

Appendix B9

Memorandum from Lee Axelrad
regarding Groundwater Rights for the
Middle Green Valley Specific Plan



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MEMORANDUM

TO: Michael Yankovich
FROM: Lee Axelrad, Deputy County Counsel
DATE: July 19, 2013
RE: Middle Green Valley Specific Plan – Groundwater Rights

Water rights for public supply of groundwater under Water Supply Option B of the Middle Green Valley Specific Plan will likely be appropriative rights.

Appropriative Rights of CSA. Option B anticipates that groundwater will be extracted by a County Service Area for public uses such as supply of potable water for municipal/residential purposes. The right to use groundwater for public purposes is typically deemed to be an appropriative right. (*Pasadena v. Alhambra* (1948) 33 Cal. 2d 908, 925-26; *Wright v. Goleta Water Dist.* (1985) 174 Cal. App. 3d 74, 92.) The right to appropriate groundwater is limited to the amount that is not needed for the reasonable and beneficial uses of overlying users (i.e., the “surplus” amount). (*Pasadena, supra*, 33 Cal. 2d at p. 925.)

Overlying Rights of Landowners. As shown by Figure 3-1 of the Water Supply Assessment, land within the Plan Area overlies the relevant portions of the Suisun-Fairfield Valley Groundwater Basin. Each landowner overlying a groundwater basin has an equal correlative right to extract the amount of percolating groundwater that can be reasonably and beneficially used on their own overlying land. The amount associated with overlying rights is not quantified unless the relevant basin has been adjudicated. (*Wright, supra*, 174 Cal.App.3d at p. 84.) The relevant portions of the Suisun-Fairfield Valley Groundwater Basin have not been adjudicated.

If a surplus ceases to exist and there is insufficient groundwater for overlying users and appropriators, then: (1) the rights of overlying users take precedence over the rights of appropriators; but (2) if an appropriator has been using groundwater for public purposes, overlying landowners may exercise their rights by seeking damages but not an injunction. (*Pasadena, supra*, 33 Cal.2d at p. 926; *Wright, supra*, 174 Cal.App.3d at p. 90.)

This memo concisely identifies water rights for public supply of groundwater under Water Supply Option B, and was prepared solely for the purpose of describing those rights in the plan’s groundwater Water Supply Assessment and Recirculated Draft Environmental Impact Report. This memo should not be used in any other context without first conferring with me. At later stages of the planning process, it may be desirable for the County or the County Service Area, once formed, to obtain a more detailed review of groundwater rights as appropriate to later phases of the process.