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California Water Rights Issues January 2019

Under the California Constitution, water must be put to the reasonable and beneficial use of the citizens. No water rights grant any party the right to waste water or use more than is required for their reasonable and beneficial use. Waste by the holder of the water right can be curtailed or revoked.

No water user in the State of California "owns" any water. Instead a water right grants the holder only the right to access the water. Thus a landowner has the right to access the water beneath his property for his/her reasonable and beneficial use. The owner of all water in California is the State. The State is the trustee of the water for the benefit of the public. This is referred to as the Public Trust Doctrine. The benefits to the public that the State must consider are economic, recreational, aesthetic and environmental. If at any time the State determines that the current use does not benefit the public trust the State can reallocate the water. The Public Trust Doctrine therefore means no water rights in California are truly "vested" in the traditional sense of property rights. (A Primer On California Water Rights, Gary W. Sawyers, Esq.)

Unfortunately, there are groups which are manipulating the California Legislature in violation of the Public Trust Doctrine to transfer water allocations from groups such as mutual water companies to the water users who are then allowed to transfer water allocations over the objections of the mutual water companies.

The vast majority of all mutual water companies were organized to provide water to their members only. Green River Mutual Water Company is no exception. Stock of the Green River Mutual Water Company is held by the land owners within the Green River Mutual Water Company district and the shares are appurtenant to the land. However recent legislation is looking to take the private allocations of water of existing mutual water companies and require them to become quasi-public water companies with the ability of the recipients to transfer the water.

AB 240, passed by the California Legislature in 2014, requires existing and future mutual water companies in California to either amend or draft bylaws that allow the directors of the mutual water companies to sell water to others (state agencies, schools and other mutual water companies) at the expense of the members who either paid for the installation and maintenance of the water system or are going to pay for the installation and maintenance of a water system. For existing mutual water companies, AB 240 would appear to be an act of eminent domain without compensation to the members who own the wells, installed and maintain the systems. For newly formed mutual water companies, AB 240 appears to make the shareholders indorse, through their bylaws, the public access to their water.

It can be fairly said that AB 240 is a very clever legislative scheme to force private mutual water companies in California to allow the users to be able to transfer water allocations to others through subtle changes to the California Corporations Code. Some of the more onerous provisions are as follows:

1. The first requirement of AB 240 is for all mutual water companies to amend their articles and by laws incorporating the provisions of AB 240 pursuant to the Corporations Code sections 14300 et. seq.;
2. Once the bylaws and articles are amended, then the water companies are required to record certified copies of articles and bylaws with County Recorder, (Corp. Code Section 14300);
3. Once the provisions of AB 240 are accepted and incorporated in the articles and bylaws the directors may sell water to the state, any department or agency of the state, any school district, to any public agency or to any other mutual water company and, during emergencies, to the County for fire protections. Thus if the directors decide to sell water to another water company that is selling water to Los Angeles or some other public entity, the shareholders could not stop the directors from doing so even if the amount of water sold exceeds the capacity of the current system (Corp. Code 14300);
4. After amending the Corporation articles and bylaws to comply with AB 240, the Corporation is then required to submit a map to LAFCO showing the approximate boundaries of the area the water company serves. This triggers reporting to and oversight by LAFCO (Corp. Code 14301.1 (a));
5. Once the Corporation has registered with LAFCO the Corporation is then required to respond to all requests for information from LAFCO concerning the operation of the water system (Corp. Code 14301.1 (b));
6. Once AB 240 is adopted into the bylaws, the mutual water company must maintain a financial reserve fund for repairs and replacement to its water production, transmission and distribution facilities at a level sufficient for continuous operation in compliance with the federal Safe Drinking Act and the California Safe Drinking Water Act. This is over the top. Current corporate reserves for Green River Mutual Water Company are sufficient for repairs only and would require additional dues from the members to comply with the replacement requirement (Corp. Code 14301.3); AB 240, under the guise of the Public Trust Doctrine, and through pressure from lobbying groups lobbying for individuals and large wealthy trusts are attempting to drive legislation aimed at granting water user's rights to transfer water allocations over the objections of the water suppliers. In other words, doing the very thing the California Constitution was designed to prevent; turning water into personal property that can be bought and sold for profit.

Property of Green River Mutual Water Company
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Water By-the Numbers

Sometimes it's a little easier to understand something if you break it down into a simpler form. The following is as simple as it gets.

The average person uses 80 - 100 gallons of water per day, which works out to 2,400 - 3,000 gallons per month. Whitley Gardens has 110 households with an average of 4 people per household. With 440 people using 100 gallons per day it works out to 44,000 gallons per day and 1,320,000 gallons of water per month. If you extend that out for a year, that number becomes 15,840,000 gallons. This number does not include livestock or agriculture.

The average vineyard, using a drip irrigation system uses 20 gallons per acre per minute. For 188 acres this works out to 3,760 gallons per hour. The average vineyard watering cycle is an 8 hour cycle, or 1,804,800 gallons of water per cycle/per day. That's 484,800 gallons more than Whitley Gardens uses in a month.

Let's take another step.

A 500hp pump with an 11inch line, pumps 800gpm. Pumping for 1 hour generates 48,000 gallons. Therefore, over an 8 hour period it pumps 384,000 gallons!

So the average vineyard watering cycle uses 1,804,800 gallons and it waters once a week. That works out to 7,219,200 gallons for a 4 week period. Take it a step further to an 8 month period of time (32 weeks) and it works out to 57,753,600 gallons. Twice a week works out to 115,507,200 gallons. New vines and hot weather would easily require more irrigation. To pump this much water would require 2,406 hours or 300 eight(8) hour days of operation.

Just a reminder, Whitley Gardens uses 15,840,000 per year. The vineyard uses just under 100,000,000 gallons more!

Let's go a step further and we'll call it the "what if" scenario.

What if the pump ran 12 hours a day 5 days a week 3,120 hours a year which equals 149,760,000 gallons of water. That's a lot of water, but that's not the end. This is only 1 well and one pipe. What are the numbers when you have 3 pumps? Yes, 3 wells, 3 - 500hp pumps! Those 3 wells total 1500hp, pumping 2400 gallons per minute, 144,000 gallons per hour and for an 8 hour day 1,152,000 gallons.

This begs the question, why do you need this kind of capacity? Where's the water going?

Whitley Gardens also has 3 wells serving its community. We use a 30hp pump on each well for a grand total of 90hp — 1410hp less than the vineyard!

Respectfully,

Steve Pitts

Board Member

Green River Mutual Water Company