

## California Court of Appeal Holds That a County's Restriction On Groundwater Pumping Is Not A Compensable "Taking"

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While prior cases and recent legislation have begun to introduce some ground-shaking over the security of water rights as a form of real property rights, *Allegretti & Co. v. County of Imperial* is an earthquake of significant proportion. In a recently published decision, the Court of Appeal held that County-imposed limitations on a private property owner's right to pump groundwater did not constitute a physical or regulatory taking of property under the California and federal Constitutions. The court decision allows local agencies to impose pumping limitations or other restrictions on water rights without justification and without paying just compensation.

Allegretti, an Imperial County farming company owning land overlying a groundwater basin, sought a conditional use permit from the County to redrill one of its several existing wells. In 1997, the County approved the permit, but placed a condition limiting Allegretti's annual groundwater production to 12,000 acre-feet per year from all wells located on the property. This condition applied to the entirety of Allegretti's groundwater use, not just the single well to be redrilled. Allegretti did not accept the permit and it did not take effect. Rather, Allegretti sued the County for inverse condemnation, alleging that the County's permit condition constituted a taking of its groundwater rights, mandating compensation.

The Court of Appeal rejected all of Allegretti's arguments. The court held that the County's imposition of a permit condition limiting the use of groundwater was not a physical taking. While the court recognized that physical takings of water rights are possible where the government *physically* diverts water, it concluded that, in this instance, the County had not encroached upon Allegretti's property or diverted any water from beneath its property and therefore its actions did not amount to a taking. The Court criticized and distinguished *Tulare Lake Basin Water Storage District v. United States* (2005) 67 Fed.Cl. 504, in

which that court had concluded that environmental conditions that resulted in a governmental sponsored reduction in the amount of water made available to certain water districts amounted to a compensable physical taking because the districts were deprived of the water to which they held contractual rights.

The Court of Appeal also rejected Allegretti's regulatory takings argument. The Court concluded that the County's action did not constitute a *total* deprivation of Allegretti's water rights because a large portion of the water and irrigable land remained useable. The Court dismissed this takings argument because the County's action did not severely impair the value of the Allegretti property or interfere with Allegretti's investment-backed expectations to the "legal" level supporting a taking.

This case is dramatic in that it suggests a far reaching application of its ruling – that local governments have the authority to broadly regulate water rights in the absence of overdraft or contamination of a groundwater basin or an adjudication of all parties' rights in the basin. Moreover, despite a long line of cases to the contrary, the *Allegretti* Court even goes so far as to reject the strength of the real property rights associated with all water rights. In doing so, the decision suggests that no water right holder, whether public or private, is immune from these kinds of incursions on its water rights. The certainty of any right in groundwater is substantially undercut by this decision.

Allegretti has petitioned the California Supreme Court's review of the decision and Hatch & Parent has begun assembling a group supportive of Supreme Court review. For more information about the case or to discuss how the case might affect groundwater users throughout the state, contact: Stephanie Hastings at (805) 882-1415 or [SHastings@hatchparent.com](mailto:SHastings@hatchparent.com), or Amy Steinfeld at (805) 882-1409 or [ASteinfeld@HatchParent.com](mailto:ASteinfeld@HatchParent.com).