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COURT RULES GROUNDWATER PROTECTED AS PUBLIC TRUST

On July 15, 2014, a Sacramento court ruled for the first time that groundwater pumping must be regulated to protect nearby rivers, under a legal rule known as the “public trust doctrine.” Judge Allen Sumner of the Sacramento Superior Court held that California and Siskiyou County must consider the effect on the environment from groundwater pumping near the Scott River. The case was filed by the Environmental Law Foundation (“ELF”), Pacific Coast Federation of Fishermen’s Associations, and the Institute for Fisheries Resources in June of 2010 to stop unregulated pumping of groundwater in the Scott River Valley, located in Siskiyou County. The suit named the State Water Resources Control Board and Siskiyou County as responsible to regulate the groundwater pumping.

“This is a monumental decision, and changes everything about groundwater in California. California—the only Western State that does not regulate its precious groundwater—is one step closer to the modern world and protecting this vital resource,” said James Wheaton, President of ELF and lead lawyer for the groups. The groups are also represented by Glen Spain, and Professor Richard Frank, Director of the California Environmental Law and Policy Center at the UC Davis Law School.

Because California does not regulate groundwater extractions at all there is so much pumping out of the aquifer in the Scott River Valley that the river goes dry many summers. The groups brought the suit to protect the fish, ecosystem, and recreational resources in the Scott. The dewatering is occurring despite a 1980 court decree designed to allocate water uses in the Valley; however, the decree stops at 500 feet from the river, which resulted in a large increase in wells beyond that limit.

Judge Sumner is the first to rule that the public trust doctrine protects rivers from “the harm caused by groundwater extraction.” “If pumping groundwater impairs the public’s right to use a navigable waterway for trust purposes, there is no sound reason in law or policy why the public trust doctrine should not apply,” Judge Sumner concluded.

The ruling relied on a watershed case from the California Supreme Court in 1983 to protect Mono Lake, which had been drying up due to diversions of its feeder streams by Los Angeles. This ruling could be a legal precedent to protect rivers throughout California.

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