



Legislation and Law

Court: Groundwater Pumper not Liable for Neighbors' Loss

In a decision that may not surprise those well versed in Arizona groundwater law, a court recently ruled against pecan farmers who sued a nearby landowner whose groundwater pumping caused a significant drop in the water table resulting in a loss of their orchards.

Abbott Laboratories, a neighboring landowner of the pecan farmers, two Casa Grande married couples, pumped groundwater to build a storage basement under its facility. In its application to the Arizona Department of Water Resources, Abbott, which is an Illinois corporation, stated it would pump the groundwater into an on-site retention basin so that it would sink back into the aquifer. ADWR required that Abbott annually report its dewatering activity to the agency. ADWR issued the corporation an emergency dewatering permit for 2.07 acre feet.

Encountering much more water than anticipated, Abbott increased its pumping to drain the construction project, with the result that 122 acre feet of groundwater was eventually pumped. Abbott did not seek a permit to pump the additional groundwater.

The increased pumping caused the retention basin to fill to capacity; Abbott channeled the excess groundwater to flow off the property. Pumping ended about March 1998.

Meanwhile the pecan farmers' water table, which was 16 feet below the surface prior to Abbott's pumping, dropped to 32 feet, the depth of the basement on the Abbott property. Their trees died, and the farmers sued Abbott on grounds of negligence and nuisance. A district court awarded the farmers \$1.2 million, a ruling

Continued on page 10

Court...continued from page 7

that was overturned by a federal Appeals Court.

The three-judge panel referred to a 1957 Arizona Supreme Court ruling that stated that common law doctrine in Arizona allows groundwater pumping if the water is extracted for a reasonable use on the property from which it is taken. If such terms are met, the pumper incurs no liability to adjoining landowners for damages resulting from groundwater depletion on their lands.

That some of the groundwater was channeled off the property was immaterial to the court. It stated that according to Arizona law withdrawn water does not have to be used so long as it is extracted for a reasonable beneficial use.

Abbot acknowledged that its removal of excess water violated the permit's conditions and that the required annual reports were not properly filed. Abbott agreed to pay a \$6,508 fine to the state.

In his concurrence, Judge Jerome Ferris stated, "If we were not bound to follow the Arizona Supreme Court, I would urge that Arizona's reasonable use doctrine no longer depend solely upon whether the use of the water benefits the property from which it is extracted. Accounting for the amount of water used, considering the utility of competing waters uses, and acknowledging the rights of adjacent water users seems especially important in an arid, rapidly growing state like Arizona."