

Farmers thought they had 20 years to use groundwater as they wished - maybe not anymore

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California farmers are laboring under a daunting edict: They must stop over-pumping groundwater from beneath their ranches. The saving grace is that state law gives them more than 20 years to do it.

Now, however, a landmark court ruling could force many farmers to curb their groundwater consumption much sooner than that, landing like a bombshell in the contentious world of California water.

For the first time, a California court has said state and county governments have a duty to regulate groundwater usage when it's clear that the pumping drains water from adjacent rivers.

"This is going to be an immediate obligation, not one that they can wait 20 years," said James Wheaton of the Environmental Law Foundation, an Oakland nonprofit that won the lawsuit. "They're going to have to act now."

The Aug. 29 ruling by the Third District Court of Appeal involves the Scott River in Siskiyou County, an obscure 60-mile tributary of the Klamath near the Oregon border that suddenly looms as a major artery in California water law. Wheaton said the ramifications go far beyond Siskiyou's borders.

"This ruling applies statewide," he said.

The court case spotlighted the often overlooked connection between rivers and aquifers. Rivers aren't just fed by rainwater and melting snow; they also depend on groundwater. Richard Frank, a UC Davis law professor who worked on the lawsuit, said farmers in the vicinity of the Scott pump so much groundwater that portions of the river go nearly dry during the summer. That has had a devastating effect on fish populations, including the endangered coho salmon.

"That's jobs and dollars and our livelihood," said Glen Spain, a lawyer who worked on the

case and regional director of the Pacific Coast Federation of Fishermen's Associations. "If you're a fish, a dried-up river is death."

Ironically, the ruling would probably have the least impact in parched regions like the San Joaquin Valley, where aquifers already have been drained so badly that they no longer feed the rivers, said Brian Gray, a water-law expert at the Public Policy Institute of California.

The court established a broad, general principle – essentially, that groundwater pumping that harms rivers violates California law, and Siskiyou County officials must take that into account when they allow new wells to be drilled. Additional court cases or other actions would be needed to establish hard-and-fast rules on what's permissible, Wheaton said. He said the Environmental Law Group hasn't decided which steps to take.

"Is this going to change anybody's pumping next year? Not to my knowledge," said Chris Scheuring, general counsel at the California Farm Bureau Federation.

But the ruling could eventually have an effect in plenty of places. Ellen Hanak, a water-policy expert at PPIC, said groundwater pumping by wine grape growers has been shown to reduce flows significantly on the Russian River, for example. In one case, a decade ago, the river ran so low that endangered salmon were left to die on the river banks, prompting regulations requiring farmers on the Russian to coordinate their pumping activities to keep flows high enough.

Last month's court ruling could eventually bring far stricter restrictions. The Farm Bureau was concerned enough that it argued in court against the ruling.

Restricting groundwater pumping "could have a significant negative economic impact on many landowners, and frustrate long-existing, investment-backed expectations to a water right that has never before been so limited," the Farm Bureau's lawyers wrote in a legal brief with the Pacific Legal Foundation, a property-rights nonprofit in Sacramento.

Groundwater is California's lifeline, particularly in agriculture. According to the Public Policy Institute of California, aquifers generate about 40 percent of the water used by farms and cities. In lean times, it gets worse. During the recent five-year drought, farmers drilled thousands of new groundwater wells and extracted as much as 8.4 million acre-feet of water out of the aquifers each year, according to a UC Davis study. An acre-foot is about 326,000 gallons.

Alarmed about falling water tables and other consequences, the Legislature acted in 2014 to rein in groundwater consumption. The Sustainable Groundwater Management Act will require "critically over-drafted" groundwater basins to come into balance – meaning farmers will have to put as much into the basin as they take out – by 2040. The

groundwater basins in better shape have until 2042 to become sustainable. Generally speaking, “sustainable” means the basins are in no worse shape than they were in January 2015.

Regional agencies are in charge of developing the sustainability plans, and state officials who oversee SGMA say last month’s court ruling won’t change that. The decision “does not interrupt DWR’s implementation of SGMA nor uproot development of groundwater sustainability plans by local agencies,” said Joyia Emard, a spokeswoman for the Department of Water Resources, in an email.

Even with two decades-plus of lead time, farm advocates say SGMA will likely force the permanent retirement of hundreds of thousands of acres of farmland. Environmentalists, however, say the Scott River can’t wait for the law’s deadlines to kick in.

In its lawsuit, the Environmental Law Foundation cited a legal doctrine known as “the public trust.” It’s a powerful doctrine, rooted in ancient Roman law, and says the state and county governments have the duty to protect public resources such as water. The public trust doctrine was the basis for one of the most important legal decisions in California water history – the state Supreme Court’s 1983 ruling that gave broad protections to Mono Lake on the eastern slope of the Sierra. That ruling prompted state regulators several years later to significantly curtail the city of Los Angeles’ ability to draw water from the lake.

Now the concept is being applied to groundwater pumping and the impact it has on the state’s rivers. “If you pump out the groundwater and deplete the river, you potentially violate the public trust,” said the PPIC’s Gray.

In the lawsuit, Siskiyou County officials said there was already a law in place to rein in pumping operations – the SGMA groundwater law – which overrides the public trust issue. The court flatly rejected that argument. Siskiyou County’s attorneys couldn’t be reached for comment for this story.

Wheaton said he doesn’t want to use the ruling to hurt farmers, who he said have suffered plenty in recent years. But he said the rivers have to be protected, and soon.

With the ruling, “we have a very powerful tool,” the environmental lawyer said. “We want to wield it in a way that’s responsible but effective.”

