

# FOX CANYON GROUNDWATER MANAGEMENT AGENCY

A STATE OF CALIFORNIA WATER AGENCY



## BOARD OF DIRECTORS

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## EXECUTIVE OFFICER

**Jeff Pratt, P.E.**

## NOTICE OF MEETING

**NOTICE IS HEREBY GIVEN** that the Fox Canyon Groundwater Management Agency (FCGMA) will hold an **Executive Committee Meeting** at **1:30 p.m.** on **Tuesday, October 1, 2019**, in the **Pacific Conference Room**, Ventura Government Center, Hall of Justice, First Floor, 800 S. Victoria Ave, Ventura, CA 93009.

## FCGMA EXECUTIVE COMMITTEE MEETING AGENDA

**October 1, 2019**

**Members:** Chair Eugene F. West  
Co-Chair David Borchard

- A. Call to Order**
- B. Introductions**
- C. Public Comment** – Audience members may speak about FCGMA-related matters not on today's Agenda.
- D. Proposed Ordinance for a New Pumping Allocation System for the Oxnard and Pleasant Valley Basins – Santa Clara River Water Flex Allocation** – Discuss revisions to the proposed Santa Clara River Water Flex Allocation for United Water Conservation District and Pleasant Valley County Water District (returning item from July 15, 2019 meeting).
- E. New Pumping Allocation System Variance Request Processing** Discuss revisions to the proposed Santa Clara River Water Flex Allocation for United Water Conservation District and Pleasant Valley County Water District (returning item from July 15, 2019 meeting).
- F. Future Agenda Items and Next Meeting Date**
- G. Adjourn the Executive Committee Meeting**

## NOTICES

*The FCGMA Board strives to conduct accessible, orderly, and fair meetings where everyone can be heard on the issues. The Board Chair will conduct the meeting and establish appropriate rules and time limitations for each item. The Board can only act on items designated as Action Items. Action items on the agenda are staff proposals and may be modified by the Board as a result of public comment or Board member input. Additional information about Board meeting procedures is included after the last agenda item.*

**Administrative Record:** Material presented as part of testimony will be made part of the Agency's record, and 10 copies should be left with the Board Clerk. This includes any photographs, slides, charts, diagrams, etc.

**ADA Accommodations:** *Persons who require accommodation for any audio, visual, or other disability in order to review an agenda or to participate in the Board of Directors meeting per the Americans with Disabilities Act (ADA), may request such accommodation in writing addressed to the Clerk of the FCGMA Board, 800 So. Victoria Avenue, Location #1610, Ventura, CA 93009-1610, or via telephone by calling (805) 654-2014. Any such request should be made at least 48 hours prior to the meeting so staff can make the necessary arrangements.*

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**Availability of Complete Agenda Package:** *A copy of the complete agenda package is available for examination at the FCGMA office during regular working hours (8:00 a.m. to 5:00 p.m. Monday through Friday) beginning Three days before the Board meeting. Agenda packet contents are also posted on the FCGMA website as soon as possible, and left there for archival retrieval in case reference is needed on previously considered matters. Questions about specific items on the agenda should be directed to the Agency's Executive Officer.*

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**Continuance of Items:** *The Board will endeavor to consider all matters listed on this agenda. However, time may not allow the Board to hear all matters listed. Matters not heard at this meeting may be carried over to the next Board meeting or to a future Board meeting. Participating individuals or parties will be notified of the rescheduling of their item prior to the meeting. Please contact the FCGMA staff to find out about rescheduled items.*

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**Electronic Information and Updates:** *Our web site address is <http://www.fcgma.org>. Information available online includes the Board's meeting schedule, a list of the Board members and staff, general information, and various Agency forms. If you would like to speak to a staff member, please contact the FCGMA Clerk of the Board at (805) 654-2014.*

# FCGMA Executive Committee Meeting

October 1, 2019



**D. Proposed Ordinance for a New  
Pumping Allocation System for the  
Oxnard and Pleasant Valley Basins –  
Santa Clara River Water Flex Allocation**

# SCR Water Approach

- “Groundwater” vs. “one water” approach
- Staff conclusion based on analysis and stakeholder meetings that data are not available to implement one water approach at this time
- Staff recommends moving forward with groundwater approach currently in draft ordinance, i.e., “SCR Water Flex Allocation,” with minor stakeholder-requested modifications

# SCR Water Flex Allocation

- Provides conjunctive-use flexibility for PVCWD and UWCD
- In any year SCR water available for PV / PTP deliveries falls below base period PV / PTP deliveries, PVCWD's / UWCD's extraction allocation is increased by the amount of the shortfall
- In any year SCR water available for PV / PTP deliveries exceeds base period PV / PTP deliveries, PVCWD's / UWCD's extraction allocation is decreased by the amount of the surplus
- PV / PTP Flex Allocation subject to allocation reduction at same rate as extraction allocation

# Flex Limit

- Minimum allocation limit added to SCR Flex to address need for late-season irrigation demand when surface water is not available, regardless of how much surface water was available earlier in the year
- Min Limit initially set at 50% of 2013-2017 average extraction allocation
- Min Limit subject to allocation reduction at same rate as extraction allocation



# Annual Carryover

- Annual Carryover works the same for SCR Flex Allocation as for all other pumpers
- Based on total extraction allocation (not including Min Limit)
- Carryover cannot exceed 50% of current year's total allocation



# 5-Year Review of Extractions & Allocation

- If 5-Year cumulative extraction compared with 5-Year cumulative allocation, then excess extractions subject to surcharges
- Board will periodically review effectiveness of ordinance
  - Reviewed at least once every 5 years
  - If necessary, ordinance will be amended to ensure GSP sustainability goals are met

# Consideration of Net Extractions

- Intent of SCR Water Flex Allocation is to be net-neutral to groundwater extractions
- PVCWD & UWCD are water purveyors, not users – meet customer demand
- Presently, insufficient information available to directly tie PVCWD & UWCD deliveries to customer extraction
- New ordinance reporting requirements expected to provide this information
- Staff recommends 5-year review of net extractions analyze closed system of both PVCWD & UWCD and customer extractions to extent information is available

# Available SCR Water in Excess of Flex

- The SCR Water Flex Allocation is a groundwater flexibility allocation, not an allocation of SCR water deliveries
- May be more SCR water available in some years than can be flexed by PVCWD or UWCD
- This surface water should be delivered to PVCWD and/or UWCD customers for the benefit of the basin with expectation that those customers reduce pumping
- New ordinance reporting expected to provide information to check
- PVCWD identified concern of some pumpers that taking additional delivered SCR water and reducing extractions would not affect their extraction allocation
- PVCWD staff to provide draft language for consideration, but not received yet

# Next Steps

- Receive Executive Committee recommendations
- Consider adoption of ordinance at Oct. 23 Board meeting
- Staff recommends adoption of ordinance at Oct. 23 Board meeting, but implementation effective Oct. 1, 2020, to provide adequate time for:
  - Notification to owners and operators regarding new allocation system
  - Receiving and processing variance requests
  - Modifications to administrative and data-management systems

# **E. New Pumping Allocation System Variance Request Processing**

# Variance Request Processing

- Anticipate that owners/operators of wells with missing years of reported extractions will apply for variances
- Legitimate reasons for zero extractions may include:
  - Land was fallowed for one or more years during base period to convert to organic operation
  - Well was replaced during base period
  - In-lieu or off-site water used before well was installed

# Non-Reported Extractions

- Some of the missing base-period years of extraction data may be due to non-reporting by owners/operators
- Example scenarios:
  - Leased land operators with remote and/or inattentive owners
  - Recent purchase of land with past unreported extractions
  - Defunct former operators
  - Owners or operators with willful or negligent non-reporting



# Non-Reported Extractions

1. No change in ownership
  - a. Unregistered well, no SAES filings
    - i. Lease operator
    - ii. Owner operator
2. New well owner
  - a. Same operator
  - b. Different operator

# Criminal & Civil Penalties

- Authorized by FCGMA's enabling legislation and in FCGMA Ordinance Code
- Any person who intentionally violates any provision of this Ordinance Code shall be guilty of an infraction and may be required to pay a fine to the Agency in an amount not to exceed five hundred dollars (\$500) [Section 8.2]
- Any person who negligently or intentionally violates any provision of this Ordinance Code may also be liable civilly to the Agency for a sum not to exceed one thousand dollars (\$1,000) per day for each day of such violation, in addition to any other penalties that may be prescribed by law [Section 8.3]

# Resolution 2019-1 – Penalties

- Sets a civil penalty of \$50 per day for specific Ordinance Code violations:
  - Failure to submit an SAES and/or pay an owed extraction charge and/or interest and/or surcharge by due date
  - Failure to submit an application for efficiency allocation by the due date
  - Failure to report a change in owner or operator
  - Failure to submit notification of any change in flowmeter equipment
  - Failure to submit proof of installation of AMI
  - Failure to submit a monthly extraction report

# Resolution 2019-1 – Civil Penalty Reduction

- The Executive Officer may decrease the civil penalty for a given violation...at his or her discretion in accordance with any one or combination of the following criteria:
- General Criteria:
  - a) The culpability of the violator in causing the violation
  - b) The nature and persistence of the violator's failure to perform or comply with applicable Agency regulations or direction to take corrective action
  - c) The length of time the violation has existed
  - d) The violator's history of past violations, either of a similar or different nature, on the same or different property under the same ownership
  - e) The violator's cooperation with the Agency or other regulatory enforcement agency in resolving the existing and past violations
  - f) The financial burden of immediate compliance or corrective action on the violator
  - g) The extent of harm caused by the violation to the aquifer
  - h) The frequency of past violations, if any
  - i) Other factors as deemed relevant by the Executive Officer

# Resolution 2019-1 – Civil Penalty Reduction

- Criteria Specific to Typical Agency Operations:

- a) The Executive Officer may reduce the amount of the civil penalty when:

1. The person owing it may not have received the earlier requests leading up to it as a result of an Agency error in noticing. It is not an Agency error if it sends notice to an address on file that was not kept up to date by the well owner or operator.
2. The person who the civil penalty is assessed has mitigating circumstances related to illness.

- b) The Executive Officer is not likely to reduce the amount of the civil penalty when:

1. The person owing it may not have received the earlier requests leading up to it as a result of not updating their contact information with the Agency.
2. The person owing it, according to the most up to date agency records, believed it was someone else's responsibility.
3. The failure to respond to earlier requests leading up to the imposition of the civil penalty was an oversight.

# Goals

- Set appropriate civil penalties
  - Match severity of infraction
  - Be reasonably collectable
- Apply fairly and consistently

# Civil Penalty Assessment

- At \$1,000 per day = \$365,000 per year for each penalty
- At \$50 per day = \$18,250 per year for each penalty
- Example where 2005, 2006, 2007 SAES not submitted (2 violations/year)

Reporting Period	Days	Penalty \$1,000/day	Penalty \$50/day
2005-1	5,293	\$ 5,293,000	\$ 264,650
2005-2	5,110	\$ 5,110,000	\$ 255,500
2006-1	4,928	\$ 4,928,000	\$ 246,400
2006-2	4,745	\$ 4,745,000	\$ 237,250
2007-1	4,563	\$ 4,563,000	\$ 228,150
2007-2	4,380	\$ 4,380,000	\$ 219,000
<b>Total:</b>	<b>29,019</b>	<b>\$ 29,019,000</b>	<b>\$ 1,450,950</b>



# Policy Issues

- How should civil penalties be applied based on situation?
  - Owner operated, same owner
  - Lease operated, same owner
    - Same operator
    - Different operator
  - New owner
    - Same operator
    - Different operator

# Accounting for Missing Years

- If majority of years reported, then can average reported years during base period
- If majority of base-period years unreported, then burden of proof is on owner to provide documentation of volume of water used such as:
  - Pumping records
  - SCE records
  - Crop records

# Extraction Surcharges

- If extractions exceeded allocation, or
- If extractions from an unregistered well, then
- Extractions subject to surcharges in addition to civil penalties

# Extraction Surcharges

- Authorized by FCGMA's enabling legislation and in FCGMA Ordinance Code
- “Extraction surcharge” means a surcharge assessed annually each time an operator exceeds his or her extraction allocation [FCGMA Act]
- Surcharge for No Allocation - In circumstances where an individual or entity extracts groundwater from a facility(s) having no valid extraction allocation, the extraction surcharge shall be applied to the entire quantity of water extracted [Section 5.8.4]
- Surcharge payments not received or postmarked by the due date shall be charged a late penalty at the rate of 1.5 percent per month until paid in full... [Section 5.8.6.2]

# Current Surcharges – Resolution 2017-2

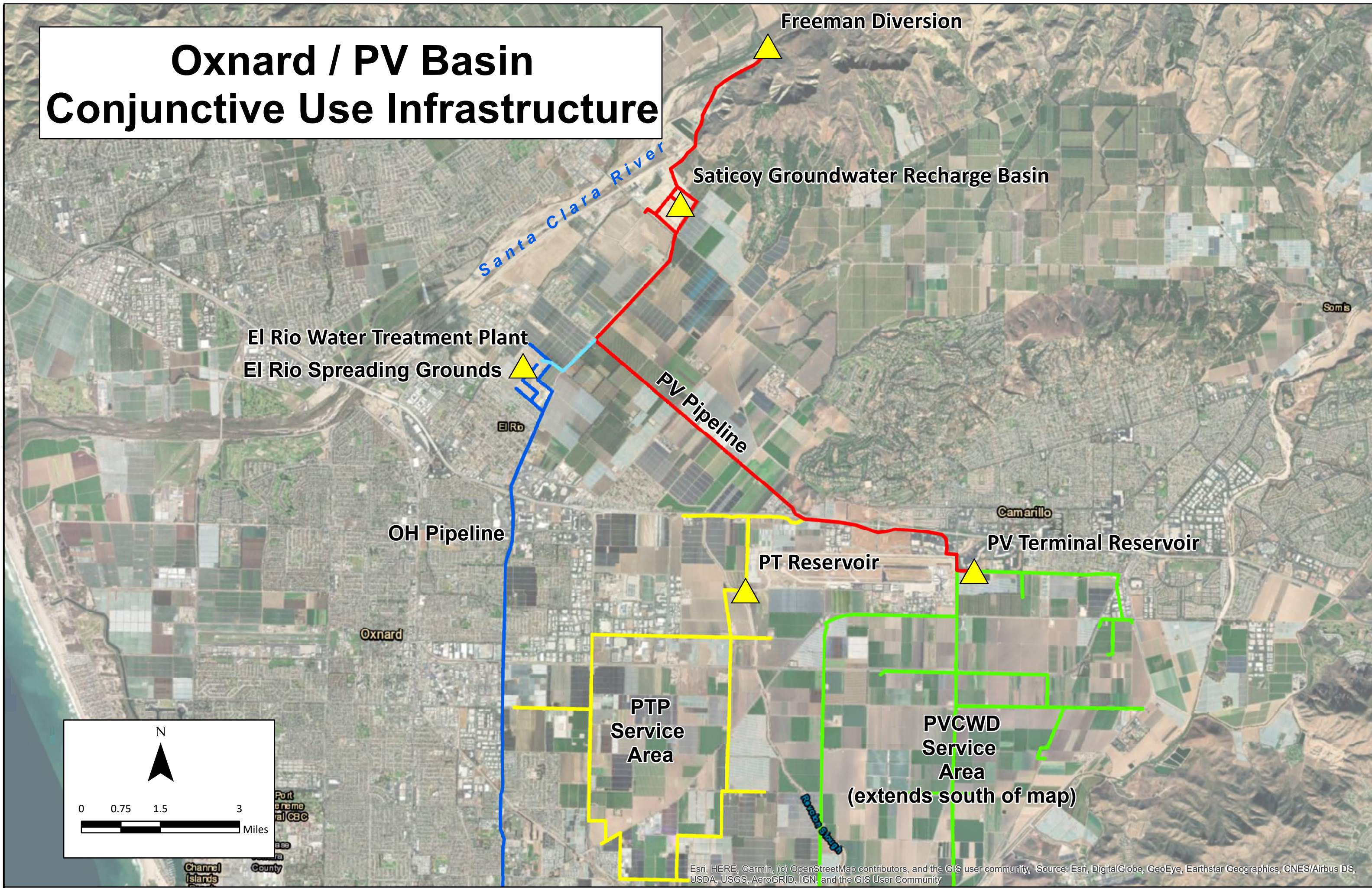
- Tier I: \$1,461 per AF for extraction exceeding allocation by 25 AF or less
- Tier II: An additional surcharge of \$250 per AF for extraction exceeding allocation by more than 25 AF but less than 100 AF
- Tier III: An additional surcharge of \$500 per AF for extraction exceeding allocation by 100 AF or more

# Next Steps

- Receive Executive Committee recommendations
- Continue developing penalty recommendations for specific scenarios
- Return to Executive Committee for review and recommendations
- Take to full Board for consideration of penalty recommendations
- Establishment of specific variance penalties does not need to be completed before adoption of new allocation ordinance



# Oxnard / PV Basin Conjunctive Use Infrastructure



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community