

Legal Ad Hoc Committee Charge

Version: v.2 (8/10/20) *refined after 8/4/20 Core Stakeholder Group input*

Developed by Consensus Building Institute in consultation with the Legal Ad Hoc Committee

PURPOSE + OBJECTIVES

The Core Stakeholder Group has formed a Legal Ad Hoc Committee to address water-rights and property-rights issues related to allocation, ramp down, allocation reduction method, and other aspects of a potential “physical solution” in the Oxnard Subbasin and Pleasant Valley Basin as part of the facilitated process.

The purpose of the Legal Committee is to contemplate and answer Core Stakeholder Group questions and proactively present legal considerations to inform Core Group policy recommendations and problem solving.

The Legal Committee will keep the Core Stakeholder Group and interest group caucuses abreast of its activities and recommendations. The goal is to build widespread support and understanding for recommendations that emerge from the Core Stakeholder Group building on the Legal Committee’s work.

TIMELINE + STEPS

Aug / Sept: Initial Meeting with Legal Committee and Attorneys: Ask the attorneys to develop an agreement regarding application of the mediation privilege and how materials and information may be brought back to the Core Stakeholder Group outside of the mediation privilege. Ask the attorneys to frame the key legal issues related to the allocation, ramp down, and end point.

Sept / Oct: The Legal Committee will present the key legal considerations to the Core Stakeholder Group and interest group caucuses to consider feedback and build support for the committee’s outputs.

The attorneys may meet (principals can opt to attend subject to the mediation privilege) to identify options for the Core Stakeholder Group to consider as part of its deliberations.

The Core Stakeholder Group or Legal Committee can identify decision points or dilemmas that would benefit from Legal Committee collective direction and input.

DELIVERABLES / PRODUCTS

The Legal Committee will share legal doctrines and corresponding legal questions / dilemmas with the Core Stakeholder Group to inform the Group's policy recommendations.

The Legal Committee will inform proposals that address ramp down, allocation, end point (minimum allocation), and other aspects of a potential physical solution that is responsive to the interests of beneficial users of groundwater.

LIST OF QUESTIONS

The following is a list of questions for Legal Committee and Attorneys consideration. The Core Stakeholder Group, the Legal Committee, and the attorneys can identify other relevant questions to inform the process. *The numbering is for reference during discussion only.*

1. The State Water Resources Control Board states that SGMA allows a Groundwater Sustainability Agency to build a regulatory framework and allocation scheme without affecting water rights. What are the key water rights considerations that should inform allocation and ramp down in the Oxnard and Pleasant Valley Basins?
2. The Oxnard Subbasin and PV Basin have been heavily augmented (via United's activities) and managed (via the legislative formation of the FCGMA) for decades. How do these facts bear on the water rights / allocation discussion? Does this place us into a category where specific case law is or isn't really applicable?
3. What facts support application of the doctrine of prescription in the OPV Basin and what facts do not?
4. Under an allocation plan that limits groundwater pumping, how does the availability of surface water affect water rights for agriculture? For cities?
5. What are the options / implications of establishing a minimum allocation within water law? What happens if one user group, agriculture, hits its minimum allocation, and a municipal pumper, like the City of Oxnard, still needs water to meet its mandated requirements? How does groundwater law consider this?
6. How do Regional Housing Needs Assessment (RHNA) requirements affect other water rights questions?
7. The base period has been a source of conflict for the Oxnard Pleasant Valley Basins, what base period(s) might the legal committee recommend that would best serve all stakeholders given the need to develop a ramp down to achieve sustainability? Note: the Core Stakeholder Group will discuss this prior to the attorneys weighing in.
8. Managing Basins Together: The GMA was formed to manage the Fox Canyon Aquifer that underlies Oxnard, Pleasant Valley, and Los Posas Valley collectively? What are the legal implications of managing collectively or independently given the founding legislation, SGMA, and Bulletin 118? if managing the Oxnard and Pleasant Valley basins together, what are the legal implications given interconnectivity of West Las Posas?

PARTICIPANTS

Core Stakeholder Group members formed the Legal Committee. Legal Committee principals, who are members of the Core Group, will meet with and without attorneys as they deem appropriate.

Legal Committee Member		Attorney
City of Oxnard	Principal: Rosemarie Gaglione	Greg Newmark, Meyers Nave
City of Ventura	Principal: Jennifer Tribo	Miles Hogan, Assistant City Attorney
Guadaluca Mutual Water Company / Broome Ranches	Principal: Alden Broome	Robert Saperstein, Brownstein, Hyatt, Farber, Schreck
Oxnard Plains and Pleasant Valley Basins Landowner Coalition	Principals: James DuBois and Greg Lewis	Russ McGlothlin, O'Melveney
Pleasant Valley County Water District	Principal: Jared Bouchard	Robert Saperstein, Brownstein, Hyatt, Farber, Schreck
Southland Sod	Principals: Jurgen Gramckow and Martin Gramckow	Eric Robinson, Kronick