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## Chino Land & Water Co. v. Lewis Investment Co., E033614, 2004 Cal. App. Unpub. LEXIS 2023 (Cal. Ct. App. Mar. 5, 2004)

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dition exists, courts must consider if the condition advances a legitimate state interest and whether the condition deprives a landowner of economically viable use of his land. Then a court must ascertain whether an "essential nexus" exists between the state interest and the condition. The "essential nexus" must be a reasonable relationship between the two. If the court determines the nexus exists, it must then ensure the condition is reasonably proportional to the interest the state will achieve. The condition may be considered a taking if the court does not find proportionality between the condition and the state interest. History indicated Northern California experienced a water shortage for fifteen years prior to Acosta's writ. The District provided water throughout this drought and continued to do so after. The District needed to regulate water consumption and prevent depletion of the source of its water in order to continue providing water services. The court decreed this to be a legitimate state interest.

The court determined the required water rights conveyance formed a reasonable nexus to the District's need to regulate and preserve the local water supply. That requirement was also roughly proportional to the needs of the District to regulate and preserve the water supply. As a result, the exaction of water rights in exchange for the supplying of water services did not constitute an unconstitutional condition. Therefore, the court held that it was not a regulatory taking requiring compensation.

Finally, the court determined whether a mandate or judicial review of ministerial or legislative acts was proper. Mandate is proper to correct the exercise of discretionary legislative power, but only if the action taken is fraudulent or so palpably unreasonable and arbitrary as to reveal an abuse of discretion as a matter of law.

Because the exaction of water rights from Acosta did not constitute a regulatory taking and the state exacted the water rights to further a legitimate state interest, it was not fraudulent, or unreasonable and arbitrary. Therefore, a writ of mandate for Acosta was not proper.

As a result, the court affirmed the trial courts dismissal and awarded the District costs for appeal.

*Sean T. Olson*

**Chino Land & Water Co. v. Lewis Investment Co., E033614, 2004 Cal. App. Unpub. LEXIS 2023 (Cal. Ct. App. Mar. 5, 2004)** (holding a failure to allege a cognizable water right under any of the three classified California groundwater rights precluded a water company from amending its complaint for quiet title, declaratory relief, and injunctive relief).

Chino Land & Water Co. ("Chino") appealed a judgment in favor of Lewis Investment Co. ("Lewis") after the Superior Court of San Bernardino County sustained Lewis' demurrer to Chino's complaint for

quiet title, declaratory relief, and injunctive relief, without permitting Chino leave to amend.

Pursuant to a 1908 reservation of rights, Chino alleged ownership of groundwater rights and related easements to the Lewis property. Chino further alleged Lewis only had the right to use the groundwater on the property itself and solely for agricultural purposes. Chino claimed possession of the right to lay and maintain pipes and aqueducts on the land. In addition, Chino claimed the right to use all available water pumped from the property and to sell or lease the water. Last, Chino alleged Lewis proposed to increase water use resulting from further development of the property.

California classifies groundwater rights by three types: overlying, appropriative, and prescriptive. The property owner's right to take groundwater for use on the land within the basin or watershed characterizes an overlying right. The appropriative right depends on the actual taking of water. When a wrongful taking of water occurs, an appropriative right may ripen into a prescriptive right.

The California Court of Appeals held that Chino did not possess a water right recognized by California law. First, Chino could not possess an overlying right because Chino did not own the property. Second, Chino could not possess an appropriative or prescriptive right because neither Chino nor its predecessors ever took the water and applied it to beneficial use.

Since Chino could not claim a present interest in the property owned by Lewis, a quiet title cause of action could not exist. The court held that a complaint seeking declaratory relief required the existence of an actual controversy and none existed in this case. Further, injunctive relief is a remedy requiring an underlying cause of action. Chino provided no adequate explanation for amending its complaint to state a cause of action and, therefore, the court held the trial court did not abuse its discretion in sustaining Lewis' demurrer to Chino's complaint.

Thus, the court affirmed the trial court's judgment denying Chino a quiet title action, declaratory relief, or injunctive relief based on Chino's lack of a cognizable water right. The court further ordered Chino to pay Lewis' appeal costs.

*Kevin Lazar*

**City of Huntington Beach v. Orange County Water Dist., No. G029778, 2004 Cal. App. Unpub. LEXIS 1600 (Cal. Ct. App. Feb. 23, 2004)** (holding Orange County Water District's master plan report and capital improvement program do not fall within the provisions of the California Environmental Quality Act, and therefore, do not require an environmental impact report or an initial study).