

# California Groundwater: Court Case Could Speed Up Regulation

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Staff

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By Daniel Potter



The Scott River's flow depends on snow melting off the nearby mountains, but the last few winters haven't delivered. In places, the river disappears underground. (Daniel Potter/KQED)

California's Supreme Court is being pressed to take up a case that could dramatically alter oversight for groundwater, building on a landmark water rights ruling the court made a generation ago.

Earlier this summer, a Sacramento Superior Court judge ruled that rural Siskiyou County in Northern California must consider people downstream who depend on the Scott River before issuing permits to drill wells and pump groundwater nearby.

If the high court accepts the case and upholds that ruling, the result could be new controls on groundwater pumping — in addition to those contained in legislation just signed by Gov. Jerry Brown.

Lawyers note the case is particularly timely given the drought, which has forced many farmers to depend on ever more water pumped from underground. In effect, both sides want to skip a few steps in the appeals process, thereby speeding up a definitive answer from the state's highest court.

At the heart of the case is the Scott River, which runs through Siskiyou County and feeds into the Klamath not far from the Oregon border.

On a map, the Scott River runs through Tom Menne's farm just west of the town of Fort Jones. In reality, the sad patch of rocks next to Menne's alfalfa fields has scarcely resembled a river at all this summer.

"But the water's still flowing here. It just goes underground through here," Menne said, crunching over gravel where the bottom of the river would be. "In different areas you go, you'll see it come back up. But there's just little puddles now."

Menne has lived on this farm most of his life, working the land like his father before him. He raised his kids to help out in turn. But they're in college now, and Menne says he's told them not to depend on the farm being there forever.

"Someday there's not going to be a farm here," he said.

"Regulations will make it so hard to make a living that there just won't be any reason to want to farm."

Alfalfa is used mainly for cattle feed and is notoriously thirsty. To slake it, Menne pumps water from underground through giant sprinkler rigs. The energy cost runs to the tens of thousands of dollars a year, which he says is a powerful disincentive against waste. Even so, one of his shallower wells was running dry, slurping loudly like the industrial-grade equivalent of a straw at the bottom of a near-empty cup.

The reason for that, Menne says, is a lot bigger than his farm.

The Scott River's flow depends on snowmelt from nearby mountains, but the last few winters haven't delivered much. "The river was going to go dry anyway. We had no winter. It's a drought. I didn't cause the drought, I'm part of the drought. It's costing me money, too."

Preston Harris, who alongside Menne has opposed calls for outside regulation, says, "It's very easy for people to point at a dry riverbed and see sprinklers going in the background and just say, 'Oh geez, the farmers are completely dewatering the system.'"

Harris heads the Scott River Water Trust and says the area makes for a convenient legal testing ground, in which farmers are scapegoated for problems that are much more complex. The endgame, Harris says with a



Tom Menne and his family have grown alfalfa in the Scott Valley for decades, but he's warned his kids they might not be in the farm business forever. (Daniel Potter/KQED)

degree of inevitability, would be new rules across the state.

That's one potential outcome, if the California Supreme Court were to uphold the lower court's July ruling dealing with safeguards for water in California.

In a landmark 1983 case, the state Supreme Court imposed limits on how much water Los Angeles could divert from streams feeding into Mono Lake, under what's known as the Public Trust Doctrine. But that ruling dealt with surface water and left unclear to what extent groundwater is also protected.

Richard Frank, a law professor at UC Davis, argues the Public Trust Doctrine "can and does, in my opinion, limit the unfettered ability of landowners to extract groundwater for their personal consumption." Frank is co-counsel alongside the Environmental Law Foundation in the 2010 suit targeting groundwater pumping in Siskiyou County.

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The current drought, he says, has only exacerbated the need for a definitive ruling, and soon.



"We don't have the luxury anymore of treating water as purely private property, a private resource. In my opinion, that's never been the law — that's never been sound policy. But having courts underscore that, emphasize that and make that principle an abiding part of water policy and water law is critically important."

And lawyers are careful to say that however the Supreme Court might rule if it takes up the Scott River case, the decision wouldn't necessarily safeguard every drop of water beneath California — only what's tied to surface water.

"I think in the Scott River, there is a clear linkage — a scientific linkage, an engineering linkage — between surface water flows and subterranean flow. ... In some cases, that linkage is either uncertain or doesn't exist as a matter of engineering fact," Frank says.

While the state's legal apparatus grinds forward, farmers along the Scott River have their fingers crossed for a wet winter.

And others are watching the river's condition, too.

Crystal Robinson is a biologist with the Quartz Valley Indian Reservation and has also worked for the Karuk Tribe downstream. She backs more oversight of groundwater pumping near the Scott.

Standing on a bridge near where the underground flow comes to the surface for a short stretch, she pointed toward a couple of lethargic fish, identifying them as steelhead. The water was shallow and not especially pristine, but seemed something of a respite from the summer heat.

For the fish, Robinson said, perhaps not:

"The river is coming out of the ground not too far upstream from here, and we've got this section of habitat, and it's going to go subsurface a few miles from here. So this is their spot," Robinson said: In effect, the fish were trapped. "They're trying to just chill out and hope that the river comes back soon."

Not unlike a few farmers nearby.

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Crystal Robinson, a biologist at the Quartz Valley Indian Reservation, acknowledges the area's farmers have been dealt a tough hand. (Daniel Potter/KQED)



