
State Water Resources Control Board

October 13, 2022

Administrative Hearings Office's Public Hearing on the Administrative Civil Liability Complaint issued by the Assistant Deputy Director of the Division of Water Rights Permitting and Enforcement Branch under Water Code section 1055 against Griset Farms: Hearing Officer's Order for Supplemental Briefing

Introduction

On June 16, 2022, the parties' attorneys filed their closing briefs in this proceeding. I have reviewed those briefs, conducted some independent research, and determined that there are additional issues, not specifically addressed in the parties' briefs, on which I would like additional briefing. This order directs the parties to file supplemental briefs addressing these issues and sets the deadline for these filings.

Discussion

It appears to me that the owner of a parcel with an overlying right to pump and use water in a groundwater basin may exercise the right by entering into an arrangement with the owner of a well located in another part of the basin under which the well owner pumps water and delivers it to the parcel owner who then conveys the water to the parcel for beneficial uses there. This conclusion is consistent with the rule that the holder of a riparian right to divert and use water from a surface water stream may divert water from the stream at a point of diversion that is not on the right holder's parcel, and then convey the diverted water to the riparian parcel for beneficial use there. (See *Holmes v. Nay* (1921) 186 Cal. 231, 240; *Turner v. James Canal Co.* (1909) 155 Cal. 82, 91-92.)

However, there are two important limitations that may apply here.

First, if the natural flow of the stream is not sufficient to reach a riparian parcel, then the parcel owner's riparian rights do not authorize the diversion of water from the stream at an upstream point for conveyance to the parcel. (*Drake v. Tucker* (1919) 43 Cal.App. 53, 58.) By analogy, it appears to me that, if the owner of a parcel could not access water in the basin by constructing and operating a well on the parcel, then the owner of the parcel may not exercise the claimed overlying right by conveying water to the parcel from a well located off the parcel. This conclusion appears to be consistent with the court's statement in *Hudson v. Dailey* (1909) 156 Cal. 617, 628, that rights to pump and use percolating groundwater extend to all "who by their natural situation have access to" the source. By implication, such rights do not extend to owners of parcels that do not

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have access to the source. (See also *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428, 434-436 [in a dispute between two users of water from a “common strata of percolating water,” one who pumps water from the strata for use on “distant lands not situated over the same water-bearing strata” is exercising an appropriative right, not an overlying right].)

Second, it appears to me that owners of overlying parcels may not exercise their overlying rights simply by receiving water pumped by a well located off their parcels and then conveying that water to their parcels for beneficial uses there. Rather, to exercise those overlying rights, the pumper and the parcel owners must enter into agreements that authorize the pumper to pump water under such rights for conveyance to those parcels for those uses. (See *City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 25-26, 31; *Eden Township Water Dist. v. City of Hayward* (1933) 218 Cal. 634, 640.)

ORDER

Considering this discussion, I direct the parties to file supplemental briefs addressing the following issues.

Issue 1 for Supplemental Briefs: May the holder of a parcel with an overlying right to pump and use water in a groundwater basin exercise the right by using water that is pumped from the basin through a well located off the parcel and then conveyed to the parcel?

Issue 2 for Supplemental Briefs: If water in a groundwater basin cannot be accessed by a well that would be constructed and operated on the parcel where the water is used, may the owner of the parcel exercise the claimed overlying right through the pumping of water by a well located off the parcel and the conveyance of the pumped water to the parcel?

Issue 3 for Supplemental Briefs: Could the owners of the parcels that received water from Stephen Griset have accessed groundwater in the same groundwater basin by constructing and operating wells on their parcels?

Issue 4 for Supplemental Briefs: If the pumper of water from a groundwater basin and the owners of the parcels where the water is used want to exercise the parcel owners’ claimed overlying rights, do they need to enter into agreements that authorize the pumper to pump water under such rights for conveyance to those parcels for uses there?

Issue 5 for Supplemental Briefs: Did Stephen Griset and the owners of parcels that received water from him enter in any such agreements?

The parties shall file these supplemental briefs by e-mailing them to the Administrative Hearings Office (“AHO”) at adminhrgoffice@waterboards.ca.gov, on or before **November 14, 2022, at 1:00 pm**. Each party shall include the e-mail addresses of everyone on the service list for this proceeding in the cc line of the party’s e-mail

transmitting the party's supplemental brief to the AHO. Each party's brief shall be a maximum of 10 pages long, double-spaced.

The June 16, 2022 submission of this matter to the AHO for preparation of a proposed order is vacated. This matter will be deemed re-submitted on November 14, 2022.

Oct. 13, 2022

/s/ ALAN B. LILLY
Alan B. Lilly
Presiding Hearing Officer
Administrative Hearings Office

Enclosure: Service List (copies sent by e-mail only, except as indicated)

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