

■ ENVIRONMENT

Water policies, politics

Defining the hows and whys of rights adjudication

By Peter Adam

There has been so much talk lately about adjudication. Lots of people don't understand why. Adjudication is simply described as the act of a court defining the rights to a given body of water. In our case, those existing within the Santa Maria Groundwater Basin.

It's very normal, really. Two parties disagree as to which of them should win an argument and they look for a third party to decide. The court really is the best place to go for such help. They have a uniform set of rules to follow and a known format everyone's attorney is comfortable with. Adjudication is just like any other litigation — if you win, it's great; if you lose, it stinks.

The argument, in this case, is about water and storage space, and who owns it. The City of Santa Maria asserts that they can take whatever water they think they need from the basin any time they want to. They also assert they can use the basin like a bank, storing water when they can get it cheap and pumping it out (possibly to sell and make lots and lots of money) during a shortage.

The reason they think this, is that there is a court decision called Los Angeles vs. San Fernando et. al. That court held that the basin there and then had been in overdraft (less coming in than going out). That being the case, storage space was accumulating and Los Angeles simply occupied the space with imported water until the naturally occurring water was all used up. Then Los Angeles owned it all (prescription). Everyone who pumped water would forever after buy it from Los Angeles. That is what is scaring the farmers here.

The farmers, on the other hand, assert that the basin here, now, is not and has not been in overdraft. When it's dry, their well levels drop; when it rains, their well levels come back to about the same place they were last time it rained a lot. That's important because if storage space doesn't exist, City of Santa Maria can't occupy it with imported water and the theory behind Los Angeles vs. San Fernando won't work. Another reason the farmers think Los Angeles vs. San Fernando won't work here is that the basin they were arguing over is a closed system. In other words, it would be very diffi-



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Now, the reason the farmers think they have a right to (own) the water is that there is a body of law (court decisions) which says that when you buy a piece of land, you can pump water from underneath, if it's there, for "reasonable and beneficial use" (overlying right). Obviously, land which has water, like the land where we like to grow vegetables, is more valuable than land that doesn't have any water under it to pump (like where cows graze). This system has been used since way before the Moors brought it with them when they moved to Spain. Also, in California, a history of not pumping the water available to a piece of land does not mean that it has lost the right to it (dormant correlative right).

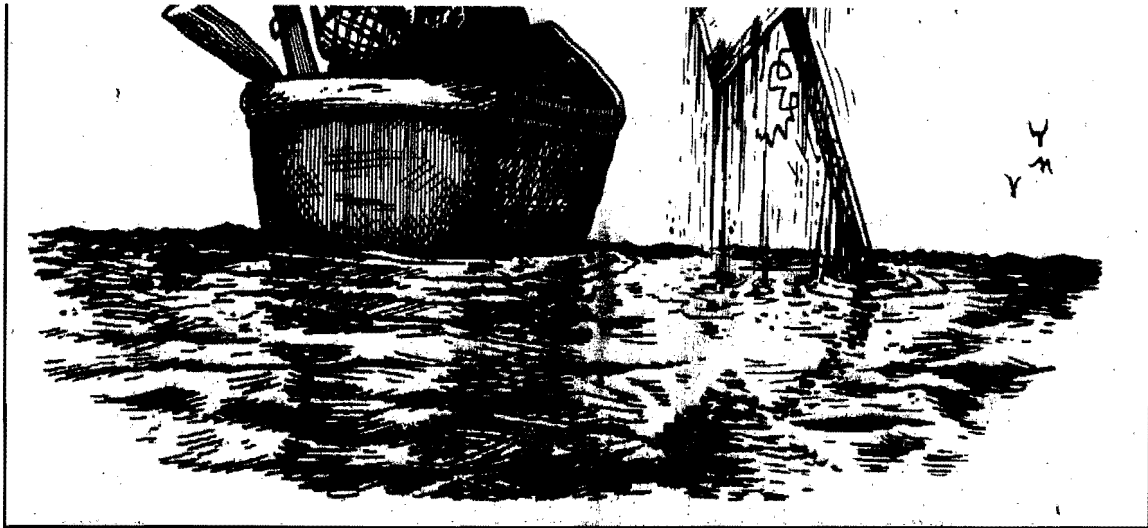
Here's the part that's not going to make sense. And it won't make sense because it doesn't seem fair; not because you don't understand it. Land that is used for houses (subdivided) loses its overlying right. The houses served by a city system are served, and the water pumped under an appropriative right. The



rights to the water under the land which was subdivided are reallocated to the remaining overlying pumpers. Appropriative rights are "junior" to (less important than) overlying rights. For example, if there were [an] overdraft, and the farmers went to court and asked for an adjudication, the court would look at the body of law to decide how to allocate the rights to the alternate supply of water. It is entirely possible that a court would tell City of Santa Maria to find an alternate supply of water (like State Water). And that the existing pumpers would have to reduce their use until they all got enough. Until some other overlyer (dormant correlative right) starts pumping and requires the whole thing to be reallocated again among the current pumpers (like what happened in Wright vs. Goleta Water District).

By the way, everybody, including myself, always says "the farmers." That's really not correct. We really should say, "overlying landowners" because most farmers own only a fraction of the land that they farm. Also, as if on the "bride's or groom's sides," Cal Cities, Nipomo CSD and Guadalupe all fit under the same banner of appropriative pumpers. Technical points, but worth being aware of.

You can see why there's a confrontation. The "overlying landowners" perceive the need to protect their rights and the City of Santa Maria et. al. can't have any unless the court grants them. Seems rather hopeless. However, there is a solution to this dilemma. Ag has placed in front of the city fathers an agreement which will protect the rights of the overlyers and at



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the same time gives permission to the city to pump what they require should the need arise. It does not give the city what it really wants which is recognition of the rights that they want. Only a court can grant these rights. And for the city to get these rights, they will have to be taken away from overlying landowners. Nobody is eager to spend the \$10 million (per side) anticipated to solve this. But, in the interest of certainty of agriculture's future, we are willing to make an investment to find out whether [agriculture] will be a permanent part of the local scene or a land use which was phased out because they failed to defend their rights. No one can guarantee winning in court. But, I do not want my children to figure out that we simply let their future go without a fight.

The risks for the city are great. If they do not prevail in court, they will lose the money they put toward their defense in addition to what they will be pouring out for State Water. Also, they may end up in an adversarial relationship with the overlyers who, after a fight, may not wish to grant permissive use as needed of the basin. That will be tremendously inconvenient and expensive. The best course of action would be for the city council to sign the "10 point agreement" as presented by [agriculture]. This will save a lot of grief and a lot of money on both sides. It will secure the water future for urban and agricultural interests alike.

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