

Case Analysis for the Small Farmer Community

Mojave Pistachios, LLC v. Superior Court (2024) 99 Cal.App.5th

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Case Name: Mojave Pistachios, LLC v. Superior Court

Case No: G062327

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Court: California Court of Appeals 4th Appellate District Division 3

Background:

Appellant Mojave Pistachios owns and operates on 1600 acres of land in the Mojave Desert. It irrigates pistachio trees exclusively with groundwater pumped from the Indian Wells Valley groundwater basin below and is under the jurisdiction of the Indian Wells Valley Groundwater Authority (IWVGA). The IWVGA is the local groundwater sustainability agency (GSA) that was created under the Sustainable Groundwater Management Act (SGMA) to manage the basin with a groundwater sustainability plan (GSP). The Department of Water Resources has determined that the basin is at risk for overdraft.

IWVGA has determined, following SGMA, that all extractions from the basin where Mojave Pistachios pumps groundwater are subject to a basin replenishment fee of \$2,130 per acre-foot, to be paid monthly, starting in 2021. The goal of this fee is to fund purchases of surface water to supplement the dwindling groundwater basin and shallow wells that may be impacted by dropping groundwater levels. Mojave Pistachios refused to pay the fee and brought suit in Kern County Superior Court challenging IWVGA's GSP and related implementation actions, including the replenishment fee.

Transient Pool:

In 2020 IWVGA created the Transient Pool (51,000 acre-feet of individually allotted groundwater) and Falling Program, as part of its GSP, to facilitate production reductions among groundwater users with the goal of encouraging a shift from relying on the overdrafted basin. To be eligible for the Transient Pool allotment, agricultural pumpers must have met the criteria set by the IWVWD's GSA and submitted a timely and complete response to the required questionnaire.

The Transient Pool is individually allotted to each qualified agricultural user to manage independently as their operations permit. Qualified Pumpers may pump or transfer any portion of their Transient Pool Water. Once a Qualified Pumper has pumped or transferred its entire allotment of Transient Pool Water, it may only continue to pump water from the Basin if it pays the necessary fees.

Ten groundwater pumpers, including Mojave Pistachios, are potentially qualified to participate in the program. Mojave and two other groundwater pumpers failed to submit the required pumping

questionnaire before the deadline and thus were deemed ineligible to participate. The transient pool was then allotted to the 7 remaining eligible pumpers. Eligible pumpers could then either:

1. reject their allotment and continue pumping while paying the Basin Replenishment Fee charged when groundwater pumpers exceed their allotment,
2. accept their allotment and associated mitigation fee, separate from the GSA's Replenishment Fee, or
3. accept the allotment and negotiate a sale of it to the Authority.

Groundwater Pumping Fees:

Mojave Pistachios was charged a groundwater "Replenishment Fee" of \$2,130 per acre-foot of groundwater. The IWVGA imposed this fee to fund the purchase of supplemental water transfers and reduce the impact of overdrafting groundwater in a critically overdrafted basin.

Pay First, Litigate Later Rule:

Mojave Pistachios argued that IWVGA's groundwater sustainability plan illegally deprived it of the water rights to pump groundwater from the Basin by conditioning its continued use of groundwater on the payment of the Replenishment Fee. Mojave Pistachios filed an injunction to prevent IWVGA from implementing the Replenishment Fee.

However, the court ruled that the "pay first, litigate later rule" barred the claim since Mojave had not yet paid the fees it hoped to invalidate. Therefore, any cause of action that attacks the validity of the Replenishment Fee or attempts to impede its prompt collection cannot proceed unless Mojave Pistachios first pays the outstanding amounts owed.

Are GSA Pumping Allotments a Taking:

The case raises significant concerns about the potential conflict between long-established groundwater rights and SGMA's regulatory framework. Mojave Pistachios argued that the IWVGA's GSP effectively deprived them of their vested groundwater rights without just compensation. The courts, however, rejected Mojave's argument and decided not to rule on the matter, upholding the authority of local groundwater sustainability agencies (GSA) to regulate water use and impose fees under SGMA.

Financial Concerns:

Mojave Pistachios faced the possibility of bankruptcy due to the back fees owed under the replenishment fee plan, a risk explicitly acknowledged by the courts. The Orange County Superior Court judge noted that bankruptcy could be an acceptable result of enforcing the "pay first" rule, even though Mojave Pistachios argued that the fees would devastate its business.

Challenging the GSP:

This case also mentions efforts by agricultural water users to challenge the validity of GSPs through legal adjudications. Mojave Pistachios, along with other users in the Indian Wells Valley, sought to have the court review the legitimacy of the IWVGA's groundwater plan, which it believed inaccurately assessed the availability of groundwater in the region.

Impacts to Small Farmers Interests:

Groundwater Pumping Fees:

For small farmers, groundwater pumping fees can be prohibitively expensive. While large agricultural entities like Mojave Pistachios may claim to struggle with multimillion-dollar annual fees (in Mojave's case, over \$8 million per year), small farmers with limited financial resources may find these costs to be even more of a threat to long-term business operations. Small farmers may not be able to pay these fees without raising prices or reducing crop yields, potentially endangering their long-term viability.

Pay First, Litigate Later Rule:

For small farmers, the "pay first, litigate later" rule could pose a significant financial burden. If they wish to dispute the legitimacy of the fees in court, small farmers must first pay the fees in full under this case, which can drain their potentially limited resources. This court ruling creates a Catch-22: small farmers who can't afford the fees may also be unable to afford judicial review.

The appellate court upheld this rule, even if the fees later turned out to be improper and emphasized that farmers will have a post-payment refund mechanism as their primary legal recourse. This aspect of the case is particularly burdensome for small farmers, who may not have the financial flexibility to pay fees before contesting their legality.

Are GSA Pumping Allotments a Taking:

Since the Court denied Mojave's argument that the IWWWD's GSP deprived them of their groundwater rights without just compensation, small farmers' historical rights to groundwater are also subject to limitations imposed by GSPs aimed at curbing overdrafting. If GSAs impose fees or restrict access to groundwater to balance aquifer levels, small farmers may face difficulty sustaining their operations, particularly in areas where they have historically depended on unrestricted access to groundwater.

Financial Concerns:

For small farmers, this precedent is concerning. If they cannot afford the fees imposed by groundwater sustainability agencies, they may be forced to cease operations or file for bankruptcy. The ruling effectively highlights that courts prioritize the financial stability of public water management systems over the economic survival of individual farms. Small farmers, who lack the financial reserves of larger agricultural companies, are particularly vulnerable to this outcome.

Challenging the GSP:

While small farmers may similarly seek judicial review of sustainability plans, the courts have emphasized the importance of harmonizing SGMA's goals with California's existing water laws. The outcome of such adjudications may influence the amount of water available for agricultural use. However, the burden of proving that a GSP is flawed can be a lengthy and costly process making it difficult for small farmers to participate in the adjudication process.

Going Forward:

For small farmers, the *Mojave Pistachios* case highlights the increasing legal and financial complexities of operating under SGMA. Groundwater fees, regulatory restrictions, and the "pay first, litigate later" rule represent significant challenges that could impact small farmers. The pay-

first, litigate later rule and its impact on farm finances makes the case a critical point of reference for small-scale farmers who rely on groundwater for their livelihoods.