

Water Rights in California

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Overview

- Background
- Details
- Issues

Background – Water Use in California



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 Follow

"Statewide, average water use is roughly 50% environmental, 40% agricultural, and 10% urban." #TBT

- Total Applied Water 2001-2010: 42.7-48.1 maf
 - Groundwater: Normal Year – 1/3, Dry Year 45%
 - Surface Water: Normal Year – 2/3, Dry Year 55%

Background – Types of Water Rights

- **Surface Water (“Dual System”)**
 - Riparian
 - Appropriative
 - *Pre-1914*
 - *Permitted or Licensed*
- **Groundwater**
 - Overlying
 - Appropriative
 - Prescriptive
- (Adjudicated Rights – judicial declaration of rights)



Background – History

- **Riparian:**

- CA adopted English Common Law (1850) – riparian system
- Case Law – “dual system” with riparian priority
- 1928 Constitutional Amendment –all water use must be *reasonable and beneficial*

- **Appropriative:**

- Gold Rush – first in time first in right
- Case Law/Statutes – refined the appropriation doctrine
- Water Commission Act (1913) – current SWRCB system



Details – Nature of a Water Right

- **Usufructuary** – right to use the water, do not own the water itself
- **Real Property** – water rights are considered real property
- ***Reasonable and Beneficial Use*** – All water use
- ***Protected by 5th Amendment, but subject to regulation and limitation***



Details – Riparian Water Rights

- Correlative – share with other riparian users
- Natural flow – no right to stored or “foreign” water
- Riparian Parcel – only parcel in watershed abutting stream
- No storage – can be temporarily “regulated”
- Not lost by non-use
- May not be extinguished – can be limited/deprioritized
- No SWRCB permit required
- Must report diversion and use



Details – Appropriative Rights

- Seniority System
 - Senior fully satisfied before junior receives any water
- Elements:
 - Date established
 - Point and Method of diversion
 - Purpose and Place of use
- Water may be stored and exported
- Can be lost by non-use



Details – Appropriative Rights (pre-1914)

- Not subject to SWRCB jurisdiction*
 - Must report diversion and use
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- * Increasing regulatory and enforcement actions by the SWRCB against pre-1914 rights



Details – Appropriative Rights (post 1914)

- Apply to SWRCB for new right (changes/transfers)
- Process:
 - File application
 - Notice and protest period
 - CEQA
 - Decision by the Board
 - Permit Issued
 - Verification
 - License Issued
- Diversion and use reporting is term of water right



Details – Groundwater Rights

- **Overlying:**
 - Correlative
 - Overlying land
 - Typically agriculture and rural residences
- **Appropriative:**
 - Nonoverlying
 - “Surplus” water
 - Typically urban uses and groundwater exports
- **Prescriptive:**
 - Adverse possession
 - Typically urban uses in overdrafted basin



Issues

- Water Diversion and Use Reporting
- Curtailments
- SWRCB Enforcement
- ESA
- Public Trust Doctrine
- Reasonable Use (Art. X sec. 2)
- Fish and Game Code
- NEPA/CEQA

Issues – SGMA

- **Where**
 - High and Medium Priority Basins (CASGEM)
 - Other basins *may* develop plans
- **Who**
 - Local Agencies with water or land use authorities
 - SWRCB serves as backstop
- **What**
 - Groundwater Sustainability Plan (GSP)
 - Achieve groundwater sustainability → avoid undesirable results
- **When**
 - Regulatory Guidance: 2015-2016
 - Identify Groundwater Sustainability Agency (GSA): **June 30, 2017**
 - Groundwater Sustainability Plan (GSA): **2020** (critical overdraft) or **2022** (all others)

Thank You

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