
Matt Clifford, Trout Unlimited California Water Project
Water Rights in CA

- Riparian Water Rights
- Appropriative Water Rights
  - (Plus groundwater)
Riparian Water Rights

Basic principle:
All owners of property adjacent to a stream have the right to reasonable use of water from the stream (or lake)

- Comes from English common law
- Prevailing system in wetter states (eastern US)
Riparian Water Rights

Features:

- Exist through ownership of land abutting stream
- Can be put to any reasonable, beneficial use on riparian property
- All riparian right holders have co-equal priority
- Usually have priority over appropriative rights
Riparian Water Rights

Limits:

• Limited to use on riparian land within watershed (can’t transfer)
• Right to natural streamflow only (not imported or stored water)
• Can’t store water (defined as retaining it for more than 30 days)
Riparian Water Rights

Can be lost by:

• Splitting a parcel to separate land from the stream (unless rights reserved)
• Signing them away by contract (e.g., Delta)
• Can lose priority in a stream adjudication (rare)
• But generally not by failing to use them
Appropriative Water Rights

Basic principle:
You get the right to use water by **putting it to beneficial use**, regardless of location

- Prevailing rule in more arid states (western US)
- Permits issued by Water Board (except pre-14)
Appropriative Water Rights

• Priority: first in time, first in right
• Limited to amount historically used (can’t increase it)
• Use it or lose it: can lose the right due to non-use (more than 5 years)
• Can store water if your right says so
Limitations on Both Riparian and Appropriative Rights

- Water itself *belongs to the state*; the holder has only the right to *use* it
- Use must be a *beneficial use*
- Use must be *reasonable*
- Subject to the *public trust doctrine*
Beneficial Uses

- Domestic
- Irrigation
- Stock watering
- Municipal
- Industrial/commercial
- Hydropower
- Fish and wildlife
- Frost protection
- Heat control
- More
Reasonable Use

- Depends on circumstances – what is reasonable at one time/place may not be at others
- Classic example: ditch loss
- Water Board can define by rule (frost protection case)
Public Trust Doctrine

• Rooted in state ownership of water
• Protects streamflow needed to support public uses of navigation/ fishing/ environment
• Water Board: continuing jurisdiction over all water rights to protect public trust
• Legislature: statutes such as §5937 (dams)
Springs

- If a spring doesn’t flow off your property, it’s yours – no permits or obligations to other users
- If it flows off your property, it’s surface water. All other riparian owners have a co-equal right, and storage requires an appropriative right.
- BUT: DFW jurisdiction may be broader
Groundwater
“Subterranean Streams”

- Treated just like surface water
- Water Board determines case-by-case
- 4-part test
Subterranean Streams

Takeaway:

• If a well is located sufficiently close to a surface stream to significantly affect surface flow, it may be treated like a surface water diversion
Groundwater
“Percolating Groundwater”

• All groundwater not part of a subterranean stream
• Not regulated by the state
• Complex rules for use among neighbors
Registrations
Small Domestic Use
Small Irrigation Use

• These are appropriative water rights
• File complete form/ pay fee to SWRCB
• Intended to allow rights for relatively small uses without full permitting process
• Commonly used for small storage projects
• DFW can impose §1600 (SLA) conditions
Small Domestic Use Registration

• No more than 4500 gpd direct diversion
• No more than 10 acre-feet of storage
• Domestic use plus incidental uses (e.g., fire protection)
• Must be renewed every 5 years
Small Irrigation Use Registration

- No more than 42,000 gpd direct diversion or 20 acre-feet of storage
- Irrigation/ frost protection/ heat control
- Must be renewed every 5 years
- Currently only available in North Coast Policy Area
Statements of Diversion & Use

• All riparian & pre-1914 users must file every 3 years
• Purpose: allow better understanding of water use and better administration of water rights
• Penalties: $1,000 for failure to file, plus $500 per day after notice from Water Board
• Post-1914s don’t have to file (already have to report) – includes SDUs/SIUs
CA Water Resources Control Board
(a.k.a. “State Water Board”)

Has Jurisdiction Over:

- Permitting & administration of post-1914 water rights
- Reasonable use of all water rights, including pre-1914 and riparian
- Protection of the public trust with regard to all rights, incl. pre-1914 and riparian

Has No Jurisdiction Over:

- Groundwater (of the “percolating” variety)
- “True” springs
DFW Regulation of Water Use: Fish and Game Code Section 1602

“An entity may not substantially divert or obstruct the natural flow of . . . any river, stream, or lake, . . . unless . . .”

[You get a Lake or Streambed Alteration Agreement from DFW]

• DFW may impose reasonable conditions to protect fishery resources
• DFW may conduct a site visit
§1707 Dedications

- Can petition the Water Board to dedicate water right to fish/wildlife, recreation, or wetlands, including ISF
- Can dedicate amount of actual, reasonable use – no “paper water”
- Protects against loss of right for non-use
- Must show no injury to other users
- Lengthy permitting process
Forbearance Agreements

• Rightholder signs a contract agreeing not to divert for a certain period
• Forbearance period can be calendar-based or flow-based
• Not a water rights transaction; no Water Board permitting necessary; no right to object
• Can’t protect water from other diverters
• Very useful & practical alternative to dedications
North Coast Instream Flow Policy

Applies to new water rights

Diversion generally restricted to rainy season

Regional Criteria for:
• Season of diversion (Dec. 15 – March 31)
• Bypass flow (very restrictive)

Can use site-specific criteria instead, but requires expensive study

New onstream reservoirs restricted

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