Water/Aquifer: California Appellate Court Addresses Whether Captured Flood Waters Constitute Personal Property

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A California Court of Appeal (Fifth District) ("Court") addressed in a March 14th Opinion whether water in an aquifer could be personal property. *See Sandton Agriculture Investments III, LLC, v. 4-S Ranch Partners*, LLC, 2025 WL 814870.

The water in question constituted captured floodwaters stored in the aquifer.

4-S Ranch Partners, LLC ("4-S") acquired legal title to California land consisting of 17 assessed parcels and containing approximately 5,257.46 acres and related interest. The land and attached improvements were appraised in 2019 at $14,985,000. The appraisal excluded any subsurface water or mineral rights. In addition, the appraisal indicated that due to two perpetual United States Fish and Wildlife conservation easements, that the land was limited to its current use as an irrigated and dry pasture ranch with some lower intensity farming uses.

The Opinion notes that from 2009-2021, pursuant to easement agreements, that 4-S and its predecessor:

1. Allowed floodwater from the East Side Bypass and the Mariposa Bypass to inundate the Land; and,
2. took possession and control of those waters, allowing them to seep into the shallow aquifer underneath the Land for storage and later extraction for sale to third parties.

A declaration asserted that in March 2020 4-S had a total inventory of 500,000 acre-feet of water stored in such aquifer.

Sandton Agriculture Investments III, LLC ("Sandton") executed a loan agreement with 4-S by a document denominated:

…DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING WITH ASSIGNMENT OF RENTS AND PROCEEDS, LEASES, AND AGREEMENTS.

The document granted Sandton the benefit of all 4-S's right, title and interest in various property. This collateral is stated to have included the land, improvements, leases, rents and proceeds, and "Water Rights" (i.e., Property). The term "Water Rights" was broadly defined.

A financing statement was filed which defined real property and referenced water assets.

4-S defaulted in its obligations under the loan agreement.

Sandton filed a Complaint for declaratory relief seeking an order stating 4-S had no ongoing interest in the Property, including any associated water rights (regardless of how characterized). 4-S argued that the water in question was personal property and had not been pledged as collateral.

The Court stated that no California appellate court to date had recognized water in an aquifer as personal property.

The trial court had held, and this Court agreed that:

1. Water was not personal property owned by 4-S; and,
2. Rights to use of the water ran with the land and therefore the lender acquired those rights at the foreclosure sale.

The California Court of Appeal noted that under California water law:

…allowing water to seep into an aquifer changes its legal classification to percolating groundwater, regardless of whether it was previously classified as floodwater or personal property. Percolating groundwater is in a "natural state" and, as such, "is part of the land."

A copy of the Opinion can be downloaded here.