



Case Study

Prescriptive Groundwater Rights

“It was the first case to arise since 2014, when Sacramento lawmakers passed the Sustainable Groundwater Management Act, and the first time a jury has been asked to decide complex questions of priority rights and prescriptive groundwater rights.”

—John Roemer, “Top Verdicts of 2018,” *Daily Journal*, February 20, 2019

Opportunity

In 2013, a small group of San Luis Obispo County landowners filed a quiet title lawsuit against several public water purveyors in the region over local groundwater rights. When White Brenner stepped in to represent one of the public agency defendants a few years later, that quiet title lawsuit had swelled to include over 500 landowners.

Challenge

The lawsuit challenged that the landowners’ overlying groundwater rights, and right to continue pumping from the Paso Robles Groundwater Basin, were equal

or superior to that of the local water purveyors. To ensure that our client and the other public agencies had enough water to provide to the residents dependent upon their services, with the smallest public agency defendant serving nearly 800 homes, our attorneys needed to establish prescriptive groundwater rights—rights that are notoriously difficult to obtain and that can only be granted through a court.



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Solution

The municipal water purveyors defended their rights to pump groundwater by establishing that the Basin had historically been over-pumped and the local landowners were well aware of the situation. Expert testimony and hundreds of pages of historical records demonstrated to the jury that the local agencies had historically pumped from the basin and delivered that water to the local citizens. The crux of this case hinged upon explaining to the jurors the scientific and legal complexities of an over-drafted groundwater basin and how a public agency gains a prescriptive ground water right.

Benefit

At the end of the four-week trial, jurors found the defendants had acquired rights equal or superior to those of the plaintiffs, during a historical use period at issue, establishing a prescriptive right as the basis for future pumping. Not only did this verdict ensure that our client and the other agencies could continue providing essential water to their communities, but it also set a precedent for any future jury trials related to prescriptive water rights.



Firm

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