

## Hanson Bridgett Talks SoCal Groundwater Resolution

By Emma Cueto

*Law360 (August 8, 2023, 11:58 AM EDT)* -- While spending years as one of many firms hashing out the management of groundwater in California's Las Posas Valley Basin, Hanson Bridgett LLP attorneys handled a multistage court process, shifting allegiances among the many parties, and a still-new state law on groundwater management to arrive at a solution that almost everyone involved was able to get behind.

Veteran water lawyer Michael Van Zandt led the Hanson Bridgett team representing one of the main parties in the suit: Ventura County and two of its waterworks districts. He spoke to Law360 Pulse about his experience with the case and his takeaways on what it might forecast for California water litigation in the future due to recent changes in the law.

"Probably in this case you had every premiere water rights attorney in the state of California involved, that you wouldn't normally see in a smaller adjudication," he said. "That made a big difference."

The lawsuit, filed in state court in Santa Barbara by the Las Posas Basin Water Rights Coalition in 2018, sought to protect water rights for landowners in the Las Posas Valley, an area of southern Ventura County that is home to an estimated 42,000 people, according to the nonprofit group Groundwater Exchange. By the end of the case in July 2023, the case would include hundreds of parties, all advocating for their portion of the valley's limited groundwater reserves.

Van Zandt and the team at Hanson Bridgett got involved in the case from the very beginning as counsel for Ventura County. The county needed to find water rights attorneys who were available, he said, which was a tough task given the size of the case.

"Most, if not all, of the local water rights attorneys were conflicted, because they represented claimants," he said.

Thus, he explained, Ventura County cast its net to northern California and hired the San Francisco-based Van Zandt, as well as the other members of his team: another partner, Nathan Metcalf, counsel Neil Bardack and senior counsel Sean Herman.

The case itself was among the first brought under the California Sustainable Groundwater Management Act, which was passed in 2014 with the goal of allowing more effective local management of groundwater reserves. The farmers and other landowners who filed the suit in 2018 were dissatisfied with the decisions of the local manager, the Fox Canyon Groundwater Management Agency.

The trial judge, Judge Thomas P. Anderle, divided the litigation into three phases, starting with a phase in which the parties attempted to prove their historic use of groundwater.

Despite the fact that both the plaintiffs' and defendants' sides included a large number of parties, during the first phase Ventura County and its waterworks districts found themselves at odds not only with the plaintiffs but also many of their fellow defendants. While most parties in the case had rights by virtue of owning property, the waterworks districts set out to establish preemptory rights, which clashed with landowners' interests.

"We wound up adverse to almost everyone," Van Zandt remembers.

Despite this, the districts had good records of their historic use, not only from their own records but from reports they had sent to Fox Canyon over many years. This helped establish the districts' historic use and secure a favorable decision during Phase 1.

When Phase 2 began, on the other hand, Van Zandt said that the interests of the public agency defendants, including Ventura County and Fox Canyon, were more aligned and they were able to work together more. This phase of the litigation focused on establishing what the sustainable annual yield from the basin was, with public agencies pushing for the number not to be set above 36,000 acre feet and individual landowners advocating for a higher yield of 40,000 or above.

"We thought, at that point in time, the proposals from the other side to get to 40,000 acre feet or even 42,000 acre feet were not realistic," he said. "They weren't funded. ... There was no design."

The court chose ultimately not to give a set number, but did approve allocations that added up to over 40,000 acre feet.

However, Van Zandt said, he and his clients were very pleased with the results of phase three, in which the court decided on a physical solution and management scheme for the basin — which included projects to increase the water supply and hopefully make 40,000 acre feet per year a sustainable yield for the basin. These include projects to utilize rainwater runoff to replenish the basin and plans to remove some vegetation.

At this stage there was also resistance to keeping Fox Canyon as the management agency, but the court ultimately ruled that the agency would stay, while also putting in some checks and balances on its power that Van Zandt said seemed to appease the concerns of some farmers in the case.

Throughout the case, parties aligned and realigned themselves depending on who had competing or mutual interests during the three phases, Van Zandt said, noting it was, "an interesting dynamic."

As someone who has handled water cases in California, Nevada and Idaho, Van Zandt said that he was very pleased with how quickly the case was resolved. Though it ran for roughly five years, that's extremely quick in the context of water law, he noted, adding that many cases in Western states over the course of the past century have run for decades.

That speed was a testament to the Sustainable Groundwater Management Act and the expedited review amendments that were added to the law in 2016, Van Zandt said.

"That's going to make a big difference," he said. "Now you can expect you're going to have a significant and quick adjudication of the issues. That's good for California; it's good for the economy; it's good for the landowners."

--Editing by Alyssa Miller.

---

All Content © 2003-2023, Portfolio Media, Inc.