

**FILED**  
Superior Court of California  
County of Los Angeles

JAN 05 2023

David W. Slayton  
Sherri R. Carter, Executive Officer/Clerk of Court  
By Dejane Wortham, Deputy

RULINGS/ORDERS; ATTACHMENT

Bolthouse Land Co., LLC et al. v. All Persons Claiming a Right to Extract or Store Groundwater in the Cuyama Valley Groundwater Basin et al., Case No: BCV-21-101927

Defendant Walking U Ranch, LLC's Motion to Stay Action or Abstain is DENIED.

Defendant Ramagon/Schenk Trust's Joinder in the Motion is DENIED.

Plaintiffs' Requests for Judicial Notice are GRANTED, except as to truth.

The Court's Evidentiary Rulings are attached hereto.

I.  
INTRODUCTION

This is a groundwater rights adjudication. Plaintiffs Bolthouse Land Co., LLC; Wm. Bolthouse Farms, Inc.; Grimmway Enterprises, Inc.; Diamond Farming Co.; Lapis Land Co., LLC; and Ruby Property Holdings, LLC seek a comprehensive adjudication of groundwater rights in the Cuyama Valley Groundwater Basin (Basin) under Code of Civil Procedure §§ 830 et seq.

On August 17, 2021, Plaintiffs filed their complaint in Kern County Superior Court. On November 22, 2021, this action was assigned and transferred to this Court.

On March 8, 2022, Plaintiffs filed their First Amended Complaint (FAC). In the FAC, Plaintiffs assert the following causes of action: (1) comprehensive adjudication and physical solution re: groundwater rights; and (2) quiet title. Plaintiffs also seek a preliminary injunction to provide for management of the Basin.

On August 15, 2022, Defendant Walking U Ranch (Ranch) filed the pending motion to stay pursuant to Code of Civil Procedure § 848. On September 6, 2022, Defendant Ramagon/Schenk Trust filed its joinder to Ranch's motion.

On December 16, 2022, Plaintiffs filed their opposition. On December 21, 2022, Ranch filed its reply. On December 22, 2022, joinders to Plaintiffs' opposition were filed by Defendants (1) Coalition of Landowners for Commonsense Groundwater Solutions; (2) Cuyama Dairy Land, LLC and Hoekstra Family Trust, Dated May 6, 1999; and (3) Kern Ridge Growers, Inc. and Bob Giragosian.

## II. DISCUSSION

### A. Applicable Law

Code of Civil Procedure § 848 provides:

(a) Upon the court's own motion or the motion of any party to a comprehensive adjudication, a court may stay a comprehensive adjudication for a period of up to one year, subject to renewal in the court's discretion upon a showing of good cause, in order to facilitate any of the following:

- (1) Adoption of a groundwater sustainability plan that provides for a physical solution or otherwise addresses issues in the comprehensive adjudication.
- (2) The development of technical studies that may be useful to the parties in the comprehensive adjudication.
- (3) Voluntary mediation or participation in a settlement conference on all, or a portion of, the subject matters or legal questions identified in the comprehensive adjudication.
- (4) Compromise and settlement of the comprehensive adjudication or issues in the comprehensive adjudication.

### B. Requests for Judicial Notice

Plaintiffs request judicial notice of the following documents:

- Exhibit A: Correspondence from the Department of Water Resources (DWR), dated January 21, 2022, concerning the DWR's "Incomplete Determination of the 2020 Cuyama Valley Basin Groundwater Sustainability Plan";

- Exhibit B: Excerpts from the Cuyama Groundwater Sustainability Agency's (GSA) revised Groundwater Sustainability Plan submitted on July 6, 2022 (Revised GSP); and
- Exhibit C: A snapshot identifying the Cuyama GSA's Board of Directors from the Cuyama GSA's website, <https://cuyamabasin.org/cuyama-gsa-board>.

Courts may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Evid. Code, § 452(c). "Official acts include records, reports and orders of administrative agencies." Rodas v. Spiegel (2001) 87 Cal.App.4th 513, 518. Pursuant to Evidence Code § 452(c), the Court will take judicial notice of Exhibits A-C, but not of the truth of any reasonably disputable matters contained in the documents.

C. Ranch Has Not Complied with California Rule of Court 3.1113.

Under Rule 3.1113(d), except in a summary judgment or summary adjudication motion, an opening memorandum in support of a motion may not exceed 15 pages. No reply memorandum may exceed 10 pages. Here, contrary to Rule 3.1113(d), Ranch's opening memorandum is 20 pages and its reply memorandum is 11 pages. Ranch did not seek leave of Court to file overlong opening or reply memoranda pursuant to Rule 3.1113(e).

Under Rule 3.1113(k), "All references to exhibits or declarations in supporting or opposing papers must reference the number or letter of the exhibit, the specific page, and, if applicable, the paragraph or line number." In its opening memorandum, Ranch repeatedly cites the "March Decl" without providing a corresponding paragraph number. Citing a declaration without providing adequate means to locate such citations is tantamount to not providing evidence at all. The Court declines to winnow out the referenced paragraphs from Ranch's counsel's declaration.

Ranch also repeatedly refers to the Cuyama Basin Groundwater Sustainability Plan (GSP), but neither attaches nor requests judicial notice of the GSP pursuant to Rules 3.1113(1) or 3.1306(c). Instead, Ranch refers the Court to Internet URLs. Motion at 14. This is not evidence. Ranch contends that the GSP is too voluminous to attach in its entirety. However, the solution to that problem would be to attach excerpts of any

relevant cited material—not to send the Court on an Internet fishing expedition.

Accordingly, in ruling on the pending motion, the Court will (1) disregard pages 16-20 of Ranch's opening memorandum and page 11 of Ranch's reply memorandum; (2) disregard all references to Ranch's counsel's declaration in Ranch's opening memorandum; and (3) disregard all of Ranch's references to the GSP.

Plaintiffs' opposition memorandum is 17 pages. Accordingly, the Court will similarly disregard pages 16-17 of Plaintiffs' memorandum.

D. Ranch Has Not Shown That a Stay is Warranted Under Code of Civil Procedure § 848.

Ranch contends that the Court should stay this action until the Department of Water Resources (DWR) approves the revised GSP submitted by the Cuyama Basin Groundwater Sustainability Agency (GSA). Under Section 848, a Court may stay a comprehensive adjudication "in order to facilitate . . . [a]doption of a groundwater sustainability plan that provides for a physical solution or otherwise addresses issues in the comprehensive adjudication." Code Civ. Proc., § 848(a)(1). Here, Ranch does not show that a stay would (1) facilitate adoption of a GSP that provides for (2) "physical solution" as to the Basin or (3) addresses other "issues in the comprehensive adjudication."

In 2014, California passed the Sustainable Groundwater Management Act (SGMA), requiring that groundwater basins throughout the state be managed by local groundwater sustainability agencies under groundwater sustainability plans. Wat. Code, §§ 10720 et seq. DWR designated the Cuyama Basin as "high priority" requiring the GSA to submit a GSP to DWR for approval by January 2020. See, e.g., Wat. Code, §§ 10720.7(a)(1), 10727(a). Once GSPs are submitted, DWR then reviews the GSPs to determine whether they satisfy the requirements of SGMA and the regulations promulgated thereunder. Wat. Code, § 10733.4. GSAs are required to periodically evaluate the GSPs based on changed conditions and amend the plans as circumstances change. Wat. Code, § 10728.2.

In 2015, after the Legislature adopted SGMA, the Legislature enacted Code of Civil Procedure §§ 830 et seq., known as the Streamlined Adjudication Act (Act). The Act sets forth the procedural rules for a comprehensive adjudication to

"protect[] water rights" in a "manner that promotes efficiency, reduces unnecessary delays, and provides due process." Code Civ. Proc., §§ 830(b)(1), (2).

The court's final judgment in a comprehensive adjudication, for the groundwater rights of each party, may declare the priority, amount, purposes of use, extraction location, place of use of the water, and use of storage space in the basin, together with appropriate injunctive relief, subject to terms adopted by the court to implement a physical solution in the comprehensive adjudication. Code Civ. Proc., § 834(b). "The court shall have the authority and the duty to impose a physical solution on the parties in a comprehensive adjudication where necessary and consistent with Article 2 of Section X of the California Constitution." Code Civ. Proc., § 849(a). "Before adopting a physical solution, the court shall consider any existing groundwater sustainability plan or program." Code Civ. Proc., § 849(b).

"The phrase 'physical solution' is used in water-rights cases to describe an agreed upon or judicially imposed resolution of conflicting claims in a manner that advances the constitutional rule of reasonable and beneficial use of the state's water supply." City of Santa Maria v. Adam (2012) 211 Cal.App.4th 266, 287. A physical solution is "an equitable remedy designed to alleviate overdrafts and the consequential depletion of water resources in a particular area, consistent with the constitutional mandate to prevent waste and unreasonable water use and to maximize the beneficial use of this state's limited resource." California American Water v. City of Seaside (2010) 183 Cal.App.4th 471, 480. In imposing a physical solution, a court employs "general equitable principles to achieve practical allocation of water to competing interests so that a reasonable accommodation of demands upon a water source can be achieved." Imperial Irrigation Dist. v. State Wat. Resources Control Bd. (1990) 225 Cal.App.3d 548, 572.

In a comprehensive adjudication, a court must determine water rights and may use its equitable powers to impose a physical solution. As Plaintiffs correctly note, neither the DWR or GSA appear to have the power or jurisdiction to determine water rights or impose a physical solution.

First, the GSP at issue does not comprehensively determine water rights or impose a physical solution under the Act. See Wat. Code § 10720.5(a) ("Nothing in this part modifies rights or priorities to use or store groundwater consistent with Section

2, of Article X of the California Constitution . . . .") Courts use equitable principles to determine groundwater rights and priorities based upon California groundwater law. Code Civ. Proc., §§ 833(a); 834. Equity is a judicial, not legislative, function. Neither GSA nor DWR have authority to determine water rights or develop the equitable remedy of a physical solution.

Second, as DWR previously determined, the initial GSP was incomplete, relies on incomplete data and an incomplete groundwater model and purports to reduce groundwater pumping in only a small portion of the Basin, against only some water users with correlative rights, which is inconsistent with California law and groundwater hydrogeology. The GSP does not limit or manage groundwater production in the majority of the Basin. RJN, Exh. A at 1, 4.

Third, it is unclear when or if DWR will approve the revised GSP, submitted in July 2022. Even if a stay were granted, it is entirely possible that the DWR will not approve the revised GSP, and any stay would serve no purpose other than to unnecessarily delay this comprehensive adjudication.

Finally, Ranch provided no admissible evidence that a stay would facilitate the DWR's adoption of the GSP, or that DWR's review process is affected in any way by the comprehensive adjudication in this Court. This Court must adjudicate water rights in the Basin before imposing any physical solution and entering judgment. This process will take time. Given that the DWR took two years to review the initial GSP, it is likely that the DWR will have reviewed the revised GSP before this Court imposes any physical solution. If the DWR does not approve the revised GSP, then the Court need not consider it before imposing a physical solution. If the DWR approves the revised GSP, then in fashioning any physical solution the Court "shall consider"—but is not bound by—the revised GSP. Code Civ. Proc., § 849(b); Wat. Code, § 10720.5(b) ("Nothing in this Part, or in any groundwater management plan adopted pursuant to this Part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights."); Wat. Code, § 10726.8(b) ("Nothing in this Part shall be construed as authorizing a local agency to make a binding determination of the water rights of any person or entity, or to impose fees or regulatory requirements on activities outside the boundaries of the local agency.").

The Court acknowledges that any physical solution it imposes must comport with Water Code § 10737.8 and Code of Civil Procedure § 850. Yet contrary to Ranch's contentions, any GSP approved by the DWR does not restrict the Court's discretion in fashioning an appropriate remedy in this comprehensive adjudication under California groundwater law.

Accordingly, there is nothing to be gained by staying this action. Whether the DWR approves or rejects the revised GSP affects only evidence that this Court must consider after adjudicating groundwater rights and before imposing any physical solution. This Court can adjudicate groundwater rights while the DWR reviews the revised GSP. If the DWR approves the revised GSP, the Court will consider the revised GSP before imposing any physical solution. In contrast, staying the action would cause delay, promote inefficiencies, and defeat the purpose of the Act by delaying adjudication of issues that only this Court can decide.

E. The Court Declines to Consider Ranch's Abstention Argument Under the Primary Jurisdiction Doctrine.

As noted above, Ranch did not seek leave to file an overlong opening memorandum. The Court therefore declines to consider pages 16-20 of Ranch's opening memorandum, which addresses abstention under the primary jurisdiction doctrine.

Even if the Court were to consider Ranch's abstention argument, that argument would fail. The primary jurisdiction doctrine:

. . . applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views.

United States v. Western Pac. R. Co. (1956) 352 U.S. 59, 63-64. Thus, the primary jurisdiction doctrine only applies where an agency and a court have concurrent jurisdiction over a dispute. As Plaintiffs correctly note, only this Court has the jurisdiction to determine water rights and impose a physical solution. Neither the GSA nor the DWR have these powers.



Accordingly, the primary jurisdiction doctrine does not apply here.

III.  
CONCLUSION

Based upon the foregoing, the Court orders that:

- 1) Defendant Walking U Ranch, LLC's Motion to Stay Action or Abstain is DENIED.
- 2) Defendant Ramagon/Schenk Trust's Joinder in the Motion is DENIED.
- 3) Plaintiffs' Requests for Judicial Notice are GRANTED, except as to truth.
- 4) The Court's Evidentiary Rulings are attached hereto.

CLERK TO GIVE NOTICE TO PLAINTIFF. PLAINTIFF TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: January 5, 2023



YVETTE M. PALAZUELOS  
YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT



ATTACHMENT

The Court rules on Plaintiffs' evidentiary objections as follows:

SUSTAINED:

- March Decl., Obj. 2, 3, 4, 5, 6, 9, 11, 12, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

OVERRULED:

- March Decl., Obj. 7, 8, 10, 14, 15, 16, 17, 19, 34

Plaintiffs' evidentiary objections are missing numbers 1 and 13.