

## **Groundwater Is Real Property That Passes in a Foreclosure Sale**

**Citation:** *Sandton Agriculture Investments III, LLC v. 4-S Ranch Partners, LLC*, \_\_\_ Cal.App.5th \_\_\_, 2025

### **Background**

In *Sandton Agriculture Investments III, LLC v. 4-S Ranch Partners, LLC*, the California Court of Appeal addressed an important — and often misunderstood — issue in real estate litigation: **whether groundwater and floodwater stored beneath land constitutes real property or personal property.**

The dispute arose after a **nonjudicial foreclosure sale** of agricultural land. Sandton Agriculture purchased the property at the foreclosure sale. After the sale, the former owner, 4-S Ranch Partners, claimed continuing ownership rights to **groundwater and floodwater stored in an aquifer beneath the land**, arguing that the water was its personal property and therefore did not pass with the foreclosure sale to Sandton.

Sandton moved for summary judgment, contending that the water rights were part of the real property conveyed at the foreclosure sale. The trial court agreed, and 4-S Ranch appealed.

### **Legal Issue**

The Court of Appeal considered the following question:

**Does groundwater and floodwater stored in an aquifer beneath land constitute real property that passes to the purchaser at a nonjudicial foreclosure sale, or personal property retained by the former owner?**

### **Court's Holding**

The Court of Appeal **affirmed the trial court's grant of summary judgment** in favor of the purchaser and held that:

- **Groundwater and floodwater stored in an aquifer beneath land are part of the real property, not personal property; and**
- **Water in its natural state remains real property unless and until it is severed from the land.**

Because the water at issue had not been severed, it **passed to the purchaser as part of the real property at the nonjudicial foreclosure sale**, just like the land itself.

## **Why This Decision Matters to Real Property Practitioners**

### **• Water Rights Follow the Land**

Absent severance, groundwater and floodwater stored beneath property are treated as part of the real estate — and transfer automatically with the land.

### **• Foreclosure Transfers More Than Dirt**

Nonjudicial foreclosure sales convey not only surface rights, but also subsurface interests that remain part of the real property.

### **• Personal Property Arguments Have Limits**

Attempts to recharacterize natural water as personal property will fail where the water remains in its natural, unextracted state.

## **Practical Takeaways for Clients and Property Owners**

• **Purchasers may acquire valuable subsurface water rights** without separate documentation.

• **Former owners cannot retain groundwater rights** unless those rights were lawfully severed before foreclosure or in a sale contract.

• **Water-related assets should be evaluated as part of real property due diligence**, particularly in agricultural and rural transactions.

## **Conclusion**

*Sandton Agriculture Investments III, LLC v. 4-S Ranch Partners, LLC* reinforces a foundational principle of California property law: **water in its natural state is real property**. When land is sold at foreclosure, groundwater and floodwater stored beneath the property pass with the land unless they have been clearly severed.

For real estate litigators, lenders, and purchasers, the case provides important clarity on how water rights are treated in foreclosure and title disputes.

## **Need Guidance on Property Rights or Foreclosure Disputes?**

Our Real Estate Litigation team advises clients on disputes involving foreclosure sales, subsurface property rights, water rights, and title issues.

**Contact us** to discuss how this decision may affect your property interests or pending litigation.

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## **About Horner Law Group**

Horner Law Group, PC is a Walnut Creek-based business and commercial real estate law firm that focuses on all legal aspects of the development, ownership, operation, management, leasing, finance and purchase and sale of commercial real estate, and on corporate and business formation and disputes. We represent clients throughout Contra Costa County, Northern California, and the State of California in litigation, transactions, and other business matters.

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