



Water Rights 101: An Overview of California Water Law with an Emphasis on Instream Flow Projects



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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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