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Cent. & W. Basin Water Replenishment Dist. v. S. Cal. Water Co., 135 Cal. Rptr. 2d 486 (Cal. Ct. App. 2003)

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affect ASM and SSF because their salmon farms had been unprofitable in the two previous years. After assessing these factors, the court fined ASM and SSF fifty thousand dollars each.

Finally, the court addressed USPIRG's request for injunctive relief. The court found that ASM and SSF's salmon farms threatened immediate irreparable harm because escaping non-North American species threatened endangered species and salmon farm discharges degraded the environment. Hence, the court enjoined defendants from stocking their pens until they obtained a permit. The court also permanently enjoined defendants from stocking any non-North American salmon species.

On July 25, 2003, the court addressed ASM and SSF's motion to stay the court's May 28, 2003 order. The court concluded ASM and SSF did not have a strong likelihood of success on the merits as they had previously litigated all issues. Further, any harm to ASM and SSF derived from their own failure to comply with the CWA. Finally, the court concluded granting a stay would cause great environmental harm, which vastly outweighed ASM and SSF's assertion of economic hardship. Hence, the court denied ASM and SSF's motion for a stay of the May 28, 2003 order.

Heather Chamberlain

STATE COURTS

CALIFORNIA

Cent. & W. Basin Water Replenishment Dist. v. S. Cal. Water Co., 135 Cal. Rptr. 2d 486 (Cal. Ct. App. 2003) (holding that, along with the water resources of the State of California, available storage capacity in a ground water system must be utilized for the greatest public welfare and is subject to management by the appropriate state agency).

Appellants, including several municipal, commercial, private, and industrial interests ("Pumpers"), hold groundwater rights in the Central Valley area near Los Angeles. Respondent Water Replenishment District of Southern California ("WRD"), a state agency, was created by the California legislature to monitor the Central Valley groundwater basin. The majority of the Central Valley is located within the Los Angeles metropolitan area. The Pumpers claim to hold half of the allowable water rights in the Central Basin and to supply over 1 million residents and businesses in the Los Angeles area. The Pumpers motioned the Superior Court of Los Angeles County to qualify and allocate the storage rights for the basin left undetermined after the adjudication of their water rights. The WRD contended the storage capacity of the Central Valley groundwater basin was a public resource and was within the WRD's

authority to regulate for the greatest public welfare. The trial court agreed with the WRD and denied the Pumpers' request for the allocation of the storage capacity to the private water right holders. The Pumpers appealed to the California Court of Appeals.

The Pumpers' water rights were adjudicated when the predecessor of the WRD brought an action in the 1960s to have all water rights in the Central Valley basin reduced to a level that would prevent an overdraft in the system. An overdraft allows seawater to infiltrate into the basin and contaminate the groundwater system with salt water. All groundwater users agreed to have the water rights in the basin based on the percentage that each was extracting at the time of the adjudication. The final agreement gave each then current water right holder a prorated portion of the maximum allowable extraction that would prevent an overdraft.

The Pumpers claimed to be in the best position to manage the available groundwater storage capacity. They pointed to the principal of conjunctive use, which allows for the combined use of both surface water and groundwater for the greatest efficiency. In support of conjunctive use, the Pumpers claimed to be able to conserve the scarce water resources of the state by purchasing and using surface water rights in lieu of groundwater before the surface water was lost to outflows or evaporation. Additionally, by allowing the Pumpers to use the groundwater system to store their purchased surface water rights, evaporation from surface water systems or storage would further be decreased. Furthermore, the Pumpers claimed to already have a vested right in the storage capacity of the groundwater system. They relied mainly on their established carryover rights and the principle of mutual prescription as conferring vested rights in the groundwater storage capacity in the Central Valley basin. Finally, the Pumpers claimed that by making the storage capacity a fully transferable private asset vested in the current water right holders, the market would ensure the most efficient and beneficial use of the water by allowing the party who valued the resource the most to purchase and control the resource.

Carryover rights allow water right holders to leave a portion of their allowable extractions in the basin for a given period of time while retaining the right to later pump the water in addition to their normally allowed quantity for that latter period. The Pumpers claimed their carryover rights already granted them the right to utilize the available storage capacity. However, exercising the carryover rights for all parties entitled to extract groundwater from the basin would consume only 45,000 acre feet of the approximately 645,700 acre feet of available capacity. The court addressed this argument by noting carryover rights are limited to their defined bounds and are not an expansive right to utilize the entire storage capacity of the system. The court continued, explaining that at best the Pumpers' argument might have supported an expansion of their carryover rights; however, the motion did not request such an action.

Alternatively, the Pumpers claimed the principles of mutual

prescription used in setting their water rights applied equally to the right to utilize the storage capacity in the basin. A required element in proving mutual prescription is the possession and use of the property to the exclusion of all others with a right to the property. By definition, the unused storage capacity of the ground water basin was not being possessed in a manner excluding all others. Accordingly, the court rejected this claim because the Pumpers did not establish the elements of mutual prescription, and private entities cannot gain possession of a public resource by prescription.

Next, the Pumpers claimed the right to extract ground water and the right to use the storage capacity were hydrologically and legally linked. Looking at the link between extraction and storage, the court noted that the Pumpers failed to offer any evidence of a legal link between the two processes. The court went on to explain that the processes are physically distinct and a hydrological connection is not sufficient to establish a legal link. The court also pointed out that the WRD has a right to replenish the level of water in the basin but lacks any right to extract water.

In their final claim, the Pumpers argued that by making the right to use the storage capacity of the basin a fully transferable private asset, the free market would ensure the greatest beneficial use of the resource. The court rejected this argument by pointing out the lack of any safeguard for the public welfare. California law requires the use of all water resources in the state in a manner promoting the greatest public benefit. Domestic use is the top priority, followed by irrigation. The storage capacity of groundwater systems falls within the definition of water resources of the state. The court went on to explain that the most efficient use is not necessarily the most beneficial use with regard to the public welfare. The WRD's function is to monitor the groundwater basin to ensure its maintenance as a public asset; therefore, the court ruled the WRD was the proper entity to manage the storage capacity of the Central Valley basin.

The WRD questioned the court system's jurisdiction to decide this case because the courts have no authority to create new water rights. The court dismissed this argument, holding that this action was not an adjudication of new water rights. Furthermore, the court reserved jurisdiction in this matter at the original adjudication of the water rights in order to address any future circumstances that might jeopardize the agreed prorated allocations. Thus, the court affirmed the trial court's ruling that the available storage capacity was a public resource under the managerial authority of the WRD.

Sean R. Biddle