

GROUNDWATER LAW AND RIGHTS

The Colusa County Department of Agriculture, Water
Resources

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Robert E. Donlan
Ellison, Schneider & Harris

RED@eslawfirm.com

(916) 447-2166

OWNERSHIP OF WATER

- State owns water and holds in trust for the people of California;
- Water rights may be acquired from the State, but are *usufructuary* (right to the use of water);
- Right of use is real property, entitled to protection like other real property, subject to other legal requirements;
- Water reduced to possession is considered personal property.

Surface Water and Groundwater are Regulated and Managed Separately in CA

- Groundwater Classification (Percolating Groundwater vs. Subterranean Streams);
- Groundwater law applies to “percolating groundwater” present in a groundwater basin;
 - All underground water presumed to be percolating absent evidence to the contrary (Los Angeles v. Pomeroy (1899) 124 Ca. 597).

Surface Water Law and Rules Apply to Waters Flowing in Streams and Lakes and “Subterranean Streams Flowing in Known and Definite Channels” (Water Code § 1200)

- Water flowing in defined underground channel;
- Bounded by relatively impermeable bed and banks;
- Channel defined or capable of definition; and
- Groundwater flow generally in same direction as adjacent surface flow. (North Gualala Water Company v. State Water Resources Control Board (2006) 139 Cal.App. 4th 1577).

Groundwater Rights

- California rejects English common law rule of absolute ownership (Katz v. Walkinshaw (1903) 141 Cal. 1166);
- Development of Rules of Reasonable Use and Doctrine of Correlative Rights among overlying groundwater users (Katz).

Types of Groundwater Rights

- Overlying Rights;
- Appropriative Rights;
- Prescriptive Rights;
- Rights to Recovery of Imported Waters;
- Rights to Storage Capacity in Basins.

Overlying Groundwater Rights

- Right to pump and use water on land overlying a groundwater basin or within watershed overlying basin. (City of Pasadena v. City of Alhambra (1949) 33 Cal.2d 908);
- Right is correlative to rights of other overlying pumpers to safe yield of the basin (Katz).
 - In times of shortage or limited supply, all overlying users must reduce pumping;
 - Analogous to riparian rights;
 - Quantity limited to (1) amounts necessary for reasonable use on overlying land and (2) correlative share of Safe Yield of Basin.
- Subject to Prescription and Subordination in Adjudication.

Non-Overlying / Appropriative Groundwater Rights

- Right to pump and use water for non-overlying uses;
- Right is generally subordinate to overlying uses, and non-overlying uses must cease before any overlying right is reduced;
 - Non-Overlying Rights are Based on Priority as between non-overlying users.
- Municipal use is generally considered non-overlying (except where overlying in fact);
- Subject to reasonable and beneficial use requirements.

Key Terms: Basin, Safe Yield, Overdraft

- Basin – various definitions depending on geology, hydrogeology, and geopolitical concepts.
- Safe yield is the maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing an undesirable result; undesirable result is the gradual lowering of groundwater levels resulting in eventual depletion of the supply. (Los Angeles v. San Fernando (1975) 14 Cal.3d 199).
- Overdraft occurs when water withdrawal exceeds water replenishment over a period of time; the point at which “extractions from the basin exceed its safe yield plus any temporary surplus.” (Los Angeles v. San Fernando (1975) 14 Cal.3d 199).

Priority to Limited Supplies

- Full satisfaction of overlying uses;
- Correlative allocation among overlying uses;
- Surplus above safe yield available for appropriation;
- Non-surplus appropriative uses may be enjoined;
- Adjudication and Prescription.

Adjudication – Allocation of Rights in Overdrafted Basins

- Overlying users may obtain declaratory and injunctive relief against non-surplus appropriators;
- Overlying users may maintain and protect rights by pumping during prescriptive period;
- Un-exercised overlying rights may be lost/prescribed;
- Priority of right amongst appropriators;
- No prescription against municipal pumpers (Civil Code section 1007; Los Angeles v. San Fernando (1975) 14 Cal.3d 199).

Prescription

- Taking of non-surplus water during the prescriptive period (5 years) was
 - Actual;
 - Open and Notorious;
 - Hostile and Adverse;
 - Continuous and Uninterrupted; and
 - Under Claim of Right.
- Difficult and complex elements to prove;
- Results in reduction in pumping and reapportionment of Safe Yield, generally in favor of municipal appropriators.

Judicially Created Doctrines

- Mutual Prescription Doctrine (Pasadena v. Alhambra (1949) 33 Cal.2d 908);
- Equitable Apportionment (Los Angeles v. San Fernando (1975) 14 Cal.3d 199);
- Physical Solution Doctrine (City of Lodi v. East Bay Municipal Utilities District (1936) 7 Cal.2d 316);
 - Physical solutions/equitable apportionment must respect water rights and water right priorities (City of Barstow v. Mojave Water Agency (2000) 23 Cal.4th 1224).
- Post-adjudication management by watermaster, groundwater management agency, with court oversight.

Groundwater Management – The Alternative to Adjudication

- Historical non-adjudicatory groundwater management;
 - Special Districts created to manage groundwater (Orange County Water District, Fox Canyon, Monterey County Water Resources Agency);
 - Groundwater replenishment districts (to import water to augment natural groundwater supply);
 - Public agencies using AB 3030 authorizations;
 - Municipal authorities - police powers, etc.
- Sustainable Groundwater Management Act of 2014.

Emerging Regulation of Groundwater Use

- Public Trust Doctrine (Siskiyou County Case);
- Reasonable Use Doctrine (Light v. State Water Resources Control Board (2014) 226 Cal.App.4th 1463).

Conjunctive Use and Groundwater Storage

- Conjunctive Use – the coordinated use of surface and groundwater supplies to maximize total system potential for beneficial uses and resource protection;
- Groundwater storage – augmentation of the natural supply with imported water; water belongs to the storage entity.



QUESTIONS?