

Bond Case Briefs

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WATER - CALIFORNIA

City of Marina v. County of Monterey

Court of Appeal, Sixth District, California - November 13, 2023 - Cal.Rptr.3d - 2023 WL 7485522

City, city council, and city groundwater sustainability agency filed petition and cross-petition for writ of mandate and complaint and cross-complaint for declaratory relief challenging valley basin groundwater sustainability agency's groundwater sustainability plan, as adopted by county and posted by Department of Water Resources as operative groundwater sustainability for majority of high-priority groundwater basin, including area within city.

County filed cross-petition for writ of mandate and cross-complaint for declaratory relief requesting declaration that formation of city's groundwater sustainability agency was void and that county was exclusive groundwater sustainability agency for area within city.

Following bench trial, the Superior Court denied city's writ petition and cross-petition and granted in part county's writ petition, holding that plan adopted by county was operative groundwater sustainability plan for majority of basin, including area within city, but rejecting county's contention that formation of city's groundwater management agency was void. City appealed and county cross-appealed.

The Court of Appeal held that:

- City's and valley basin agency's failure to resolve overlap between claimed areas caused area of overlap to become unmanaged, allowing county to become exclusive groundwater management sustainability agency for such area;
- County was not precluded from becoming groundwater management sustainability agency due to its membership in valley basin agency, a joint powers authority;
- Sustainable Groundwater Management Act (SGMA) did not preclude county and valley basin agency from executing coordination agreement; and
- SGMA did not preclude county from adopting groundwater sustainability plan after statutory deadline.

Failure by city and valley basin groundwater sustainability agency to timely resolve overlap in areas for which they had submitted their respective notifications of intent to form groundwater sustainability agency caused area of overlap, which was within high-priority basin, to become unmanaged, and thus, provision of Sustainable Groundwater Management Act (SGMA) allowing county where unmanaged area in high-priority basin was located to become presumptively exclusive groundwater sustainability agency for such area authorized county where area of overlap was located to become its exclusive groundwater sustainability agency; under SGMA, neither agency's decision to become groundwater sustainability agency could be effective for area of unresolved overlap.

Under the Sustainable Groundwater Management Act (SGMA), where an overlap exists between areas of a high-priority or medium-priority basin encompassed within two local agencies' notices of

intent to become a groundwater sustainability agency and the agencies do not timely resolve the conflict, neither groundwater sustainability agency has become the effective agency authorized to submit a groundwater management plan for the disputed area, and therefore that area is unmanaged.

County's membership in valley basin groundwater sustainability agency, a joint powers authority, did not preclude county from invoking its authority under Sustainable Groundwater Management Act (SGMA) to become groundwater sustainability agency for area of high-priority basin which both city and valley basin agency had claimed in their notifications of intent to form groundwater sustainability agency after city and valley basin agency failed to resolve overlap, making area unmanaged; valley basin agency, as joint powers authority, had separate, independent existence from county, as its member.

Sustainable Groundwater Management Act (SGMA) did not preclude county, which assumed role of exclusive groundwater sustainability agency for area of high-priority basin after city's and valley basin groundwater sustainability agency failed to resolve dispute over which one of those two agencies would manage such area, from entering into coordination agreement with valley basin agency whereby valley basin agency would adopt groundwater sustainability plan for area on county's behalf and implement same plan in area and remainder of high-priority basin that valley basin agency managed; coordination agreement was consistent with legislature's intent for local government agencies to cooperate to promptly manage groundwater basins and minimize state intervention.

Deadline set forth in Sustainable Groundwater Management Act (SGMA) for a high-priority groundwater basin to be managed under a groundwater sustainability plan was permissive and directory, not mandatory, and thus, county's failure to timely submit valid groundwater sustainability plan for area of high-priority basin for which county had assumed role of groundwater sustainability agency did not preclude county from untimely approving such plan; SGMA set forth no penalty or other express consequences for failure to meet deadline, but rather, only stated that if no local agency decided to form groundwater sustainability agency and adopt groundwater sustainability plan for high- or medium-priority basin by deadline, basin "may" be designated probationary basin by state, in its discretion.