce the following "public records" as that term is defined by Section 7920.530 of the Act dated on or after January 1, 2018:

1. Any and all public records, including internal and external memoranda and communications, containing information relating to any request made by Plaintiffs in the Basin Adjudication pursuant to Code of Civil Procedure, Section 836.5 for the names and addresses of persons reporting extractions within the Las Posas Valley Groundwater Basin ("Basin"), including any response FCGMA made to such request.
2. Any and all public records, including internal and external memoranda and communications, containing information relating to Plaintiffs' identification of assessor parcel numbers and physical addresses of all real property in the Basin and the names and addresses of all landowners in the Basin using the records of the Ventura County Assessor pursuant to Code of Civil Procedure section 836(d)(1)(A).

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Westlake Village Office  
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Westlake Village, California 91361  
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3. Any and all public records, including internal and external memoranda and communications, containing information relating to notice of the Basin Adjudication mailed by registered or certified mail, return receipt requested, to landowners in the Basin pursuant to Code of Civil Procedure, Section 836(d)(1)(B).
4. Any and all public records, including internal and external memoranda and communications, containing information relating to notice of the Basin Adjudication posted on parcels of land within the Basin pursuant to Code of Civil Procedure, Section 836(d)(1)(C).
5. Any and all public records, including internal and external memoranda and communications, containing information relating to notice of the Basin Adjudication published in newspapers of general circulation in Ventura County pursuant to Code of Civil Procedure, Section 836(d)(1)(D).

This request for public records applies to any applicable “writing” as defined under Section 7920.545 of the Act, including, but not limited to, any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Under the California Constitution, the people have “the right of access to information concerning the conduct of the people’s business[.]” (See Cal. Const., Art. I, § 3(b).) In furtherance of that constitutional right, this request must be construed broadly and any asserted exemptions construed narrowly. (See *ibid.*) Regardless, we believe that all of the requested public records are subject to public inspection and disclosure under the Act. If FCGMA or the Watermaster should nevertheless decide to withhold any of the requested public records, please identify the record along with the justification for withholding in writing within ten (10) days after receipt of this request, in accordance with Sections 7922.000 and 7922.540, subdivision (a), of the Act and/or 5 U.S.C. section 552, subdivision (b) of FOIA. In that correspondence please identify the records within the scope of the request that will be withheld from disclosure and the justification for such withholding, including: (1) identities of the author and recipients of the documents (including recipients copied); (2) the date prepared; (3) the privilege being asserted; and, (4) the subject matter of the document. (See Gov. Code, §§ 7922.000, 7922.540, subd. (a).)

Fox Canyon Groundwater Management Agency  
RE: Public Records Act Request  
June 24, 2024  
Page 3

To minimize duplication costs, please advise as to whether the documents can be provided in electronic format or the anticipated costs for production. Otherwise, please contact us when the records are available for review.

Sincerely,



Michele Staples

Cc: Arne Anselm, Interim Executive Officer, [Arne.anselm@ventura.org](mailto:Arne.anselm@ventura.org)  
Tiffany North, County Counsel, County of Ventura, [tiffany.north@ventura.org](mailto:tiffany.north@ventura.org)  
Jason Canger, Assistant County Counsel, County of Ventura, [jason.canger@ventura.org](mailto:jason.canger@ventura.org)  
Elizabeth Ewens, Stoel Rives, [elizabeth.ewens@stoel.com](mailto:elizabeth.ewens@stoel.com)



June 24, 2024

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**VIA E-MAIL AND U.S. MAIL**

Board of Directors  
Fox Canyon Groundwater Management Agency  
Las Posas Valley Watermaster  
800 South Victoria Avenue  
Ventura, CA 93009-1610  
[FCGMA@ventura.org](mailto:FCGMA@ventura.org)

**Re: *Las Posas Valley Water Rights Coalition, et al. v. Fox Canyon Groundwater Management Agency, et al.*: (1) Notification of Violation of Landowner Notice Requirements; and (2) Demand for Preservation of Evidence**

Dear Honorable Board Members:

We represent landowners asserting overlying water rights in the Las Posas Valley Groundwater Basin ("Basin") who were not provided mailed or posted notice of the action entitled *Las Posas Valley Water Rights Coalition, et al. v. Fox Canyon Groundwater Management Agency, et al.*, Santa Barbara County Superior Court Case No. VENCI00509700 (the "Basin Adjudication"), in violation of the streamlined adjudication statutes (see, e.g., Code of Civil Procedure ("CCP") § 836(d); Water Code §§ 10720.5(c)).

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Plaintiffs' Notice of Completion of Mailing filed June 3, 2019 and the supporting Declaration of Jennifer M. Keough, CEO of JND Legal Administration LLC ("JND"), do not

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support the Judgment's conclusion that the requirements for notice under Code of Civil Procedure section 836 were complied with, and we found no other supporting evidence in the Court Docket. JND did not respond to our informal requests for information about addresses to which the Adjudication Notice Packets were mailed, which return receipts were received, or which parcels were posted with Adjudication Notice Packets.

Additionally, the Judgment entered in the Basin Adjudication fails to allocate groundwater to the Omitted Rights Holders, fails to reflect their water right priorities, does not treat them equitably as compared to the parties who participated in the Basin Adjudication, and does not take into account the groundwater used by those of our clients who are small farmers, all in violation of CCP section 850(a). Therefore, we are submitting this formal Demand for Preservation of Evidence in an effort to maintain Fox Canyon Groundwater Management Agency ("FCGMA") and Las Posas Valley Watermaster ("Watermaster") Documents and information related to whether notice was provided as required by law for purposes of potential litigation/alternative dispute resolution.

### **Litigation Hold and Preservation of Evidence**

*The Omitted Rights Holders hereby demand that FCGMA and the Watermaster preserve all Documents<sup>1</sup>, tangible things, and electronically stored information ("ESI" as defined below) potentially relevant, and/or reasonably calculated to lead to the discovery of admissible evidence relating to:*

- *Plaintiffs' mailed notices, posted notices and published notices of the Basin Adjudication required by CCP § 836(d);*
- *Plaintiffs' request to FCGMA for names and addresses of persons reporting extractions within the Basin required by CCP § 836.5(a); and*
- *FCGMA's response to Plaintiffs' request required by CCP § 836.5(b).*

As demanded in this letter, the requirement to maintain all Documents and information also pertains to any individual and/or entity working on behalf, or at the direction, of FCGMA or the Watermaster. This includes all employees, officers, directors, attorneys, accountants, partners, representatives, agents, independent contractors, divisions, and any third parties acting

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<sup>1</sup> The term "Documents" and/or "Document" has the broadest meaning permissible pursuant to California Evidence Code § 250 and includes, without limitation, all writings, papers, books, records, memoranda, contracts, pictures, photographs, printouts, electronic data compilations, diskettes, tapes, media, and all other tangible things upon which any hand writing, typing, printing, drawing, representation, photostatic or copy, magnetic or electronic impulse, or other form of communication recorded or reproduced, and includes preliminary drafts, studies, analyses and reports as well as any and all non-identical copies of any of the foregoing now in the possession, custody, or control of each person, and her, his, or its counsel, agents, employees, and any and all persons acting on her, his, or its behalf. "Documents" includes all electronic and physical versions of any documents, including ESI.



on behalf of FCGMA or the Watermaster, whether or not those third parties are paid in performing their duties.

FCGMA and the Watermaster must anticipate that information either relevant to, and/or reasonably calculated to lead to the discovery of admissible evidence in, this matter is in its possession, custody, or control. The requested information includes all documents initially in FCGMA's or the Watermaster's possession, custody, or control and/or created by FCGMA or the Watermaster, as well as all Documents and information obtained by FCGMA or the Watermaster during the course of the Basin Adjudication, whether through formal discovery or otherwise. Such information may reside, without limitation, on current and former computer systems and removable electronic media, all computer systems, services, servers, and devices (including all remote access and wireless devices) used in any way relating to the Basin Adjudication, including, without limitation, phones and tablets, online repositories, and on other storage media and sources, voice and video recording systems, cloud storage services, servers, and social networking accounts. This may include, but not be limited to, Documents stored on the personal devices of Watermaster employees and/or those working on its behalf and/or at its direction (including all lawyers, consultants, experts, employees and independent contractors).

Electronically stored information ("ESI") shall be afforded the broadest possible meaning and includes, without limitation, potentially relevant information stored electronically, magnetically, optically, or otherwise as and on:

- Digital Communications (e.g., electronic mail ("email"), voicemail, text messages, WhatsApp messages, Facebook Messenger messages, or messages stored on SIM cards)
- Email Servers (e.g., Microsoft 365, Gmail, or Microsoft Exchange databases)
- Word Processed Documents (e.g., Microsoft Word, Apple Pages, or Google Docs files and drafts)
- Spreadsheets and Tables (e.g., Microsoft Excel, Apple Numbers, or Google Sheets files and drafts)
- Presentations (e.g., Microsoft PowerPoint, Apple Keynote, or Google Slides files and drafts)
- Social Networking Sites (e.g., Facebook, Twitter, Instagram, or LinkedIn)
- Online "Cloud" Repositories (e.g., Drive, OneDrive, Box, DropBox, iCloud, AWS, or Azure)
- Calendar, Journaling, and Diary Application Data (e.g., Microsoft Outlook PST, Google Calendar, or iCal)
- Online Access Data (e.g., Temporary Internet Files, Web cache, Google history, cookies)
- Routers and any other internet access devices
- Encrypted messages

ESI resides not only in areas of electronic, magnetic, and optical storage media

reasonably accessible, but also in areas that may not be deemed reasonably accessible. Regardless, FCGMA and the Watermaster are obligated to preserve potentially relevant evidence that resides in areas both reasonably accessible and not reasonably accessible, even if such ESI is not anticipated to be produced or claims may be made that such ESI is confidential or privileged from disclosure.

It is hereby demanded that FCGMA and the Watermaster act immediately to preserve potentially relevant Documents, tangible things, and ESI, including, without limitation, information with the earlier of a "Created" or "Last Modified" date on or after January 1, 2018 through the date of this demand and continuing thereafter.

Adequate preservation of ESI requires more than simply refraining from efforts to delete, destroy, or dispose of such evidence. FCGMA and the Watermaster must intervene to prevent loss due to routine operations or active deletion by employing proper techniques and protocols to preserve ESI. Many routine activities serve to irretrievably alter evidence and constitute unlawful spoliation of evidence.

Nothing herein shall be read to limit or diminish any concurrent common law and statutory obligations to preserve Documents, tangible things, and other potentially relevant evidence. These duties and obligations exist under federal and state law, and require FCGMA and the Watermaster to preserve evidence of the subject-matter of litigation from the moment such litigation is reasonably anticipated. (*See e.g., Montoya v. Orange County Sheriff's Dept.*, 987 F.Supp.2d 981, 1010 (C.D. Cal. 2013) (citing *Apple Inc. v. Samsung Electronics Co., Ltd.*, 881 F.Supp.2d 1132, 1136 (N.D. Cal. 2012).) Since the Basin Adjudication was filed on March 27, 2018, such preservation must date back at least that far, but we are demanding preservation back to January 1, 2018. Further, "[w]hen a company or organization has a document retention policy, it is obligated to suspend that policy and implement a litigation hold to ensure the preservation of relevant documents after the preservation duty has been triggered." (*Apple Inc. v. Samsung Electronics Co., Ltd.*, *supra*, 881 F.Supp.2d at 1137.) The failure to preserve evidence may result in sanctions against FCGMA and the Watermaster. (*See, e.g., Kwan Software Eng'g, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74; *Kim v. R Consulting & Sales, Inc.* (2021) 67 Cal.App.5th 263, 268–269.)

### **Suspension of Routine Destruction**

Demand is hereby made that FCGMA and the Watermaster immediately initiate a hold for potentially relevant ESI, Documents, and tangible things and to act diligently and in good faith to secure and audit compliance with such hold. Demand is further made that FCGMA and the Watermaster immediately identify and modify or suspend features of their information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI, if such features or operations exist. Examples of such features and operations may include, without limitation:

- Purging the contents of email and messaging repositories by age, quota, or other criteria;

- Using data or media wiping, disposal, erasure, or encryption utilities or devices;
- Overwriting, erasing, destroying, or discarding backup media;
- Re-assigning, re-imaging, or disposing of systems, servers, devices, or media;
- Running "cleaner" or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories or non-renewal of online accounts;
- Using metadata stripper utilities;
- Disabling server, packet, or local instant messaging logging; and
- Executing drive or file defragmentation, encryption, or compression programs.

### **Guard Against Deletion and Spoliation**

FCGMA and the Watermaster should anticipate the potential that their employees, officers, directors, attorneys, accountants, bookkeepers, consultants, partners, representatives, agents, independent contractors, divisions, and/or any third parties acting on their behalf, or at their direction, may seek to hide, destroy, or alter ESI. FCGMA and the Watermaster must act to prevent and guard against such actions. Especially where machines were used for internet access or personal communications, it must be anticipated that users may seek to delete or destroy information they regard as personal, confidential, incriminating, or embarrassing, and, in so doing, may also unintentionally delete or destroy potentially relevant ESI.

FCGMA and the Watermaster must take affirmative steps to prevent anyone with access to their data, systems, accounts, and archives from seeking to modify, destroy, or hide potentially relevant ESI wherever it resides (such as by deleting or overwriting files, using data shredding and erasure applications, re-imaging, damaging or replacing media, encryption, compression, steganography, or the like).

### **Preservation in Native Forms**

FCGMA and the Watermaster must anticipate that ESI, including, without limitation, emails, text messages, Documents, spreadsheets, presentations, and databases, will be sought in the form(s) in which it is ordinarily maintained (i.e., native form). Accordingly, demand is hereby made that FCGMA and the Watermaster preserve ESI in such native forms, and ensure that no methods be employed to preserve ESI that removes or degrade the ability to search the ESI by electronic means or that make it difficult or burdensome to access or use that information.

It is also requested that FCGMA and the Watermaster refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible. This includes, but is not limited to, maintaining all metadata.

### Metadata

FCGMA and the Watermaster should anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location, and dates of creation and last modification. Application metadata is information automatically included or embedded in electronic files, but which may not be apparent to a user, including deleted content, draft language, commentary, tracked changes, speaker notes, collaboration and distribution data, and dates of creation and printing. For email, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC, and BCC header fields.

Metadata may be overwritten or corrupted by careless handling or improper preservation, including by carelessly copying, forwarding, or opening files.

### Servers

With respect to servers used to manage email (*e.g.*, Microsoft 365, Gmail, Microsoft Exchange) and network storage (referred to as a "network share"), the complete contents of all relevant custodians network share and email accounts must be preserved. If FCGMA or the Watermaster is uncertain whether the preservation method they plan to employ is one that we will deem sufficient, please contact the undersigned.

### **Home Systems, Laptops, Phones, Tablets, Online Accounts, Messaging Accounts, and Other ESI Sources**

Though we expect that FCGMA and the Watermaster will act swiftly to preserve data on office workstations and servers, they also must determine whether any home or portable systems or devices may contain potentially relevant data. To the extent that any potentially relevant emails or other digital communications have been sent or received, or potentially relevant Documents have been created or viewed away from the office, the contents of systems, devices, and media used for these purposes (including not only potentially relevant data from portable or home computers, but also from external storage devices, thumb drives, CD-R/DVD-R disks, and the user's phone, tablet, voice mailbox, or other forms of ESI storage) must be preserved.

Similarly, if FCGMA or the Watermaster use(d) online or browser-based email and messaging accounts or services/servers (such as Gmail, Yahoo Mail, Microsoft 365, Slack, Apple Messaging, WhatsApp, or the like) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes and messages must be preserved.

### **Ancillary Preservation**

The Omitted Rights Holders demand FCGMA and the Watermaster preserve passwords, keys, and other authenticators required to access encrypted files or run applications, along with the installation disks, use manuals, and license keys for applications required to access the ESI.

### **Paper Preservation of ESI is Inadequate**

As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, FCGMA and the Watermaster should preserve both forms.

### **Agents, Attorneys, and Third Parties**

FCGMA and the Watermaster's preservation obligations extend beyond ESI in their care, possession, or custody and includes ESI in the custody of others that are subject to the direction or control of FCGMA or the Watermaster. Accordingly, it is hereby demanded that FCGMA and the Watermaster immediately notify any current or former employees, officers, directors, attorneys, accountants, bookkeepers, consultants, partners, representatives, agents, independent contractors, divisions, and/or third parties acting on their behalf in possession of potentially relevant ESI to preserve such ESI and all relevant evidence to the full extent of the obligations to do so referenced in this letter, and take reasonable steps to secure their compliance.

We are available to discuss reasonable preservation steps at your convenience; however, FCGMA and the Watermaster must not defer preservation steps pending such discussions, as ESI and other evidence may be lost or corrupted because of delay. Should the failure to preserve potentially relevant evidence result in the corruption, loss, or delay in production of evidence to which the Omitted Rights Holders are entitled, such failure would constitute spoliation of evidence.

***Please confirm by June 28, 2024 that FCGMA and the Watermaster have taken the steps outlined in this letter to preserve all Documents, tangible things, and ESI potentially relevant to this matter.***

Sincerely,



Michele Staples

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