

# *Los Angeles v. San Fernando*: Ground Water Management in the Grand Tradition

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## Introduction

Over the past century the California Supreme Court has provided the basic forum for resolution of state water rights conflicts. Through a series of decisions by perceptive and articulate jurists, the court has expanded water rights law to reflect each successive stage of the state's growth.<sup>1</sup> *City of Los Angeles v. City of San Fernando*<sup>2</sup> follows in that tradition by protecting and encouraging contemporary methods of water supply development. Indeed, Chief Justice Wright's opinion represents the most significant judicial contribution to California ground water<sup>3</sup> law since *City of Pasadena v. City of Alhambra*.<sup>4</sup>

The purpose of this commentary is to provide a basic understanding of the *San Fernando* decision. Because ground water management law involves a plethora of public water supply issues, this brief commentary can provide only a limited insight into the significance of Chief Justice Wright's opinion. Among the contemporary issues addressed by the Chief Justice

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1. See, e.g., *Irwin v. Phillips*, 5 Cal. 140 (1855) (mining); *Lux v. Haggin*, 69 Cal. 255, 4 P. 919 (1886) (irrigated agriculture, surface water); *Katz v. Walkinshaw*, 141 Cal. 116, 70 P. 663 (1903) (irrigated agriculture, ground water); *Chow v. City of Santa Barbara*, 217 Cal. 673, 22 P.2d 5 (1933) (municipal development, surface water); *City of Pasadena v. City of Alhambra*, 33 Cal. 2d 908, 207 P.2d 17 (1949) (municipal development, ground water). For a more extensive list of the court's water law decisions, see W. HUTCHINS, *THE CALIFORNIA LAW OF WATER RIGHTS* 521-37 (1956).

2. 14 Cal. 3d 199, 537 P.2d 1250, 123 Cal. Rptr. 1 (1975).

3. "Ground water means water beneath the ground surface." *Id.* at 209 n.2, 537 P.2d at 1260 n.2, 123 Cal. Rptr. at 11 n.2.

4. 33 Cal. 2d 908, 207 P.2d 17 (1949).

were the application of the doctrines of *stare decisis* and *res judicata* to community water supply litigation, the scope of prescriptive ground water rights, the use of underground basins as storage reservoirs for imported water, the right of communities involved in water development projects to recapture and protect stored water, and the meaning of the state constitutional requirement that state water resources be used efficiently and beneficially. Resolution of those issues directly affected the water supplies of more than one million people in three major cities and indirectly affected ground water supplies and water management decisions throughout the state.<sup>5</sup>

### I. The Original Suit

The San Fernando Valley, a major suburban and industrial area of Southern California, has a population of approximately 1.3 million people. The great majority of the populace resides in areas of the valley that are enclosed by the boundaries of the city of Los Angeles<sup>6</sup> and accounts for eighty percent of the valley's total annual water usage of 285,000 acre-feet.<sup>7</sup> Of that total, only twenty percent is supplied by the natural "safe yield"<sup>8</sup> of the valley's ground water basin.<sup>9</sup> As a result, San Fernando Valley must import most of the water it uses each year in order to avoid a major overdraft<sup>10</sup> of its ground water supply.<sup>11</sup> The extra costs incurred in importing water have in turn resulted in keen competition among valley cities for the right to use the less expensive "native"<sup>12</sup> ground water.

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5. See generally CAL. DEP'T OF WATER RESOURCES, BULL. NO. 118, CALIFORNIA'S GROUND WATER 3 (1975); CAL. DEP'T OF WATER RESOURCES, BULL. NO. 160-74, THE CALIFORNIA WATER PLAN OUTLOOK IN 1974, 91-96 (1974).

6. Los Angeles extends well beyond the San Fernando Valley; in fact only 38% of its population resides in the Valley. See COUNTY OF LOS ANGELES DEP'T OF REGIONAL PLANNING, QUARTERLY BULL. NO. 127, at 2, 5 (1975).

7. See CAL. DEP'T OF WATER RESOURCES, BULL. NO. 181-74, WATERMASTER SERVICE IN THE UPPER LOS ANGELES RIVER AREA 48, 49 [hereinafter cited as WATERMASTER SERVICE].

8. The "safe yield" is the maximum quantity of ground water that can be withdrawn annually under a given set of conditions without resulting in a gradual lowering of the ground water level and eventual depletion of the supply. 14 Cal. 3d at 278, 537 P.2d at 1308, 123 Cal. Rptr. at 59.

9. 14 Cal. 3d at 256 n.47, 537 P.2d at 1291 n.47, 123 Cal. Rptr. at 42 n.47. The ground water basin is comprised of four subbasins: San Fernando, Sylmar, Verdugo, and Eagle Rock. The San Fernando subbasin comprises most of the basin. *Id.* at 208-09, 221, 249-50, 537 P.2d at 1259, 1267, 1287, 123 Cal. Rptr. at 10, 18, 38.

10. See note 24 *infra*.

11. Annual extractions from the San Fernando Basin by all of the overlying cities have exceeded 90,000 acre-feet. WATERMASTER SERVICE, *supra* note 7, at 38.

12. Native water refers to water produced by precipitation over the local watershed. 14 Cal. 3d at 210, 537 P.2d at 1260, 123 Cal. Rptr. at 11. Foreign or imported water is water produced by precipitation in some other watershed and transported into the area where it is used.

The difference in cost between pumping ground water and importing surface water is attributable to the substantially greater capital investment required to build the system of dams,

Los Angeles has litigated its claim to the waters of the Los Angeles River and to underground waters supplying the river for over a century.<sup>13</sup> In 1881, the California Supreme Court ruled that the city possessed a "pueblo" water right,<sup>14</sup> which dated to the founding of the Pueblo of Los Angeles in 1781, to all native waters of the Los Angeles river.<sup>15</sup> Such a right granted the pueblo and its successor city<sup>16</sup> the paramount right to all water designated to the extent of its municipal needs and to those of its inhabitants.<sup>17</sup> The pueblo right was subsequently held to attach not only to the surface waters of the river but also to the ground waters of the San Fernando Valley that supplied it.<sup>18</sup>

In 1955, Los Angeles filed the present suit to quiet its title to water underlying the Upper Los Angeles River area,<sup>19</sup> to obtain a declaration of its prior rights to that water, and to enjoin neighboring cities, in particular Burbank and Glendale, from extracting that water without its permission.<sup>20</sup>

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aqueducts, treatment plants, and distribution centers for importing water, and to the substantially greater amount of energy required to pump that water over geographical obstructions.

13. The Los Angeles River provided the sole water supply for the Pueblo of Los Angeles and its successor city from the founding of the Pueblo under Spanish dominion to the first decade of the twentieth century. In response to the rapid growth of the city during the latter period, Los Angeles obtained numerous judgments declaring and enforcing its claim to a paramount right to use the water of the river to the extent of its needs. 14 Cal. 3d at 241-43, 537 P.2d at 1281-82, 123 Cal. Rptr. at 32-33.

14. This right was adopted into California law when the United States annexed California from Mexico under the provisions of the Treaty of Guadalupe Hidalgo. *See generally* 2 W. HUTCHINS, WATER RIGHTS LAWS IN THE NINETEEN WESTERN STATES 145-58 (1974) [hereinafter cited as HUTCHINS]; 1 H. ROGERS & A. NICHOLS, WATER FOR CALIFORNIA §§ 282-86 (1967).

15. *Feliz v. City of Los Angeles*, 58 Cal. 73, 78-80 (1881). Both the California and United States Supreme Courts have continued to recognize this right in a series of decisions, the most recent of which was *City of Los Angeles v. City of Glendale*, 23 Cal. 2d 68, 142 P.2d 289 (1943). *See* 14 Cal. 3d at 210-11, 235-37, 252, 537 P.2d at 1260-61, 1277-78, 1289, 123 Cal. Rptr. at 11-12, 28-29, 40. Eleven civil actions have involved the city's pueblo right, at least four of which updated the right by reason of stare decisis. *Id.* at 217, 537 P.2d at 1265, 123 Cal. Rptr. at 16.

16. *City of Los Angeles v. Pomeroy*, 124 Cal. 597, 649-50, 57 P. 585, 604-05 (1899) (Temple, J., concurring) (a majority concurred in the result) (pueblo right attaches to water needs of inhabitants of areas annexed to the city rather than being confined to the needs of inhabitants of the original pueblo).

17. 14 Cal. 3d at 245, 252, 537 P.2d at 1284, 1289, 123 Cal. Rptr. at 35, 40.

18. *City of Los Angeles v. Hunter*, 156 Cal. 603, 607-08, 105 P. 755, 757 (1909); *accord*, *City of Los Angeles v. City of Glendale*, 23 Cal. 2d 68, 73, 142 P.2d 289, 293 (1943). The *Glendale* court also ruled that Los Angeles had a right to store imported water in the San Fernando basin for subsequent recapture. In the *San Fernando* case, Los Angeles claimed that the pueblo right gave it a prior claim to all the native ground waters of the Upper Los Angeles River Area, including those underlying the Sylmar and Verdugo subareas. 14 Cal. 3d at 211, 537 P.2d at 1261, 123 Cal. Rptr. at 12. The court rejected this contention. *Id.* at 247-48, 251, 537 P.2d at 1285, 1288, 123 Cal. Rptr. at 36, 39.

19. The Upper Los Angeles River Area is the entire watershed of the Los Angeles River. 14 Cal. 3d at 208, 537 P.2d at 1259, 123 Cal. Rptr. at 10.

20. *Id.* at 207-08, 537 P.2d at 1258-59, 123 Cal. Rptr. at 9-10. The suit was more complicated and expensive than most water rights cases and involved greater delays. The proceed-

Los Angeles based its claim to the native ground water of the San Fernando basin on the fact that the natural safe yield of the basin represented the flow of the Los Angeles river over which it held the pueblo water right.<sup>21</sup> The city's claim to foreign ground water was based on the fact that it had used the basin as a natural storage reservoir by placing imported waters therein.<sup>22</sup> For several years, all three cities had pumped native and imported water from the underground basin, supplemented it with water imported from outside Southern California, and retailed the blended waters through conventional municipal water systems to areas overlying the basin.<sup>23</sup> This usage led to an annual overdraft<sup>24</sup> of the ground water in the basin. In bringing its suit for declaratory and injunctive relief, Los Angeles sought to establish its rights not only to the entire safe yield of the San Fernando basin but also to that of the entire Upper Los Angeles River Area, including the Sylmar and Verdugo subareas, and to recapture all water that Los Angeles and its customers had imported and stored in the ground water basin.<sup>25</sup>

## II. The Trial Court's Judgment

When Los Angeles sought to enforce its pueblo and recapture water rights under *City of Los Angeles v. City of Glendale*,<sup>26</sup> the trial court ruled that neither Spanish nor Mexican law had established a Los Angeles pueblo water right<sup>27</sup> and that previous Supreme Court decisions to the contrary were based on erroneous translations. The court did not feel itself bound by those decisions under the doctrines of *res judicata* and *stare decisis* for several reasons, including but not limited to subsequent changes in factual circumstances and applicable law, the existence of great public interests such that the "application of *res judicata* would defeat the ends of justice," and

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ings included a six-year referee's report, 104 days of pretrial proceedings and a 181 day trial. The referee's cost alone totaled nearly one-half million dollars. *Id.* at 216-17, 226, 537 P.2d at 1264-65, 1270, 123 Cal. Rptr. at 15-16, 21.

21. "Because the flow of the river is dependent on the supply of water in the San Fernando Valley, it has also been held that the pueblo right includes a prior right to all of the waters in the basin." *City of Los Angeles v. City of Glendale*, 23 Cal. 2d 68, 73, 142 P.2d 289, 293 (1943).

22. 14 Cal. 3d at 209, 211, 256, 537 P.2d at 1260-61, 1291, 123 Cal. Rptr. at 11-12, 42.

23. In using this water, the cities' customers permitted a large quantity to percolate back into the basin. *Id.* at 210, 537 P.2d at 1260, 123 Cal. Rptr. at 11.

24. "A ground basin is in a state of surplus when the amount of water being extracted from it is less than the maximum that could be withdrawn without adverse effects on the basin's long term supply [*i.e.*, is less than the safe yield]. . . . Overdraft commences whenever extractions increase, or the withdrawable maximum decreases, or both, to the point where the surplus ends. Thus on the commencement of overdraft there is no surplus . . . . Instead, appropriations of water in excess of surplus then invade senior basin rights, creating the element of adversity . . . ." *Id.* at 277-78, 537 P.2d at 1307-08, 123 Cal. Rptr. at 58-59.

25. *Id.* at 207-12, 537 P.2d at 1258-61, 123 Cal. Rptr. at 9-12.

26. 23 Cal. 2d 68, 142 P.2d 289 (1943).

27. 14 Cal. 3d at 217-20, 537 P.2d at 265-67, 123 Cal. Rptr. at 16-18.

judicial mistake.<sup>28</sup> With the impediment of judicial precedent thus removed, the trial court proceeded to apportion ground water recapture rights among the parties on the basis of mutual prescription.<sup>29</sup>

Mutual prescription was established as a method of allocating water shortages in overdrafted ground water basins by Chief Justice Gibson in *City of Pasadena v. City of Alhambra*<sup>30</sup> in 1949. Under this doctrine, all ground water extraction rights exercised during a prescriptive overdraft period of at least five continuous years are reduced to a common prescriptive rights classification, which is based on the minimum amount of ground water extracted annually by each entity throughout the time period. Extraction rights not fully exercised during the prescriptive period are lost. The resulting prescriptive rights are reduced pro rata so that total annual ground water extractions equal annual safe yield. In this way, all entities that extract ground water from the basin are treated equally without reference to priority dates.<sup>31</sup> Ruling that the parties had overdrafted the San Fernando basin for a prescriptive period of fourteen years immediately preceding the Los Angeles action, the trial court treated the basin's imported as well as native ground water as a common supply and reclassified all rights to that supply as prescriptive.<sup>32</sup> Los Angeles, Burbank, and Glendale were thereby limited to pro rata rights of equal priority.<sup>33</sup>

The trial court's reliance upon the doctrine of mutual prescription to the exclusion of pueblo and recapture water rights raised important and troublesome questions in the area of ground water management law. In effect, the 1968 judgment expanded mutual prescription to cover a new type of water right at the same time that it restricted the possibility of conjunctive use of ground water basins by ignoring water importation project equities and established tracing, commingling, and sharing concepts. The decision also cast doubt on the concept of judicial precedent by creating broad exceptions to the doctrines of stare decisis and res judicata.

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28. *Id.* at 218, 537 P.2d at 1265-66, 123 Cal. Rptr. at 16-17.

29. *Id.* at 220-23, 537 P.2d at 1267-69, 123 Cal. Rptr. at 18-20.

30. 33 Cal. 2d 908, 926-28, 207 P.2d 17, 28-29 (1949). The decision represented a 5-2 division among the justices, with Justice Carter filing a vigorous dissent arguing that mutual prescription was based on "the philosophy of bureaucratic communism" because it permitted state control of privately-owned water rights. *Id.* at 940-41, 207 P.2d at 37.

Since most of California's water basins were overdrafted at that time, the decision affected the state's water supplies a great deal. Prior to 1949, conventional rules of priority had applied to ground water, with overlying rights theoretically eliminating appropriative rights whenever an overdraft occurred. *See id.* at 926, 207 P.2d at 28.

31. *See HUTCHINS, supra* note 14, at 444-46.

32. 14 Cal. 3d at 220-22, 537 P.2d at 1267-68, 123 Cal. Rptr. at 18-19.

33. *Id.*

### III. The Supreme Court Opinion

In 1975, an unanimous court reversed the trial court's judgment in nearly every respect. The court applied the doctrine of mutual prescription narrowly to impose more stringent notice and damage requirements and to exempt public water rights from prescription. It reestablished and expanded ground water storage rights and, although the court recognized *res judicata* and *stare decisis* exceptions, it applied them restrictively. A brief review of each of these rulings illustrates Chief Justice Wright's approach to water law.

#### A. Res Judicata

The court recognized that there were exceptions to the *res judicata* effect of the *Glendale* court's approval of Los Angeles' pueblo water right. The court in *Glendale* had ruled on a declaratory cause of action that had not involved most of the parties in *San Fernando*. Chief Justice Wright reasoned that since the existence of a pueblo right presented a question of law, not of fact, collateral estoppel should not apply to give the *Glendale* ruling conclusive effect if the result of its application would be injustice to the parties involved in the original suit. Finding that it would be unjust to bind Burbank and Glendale to that prior pueblo right ruling when the other parties in the present action were not bound on independent grounds, the supreme court concluded that *res judicata* should be subordinated to determinations of fairness and public interest.<sup>34</sup>

In reviewing the equities inherent in the doctrine of *stare decisis*, however, the court found that it provided an adequate basis for upholding the Los Angeles pueblo water right. Determining that prior supreme court decisions had classified the city's pueblo right as a rule of law,<sup>35</sup> Chief Justice Wright found that the challenges to this right did not outweigh the countervailing policies of *stare decisis*.<sup>36</sup> Those contentions included arguments that the right was unfair under modern conditions and that the previous decisions respecting a pueblo water right were based on mistaken concepts regarding the state of Spanish and Mexican law. The court concluded that the evidence provided a reasonable basis for the previous decisions, that there were no serious legal or historical discrepancies, that Los Angeles had relied on the prior decisions, and that Burbank, Glendale, and the other parties had adequate notice of the Los Angeles pueblo water right.<sup>37</sup>

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34. *Id.* at 226-30, 537 P.2d at 1271-73, 123 Cal. Rptr. at 22-24.

35. *Id.* at 229, 537 P.2d at 1272-73, 123 Cal. Rptr. at 23-24.

36. *Id.* at 213, 245-46, 537 P.2d at 1262, 1284, 123 Cal. Rptr. at 13, 35.

37. *Id.* at 246-47, 537 P.2d at 1284-85, 123 Cal. Rptr. at 35-36.

## B. Mutual Prescription

The most important ground water rights ruling in the opinion is the limitation of the mutual prescription doctrine.<sup>38</sup> As a result of the stare decisis ruling, the native waters of the San Fernando basin were dedicated to Los Angeles under the pueblo water right;<sup>39</sup> the court's prescriptive rights ruling was thus limited to the other three subbasins underlying the San Fernando Valley,<sup>40</sup> particularly the Sylmar basin. Finding that the trial court had not properly applied the mutual prescription rules to that basin, Chief Justice Wright gave extensive instructions for applying the doctrine on remand.<sup>41</sup> The opinion does not overrule *Pasadena*,<sup>42</sup> but it does seriously limit the applicability and scope of mutual prescription.

The *Pasadena* court had adopted mutual prescription to avoid complete elimination of appropriative water rights that had arisen during a twenty-three year prescriptive period and that had provided important community water supplies.<sup>43</sup> All but one of the parties had stipulated to the judgment of the trial court "awarding prescriptive rights and allocating the water so as to restrict total production to the safe annual yield" of the Raymond basin.<sup>44</sup> The decision was thus tailored to the conditions prevailing in that basin at that time. By facilitating prescription and by basing city water rights on the amount of water pumped,<sup>45</sup> however, the decision encouraged defensive ground water overdrafting by pumpers in other basins who anticipated ground water adjudication.<sup>46</sup> The resulting "race to the pumphouse" accelerated the depletion of ground water supplies.<sup>47</sup>

In light of these circumstances, Chief Justice Wright concluded that mechanical application of the doctrine of mutual prescription did not necessarily result in a truly equitable apportionment of ground water.<sup>48</sup> Consequently, *San Fernando* conditions the application of mutual prescription on

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38. For an excellent discussion of the effect of *San Fernando* on mutual prescription, see A. SCHNEIDER, GOVERNOR'S COMMISSION TO REVISE CALIFORNIA WATER RIGHTS LAW, GROUND-WATER RIGHTS IN CALIFORNIA 10-39 (staff paper no. 2, 1977).

39. 14 Cal. 3d at 251, 537 P.2d at 1288, 123 Cal. Rptr. at 39.

40. See note 9 *supra*.

41. 14 Cal. 3d at 280-84, 537 P.2d at 1309-12, 123 Cal. Rptr. at 60-63; see text accompanying notes 49-51 *infra*.

42. See text accompanying notes 30-31 *supra*.

43. 14 Cal. 3d at 266-67, 537 P.2d at 1298-1300, 123 Cal. Rptr. at 49-50.

44. *Id.* at 270-71, 537 P.2d at 1302, 123 Cal. Rptr. at 53. The Raymond basin underlies the Pasadena area. Water from the San Gabriel Mountains runs into the basin and drains into the San Gabriel River under natural conditions. 33 Cal. 2d at 921-22, 207 P.2d at 25-26.

45. 14 Cal. 3d at 266-67, 537 P.2d at 1298-99, 123 Cal. Rptr. at 49-50.

46. Krieger & Banks, *Ground Water Basin Management*, 50 CALIF. L. REV. 56, 62 (1962).

47. See *id.*

48. 14 Cal. 3d at 265, 537 P.2d at 1298, 123 Cal. Rptr. at 49. In general, equitable apportionment requires the exercise of an informal consideration and judgment of many factors rather than strict adherence to priority rules in allocating water supplies. *Id.*

strict compliance with requirements of notice, duration, and injury. For example, the opinion requires explicit determination of the time at which a party can first be charged with notice of an overdraft.<sup>49</sup> It also requires termination of the prescriptive period whenever a year of water surplus occurs, in contrast to the court's opinion in *Pasadena*, which included two surplus years in the prescriptive period.<sup>50</sup> Finally, the *San Fernando* opinion expanded the definition of surplus by adopting the concept of temporary surplus, which defers the commencement of overdraft in certain situations.<sup>51</sup>

To reinforce the limited application of mutual prescription, the court construed the prescriptive defenses of statutory exemption and self-help broadly. Although these holdings applied only to the Sylmar basin, the rulings represent an important change in the determination of prescriptive water rights. Public water rights are generally exempted by statute from prescription,<sup>52</sup> and private rights are to some extent protected from prescription by the judicial concept of self-help.

Utilities providing public water service rely extensively on ground water rights. Most, if not all, ground water adjudications have involved stipulations that both public and private water rights have been prescribed.<sup>53</sup> Nevertheless, section 1007 of the California Civil Code provides that:

[N]o possession by any person, firm or corporation no matter how long continued of any . . . water right . . . or other property whatsoever dedicated to a public utility, or dedicated to or owned by the State or any public entity, shall ever ripen into any title, interest or right against the owner thereof.<sup>54</sup>

In the *San Fernando* case, Los Angeles had asserted section 1007 as a bar to defendants' claim of mutual prescription during the trial.<sup>55</sup> The trial court rejected that defense on the basis that all ground water adjudications subsequent to *Pasadena* had applied mutual prescription to both public and private water rights.<sup>56</sup> Chief Justice Wright, however, found that those

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49. *Id.* at 283, 537 P.2d at 1311, 123 Cal. Rptr. at 62.

50. *Id.* at 284, 537 P.2d at 1312, 123 Cal. Rptr. at 63.

51. *Id.* at 280-81, 537 P.2d at 1309-10, 123 Cal. Rptr. at 60-61. Temporary surplus is a concept of special importance in ground water management because it permits more efficient use of ground water by computing the safe yield of a basin over a multi-year hydrologic period. It recognizes that native ground water rights include the right to use underground storage capacity to avoid flood losses during wet years and that larger extractions of ground water during wet years will not damage the native ground water supply.

52. See CAL. CIV. CODE § 1007 (West Supp. 1977). The original enactment of this statute was amended in 1935 and 1968 to broaden the scope of its protection. See 14 Cal. 3d at 270-71 nn.66 & 67, 537 P.2d at 1301-02 nn.66 & 67, 123 Cal. Rptr. at 52-53 nn.66 & 67.

53. See, e.g., *City of Pasadena v. City of Alhambra*, 33 Cal. 2d 908, 207 P.2d 17 (1949).

54. CAL. CIV. CODE § 1007 (West Supp. 1977).

55. 14 Cal. 3d at 214, 537 P.2d at 1263, 123 Cal. Rptr. at 14.

56. *Id.* at 214, 220-21, 270, 537 P.2d at 1263, 1267-68, 1301, 123 Cal. Rptr. at 14, 18-19, 52.



adjudications had not reached the issue of public prescription.<sup>57</sup> Rejecting arguments that section 1007 impaired the reasonable water use limitations mandated by the California Constitution,<sup>58</sup> that its application unlawfully discriminated against private water rights, and that public water rights could be prescribed by public entities,<sup>59</sup> the *San Fernando* court concluded that the section reflects a reasonable priority for municipal water supplies and does bar prescription of water rights dedicated to public uses by public or private entities. "The result is not a diminution of sovereign powers but only the elimination of prescription as a means of transferring property from one arm of the government to another."<sup>60</sup>

After recognizing that public agencies can prescript private water rights, the opinion strengthened private defenses against such prescription. In particular, the court reaffirmed<sup>61</sup> the concept of "self-help" that had been set forth in *Pasadena*.<sup>62</sup> Thus, owners with private water rights can now protect them from public prescription to the extent that they exercise those rights during the prescriptive period. In addition, the *San Fernando* court increased the prescriptor's burden of establishing notice of adversity<sup>63</sup> and commencement of overdraft,<sup>64</sup> and required strict interruption of a prescriptive period during years of surplus.<sup>65</sup>

### C. Ground Water Storage

Chief Justice Wright's ground water storage rulings reaffirmed and revitalized the *Glendale* holding that whenever practicable, natural underground basins may be used as storage reservoirs.<sup>66</sup> The *San Fernando* court thus acknowledged that ground water basins fall within the purview of section 7075 of the California Water Code, which provides that: "Water which has been appropriated may be turned into the channel of another stream, mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another shall not be diminished."<sup>67</sup>

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57. *Id.* at 270-71, 537 P.2d at 1301-02, 123 Cal. Rptr. at 52-53.

58. CAL. CONST. art. XIV, § 3 (currently at *id.* art. X, § 2).

59. 14 Cal. 3d at 272-74, 537 P.2d at 1303-05, 123 Cal. Rptr. at 54-56.

60. *Id.* at 277, 537 P.2d at 1307, 123 Cal. Rptr. at 58.

61. *Id.* at 293 n.101, 537 P.2d at 1319 n.101, 123 Cal. Rptr. at 70 n.101.

62. "The running of the statute [of limitations], however, can effectively be interrupted by self-help on the part of the lawful owner of the property right involved." 33 Cal. 2d at 931, 207 P.2d at 30.

63. 14 Cal. 3d at 293 n.101, 537 P.2d at 1319 n.101, 123 Cal. Rptr. at 70 n.101.

64. *Id.* at 280-81, 537 P.2d at 1309-10, 123 Cal. Rptr. at 60-61.

65. *Id.* at 283-84, 537 P.2d at 1311-12, 123 Cal. Rptr. at 62-63.

66. *See id.* at 258, 537 P.2d at 1293, 123 Cal. Rptr. at 44.

67. *Id.* at 260, 537 P.2d at 1295, 123 Cal. Rptr. at 46 (quoting CAL. WATER CODE § 7075 (West 1971)).

The court also established augmentation of the ground water supply as the basis for the right of each of the cities overlying the San Fernando basin to recapture the imported water that it had sold to its residents and that had percolated back into the basin after use.<sup>68</sup> It thus eliminated the necessity of prior recapture intent or technical physical tracing. Taken together, the court's rulings indicate that ground water storage rights consist of: (1) the right to store water in a natural underground basin as long as the storage does not unreasonably impair native ground water rights; (2) the right to protect stored water from expropriation by others; and (3) the right to recapture stored water.<sup>69</sup>

#### D. Public Equities

One of the most significant aspects of Chief Justice Wright's opinion in *San Fernando* is its recognition that public equity and interest are crucial to water supply management. It is this recognition that weaves the specific rulings of the decision into a general mandate for equitable apportionment in water rights law. For example, in discussing pueblo water rights, the court acknowledged the existence of community water supply equities. Burbank and Glendale had argued that Los Angeles did not "need"<sup>70</sup> its pueblo right because it imported water from the Owens Valley and the Metropolitan Water District. The court rejected that argument in a passage that carries additional significance in light of subsequent judicial restrictions on the city's Owens Valley imports:

To confine the operation of the pueblo right to situations of physical shortage, as urged by defendants, would deprive the pueblo right of all realistic meaning and would penalize the holder of such a right for developing more remote sources of supply. Water imported from greater distances costs more. . . . Defendants' theory of need would give a city having a pueblo right an incentive to restrain and minimize its importation of water in order to entitle it to take advantage of its priority to less expensive local water. Such a theory would be contrary to "the policy inherent in the water law of this state to utilize all water available."<sup>71</sup>

The court also perceived that the right to recapture protects a community's equity in its water development projects:

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68. *Id.* at 259-62, 292-93, 537 P.2d at 1293-96, 1317-19, 123 Cal. Rptr. at 44-47, 68-70.

69. For a more detailed description of the court's ground water storage ruling, see Gleason, *Water Projects Go Underground*, 5 *ECOLOGY L.Q.* 625, 639-49 (1976).

70. As to the significance of the concept of need in regard to the pueblo right, see notes 12-18 and accompanying text *supra*.

71. 14 Cal. 3d at 254, 537 P.2d at 1290-91, 123 Cal. Rptr. at 41-42. See *Inyo County v. City of Los Angeles*, 61 Cal. App. 3d 91, 132 Cal. Rptr. 167 (1976); *Inyo County v. Yorty*, 32 Cal. App. 3d 795, 108 Cal. Rptr. 377 (1973). As a result of the current drought, the court temporarily relaxed its restrictions on ground water extraction by Los Angeles, and thus exports of Owens Valley ground water, on July 22, 1977.

The purpose of giving the right to recapture returns from delivered imported water priority over overlying rights and rights based on appropriations of the native ground supply is to credit the importer with the fruits of his expenditures and endeavors in bringing into the basin water that would not otherwise be there.<sup>72</sup>

This ruling represents a significant development in water management law in light of the increasing importance of complex financial interrelationships between those who provide public water supplies. The court finally reasserted, as a matter of constitutionally mandated public interest,<sup>73</sup> that all water rights must be subject to reasonable conditions and priorities in the use thereof,<sup>74</sup> and that legal solutions to water rights problems must minimize waste and maximize beneficial use.<sup>75</sup> In the future, it will continue to be the responsibility of the judiciary to fashion solutions that will protect existing public water supplies as well as the rights of the parties involved.<sup>76</sup>

### Conclusion

In *San Fernando*, the California Supreme Court halted the mechanical application of the mutual prescription doctrine. Under the leadership of Chief Justice Wright, the court devised a new framework for ground water rights adjudication that should provide more equitable, if somewhat more complex, protection for both public and private rights. By reaffirming the concept of conjunctive use of ground water basins and water importation projects, it has established the public right to use natural ground water basins as water supply reservoirs. In addition, by reaffirming the need to

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72. 14 Cal. 3d at 261, 537 P.2d at 1295, 123 Cal. Rptr. at 46.

73. The pertinent California constitutional provision is: "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained." CAL. CONST. art. XIV, § 3 (currently at *id.* art X, § 2).

74. 14 Cal. 3d at 255 n.45, 273, 537 P.2d at 1291 n.45, 1303, 123 Cal. Rptr. at 42 n.45, 54.

75. See *id.* at 272 n.70, 287, 290, 537 P.2d at 1303 n.70, 1314, 1316, 123 Cal. Rptr. at 54 n.70, 65, 67.

76. See *id.* at 291-92, 537 P.2d at 1317, 123 Cal. Rptr. at 68.

consider public interests in applying the judicial doctrines of *stare decisis* and *res judicata* and the constitutional doctrine of reasonable use, it has established the attachment of community equities to public water supply projects. Indeed, the court's opinion has already become a working guide in several areas of water resource management;<sup>77</sup> unquestionably, the impact of *San Fernando* will increase with growing public awareness of the necessity to use natural resources more efficiently and equitably.

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77. The concepts articulated in the opinion have been incorporated in a proposed stipulated judgment for literally hundreds of claims regarding ground water rights in the Chino Basin area of the Santa Ana River drainage, now pending before the San Bernardino County Superior Court as *Chino Basin Municipal Water District v. Chino*, Civ. No. 164327. In addition, the California Department of Water Resources has proposed an extensive program to increase the firm water supply of the State Water Project by utilizing the ground water storage concepts articulated in the opinion. See CALIFORNIA DEPARTMENT OF WATER RESOURCES, *DELTA ALTERNATIVE REVIEW STATUS 7* (1977).