

YOUR LAND



Liquid Gold

There are no more shoot-outs over water, but a California case shows the law intends to defend every last drop.

BY DEBORAH R. HUSO | PHOTOS BY JIM PATRICO

When District Attorney David Linn established Madera County, California's, Agricultural Crimes and Water Task Force in 2015, he had no idea he'd find himself, less than two years later, at the center of a large stolen-water case—this one against a large farmland-management company.

Rather, his goal was deterrence. "When I took office two years ago, water was a real scarcity in the Central Valley," he explains. "There were areas like Madera Ranchos that were actually sinking because the water table was disappearing. People's wells had gone dry, and property values had been decimated."

Water-starved counties across California have seen water-theft cases involving everything from tank trucks siphoning water out of irrigation district canals in Mendocino County for black market sale to the highest bidder to theft of water from fire hydrants in Kings County. While there aren't statewide statistics on the number of these cases, the thefts have caught the attention of local and national news, all reporting on the state's stolen water.

Linn says Madera County has only seen minor incidences of water theft, with about 2% of the cases his office handles having fallen under the category of agricultural water theft. But, it's a problem he doesn't ignore. Given agriculture's critical role in Madera County's economy and the industry's need for irrigation, "We wanted to ensure there was no misuse of the water or illegal diversion," Linn says.

Linn feels the task force has played a significant role in keeping that case number low. "We've prevented people who may want to steal water from coming into Madera County," Linn says. "We've had a number of reports involving theft of pumping equipment, power lines, sprinkler systems, anything that would be used in a vineyard or field crop to irrigate."

NO TOLERANCE. Localities

around that state have created water task forces such as the one Linn helped spearhead in Madera County. Linn says he not only wanted the county to be ready to prosecute water-theft cases if the need arose but also "to put the word out that we wouldn't tolerate [water theft] in Madera County."

Madera County has put teeth into its threat by filing a water-theft case against one of the region's largest land managers, charging that it allegedly stole nearly 15,000 gallons of water from the Madera Irrigation District (MID) in March 2016. Charges were filed against Agriland Farming Co. Inc., a Chowchilla-based farming company, and its chief executive officer James Maxwell. As of this past June, Madera County had offered Agriland a settlement, but the outcome is still pending.

Agriland is one of Madera County's largest land managers, custom-farming some 23,000 acres, and is also the third-largest nut producer in the United States.

Linn isn't surprised he's prosecuting such a large case in Madera County. "This is a major water district where water is transported via canal to tree fruit and nut farmers that rely upon water that's gravity-fed down the Sierras onto their farms," he says.

LEGAL JUNGLE. California is notorious for its water wars. The state itself has 15 books of uncodified law related to water. Uncodified laws are those developed through the court system as a result of cases being tried.

Prosecuting a water-theft case criminally can be tricky for someone not well-versed in California's complex water laws. In the Agriland case, Linn is treating MID as a public utility. He explains the charging statutes for water theft in California are similar to those that control theft of electricity, natural gas and other public utilities.

Meanwhile, Agriland attorney Dan Bacon, who operates a private practice in Fresno, says his client ►



LAW OF WATER

mainly performs custom-farming for other growers. A number of them have ranches that surround a small piece of MID property where water theft allegedly occurred.

Agriland has a long history of water purchase from MID and even gained permission from the district to install a pump to transport water via pipe from a small creek that runs through Agriland-served ranches (as well as through MID's property).

"My client has been using this area to pump for years with MID's permission," Bacon explains. He says Agriland uses about 70,000 acre-feet of water a year to farm all the properties it owns or manages, a small portion of which (6,800 acre-feet) the company purchased from MID in 2016. One acre-foot of water is about 326,000 gallons. "They are substantial water users," Bacon says, which makes the company's alleged theft of just under 15,000 gallons all the more curious.

According to the filing, The People of the State of California vs. Agriland Farming Co. Inc. and James Roy Maxwell, Agriland and CEO Maxwell trespassed on MID land in early-March 2016 and diverted water from an MID canal without authorization and without providing compensation. The company is facing felony charges, while Maxwell faces charges of misdemeanor.

Linn and MID have indicated the stolen water was worth \$80,000. Bacon refutes that claim, saying, "At most, the water had a value of approximately \$9,000 if purchased from MID."

Maxwell told *Big Valley News* in January, "Our reputation is very important to us, and we have not taken any water [to which] we were not entitled."

PIPED TO WHERE? Linn told *The Madera Tribune* in February that while Agriland was a subscriber to MID, the company had declined its water services during the 2016 growing season. Yet, not long after that, the local Agricultural Crimes and Water Task Force received reports of a pipe leading from one of MID's ditches to Agriland client property.

After four months of investigation, Linn's office concluded a pump connected to that pipe had been running for 90 hours, taking 14,850 gallons of water.

When MID officials learned of the pumping, they advised Agriland they had no authorization for it. Bacon



Water wars have broken out across the West, as farms and cities compete for dwindling supplies.

says his client shut down the pumping and even offered to pump the water they'd taken back onto MID land. "But

my client never heard back from MID," Bacon explains.

Instead, they were handed charges that Bacon says aren't even logical. The properties that surround MID are custom-farmed by Agriland, not owned by it. "So they're not paying for the water anyway. Their clients are," he says. Agriland has no incentive to steal water, Bacon argues.

"My client buys millions of dollars of water every year. Forty-five acre-feet may seem like a substantial amount to a lot of people, but in Agriland's scheme of things, it's a very, very small amount."

In this instance, quantity is secondary to the charge of theft. Linn says his office prosecutes everyone equally. "Water is the gold of this century," he says. "In the San Joaquin Valley, you can't develop, bring in new industry or open fallow fields [without it]."

Supplies of water are a growing problem across the American West. As demand for water from agriculture and urban areas strain an already-strained delivery system, legal conflict will be all the more common—and the temptation to steal water will grow with it.

Bacon is hopeful the case will be resolved outside the courtroom. He believes Agriland may have been targeted because of its size. The company represents a pretty high-profile water-theft case.

"[Water theft] is a different kind of crime," Linn says. "It's not your typical theft. Water is not personal property. Water is essentially the same as real property. It's almost like a right."

It's a right landowners in the arid West take seriously. ●

Protect Yourself From Water Theft

- ▶ Educate yourself about your state's water laws. "In California, for example, we have a whole series of uncodified law on water," says Madera County district attorney David Linn. Uncodified laws are those developed through the court system as result of cases being tried. "Our state legislature has been reluctant to pass legislation that would offend any of their constituents, and water has always been such a hot political topic."
- ▶ If you store water on your property, install adequate fencing. If your water storage is easy to access, it's

more vulnerable to theft. The same goes for protecting equipment such as water pumps, which Linn says have been stolen in Madera County.

- ▶ Be on the lookout for diagonal drilling, particularly if you're operating in an area facing severe drought. If you see large rigs drilling near your property, and you simultaneously experience a sudden decrease in your own waterflows or well outputs, someone could be stealing groundwater from your land.