

APPENDIX A
SUMMARY OF CALIFORNIA WATER LAW

A. RIPARIAN WATER RIGHTS

Riparian rights attach to land that borders a river or stream, and one becomes a holder of a riparian water right by virtue of ownership of that land and by putting water to beneficial use. A riparian water right entitles the landowner to put the water to reasonable use on the riparian lands as long as the use does not interfere with the reasonable use of other riparians.

Essential elements of the riparian right, as well as limitations on its use, are as follows:

1. One must own riparian land in order to exercise a riparian right.
2. A riparian right only attaches to the *natural* flow within a watercourse. A riparian right cannot be associated with imported waters or water “foreign” to a watercourse. Water released from storage is considered “foreign” in time and does not constitute natural flow even though the water may have originated within the watershed.
3. A riparian right attaches to the flow of a natural watercourse. In general, one cannot acquire a riparian right to the flow in an artificial body of water.
4. A riparian right is limited to use on riparian land that is within the watershed of the water source.
5. A riparian right can be lost if it is severed from the land. The land to which a riparian right is claimed to be appurtenant must be contiguous to the source. For example, when a larger parcel is divided, any sub-parcels that are no longer contiguous to the watercourse would subsequently lose the right. Once severed, the right cannot be reattached. A riparian right attaches to the smallest parcel of land contiguous to the watercourse within the chain of title. (*Boehmer v. Big Rock Creek Irrigation District* 117 Cal. 19, 48 [1897] p. 908.)
6. The severance of riparian rights is implied. Express reservations or grants can serve to preserve the riparian right on parcels that otherwise would lose the right. (*Pleasant Valley Canal Co. v. Borrer* 61 Cal. App.



4th 772, 780 [1998].) The grant or reservation will bind the parties to the conveyance but may not be effective against third parties. Third parties, however, must be able to show injury due to the grant or reservation in order to establish that the conveyance was unreasonable.

7. A riparian right must be used for beneficial purposes, in that it will generally support domestic, irrigation, industrial, and mining uses on riparian lands, as well as the generation of hydroelectric power and recreational uses. A riparian right, however, will not, in general, support a municipal use of water. A municipal use would, for example, include the development of a large water system to supply the full water needs of a municipality. While a municipality may exercise riparian rights for use on riparian lands owned by the municipality, the use (unless otherwise provided for) cannot be expanded for service to lands not owned by the municipality. A riparian right must also be reasonable. Because each riparian user's rights are defined in relation with other riparians' rights in the system, year-to-year changes, including changes to the stream channel and alterations of water use, affect the rights of each riparian in the system. If one variable changes, all others change, and therefore the corresponding rights change as well.
8. In California, a riparian owner may not store water pursuant to a riparian right. Stored water does not constitute natural flow, and thus is considered to be "foreign in time" to which no riparian water right attaches. There is a 30-day exception to this rule.
9. As a general rule, a riparian right cannot be lost through nonuse. A riparian right, however, can be limited in a number of ways, including a loss of priority or loss of use for certain specific purposes, but only through statutory adjudication. (*In re Waters of Long Valley Creek Stream System*, 25 Cal.3d 339, 599 P.2d 656 [1979].)
10. A Statement of Diversion and Water Use can be used to document riparian usage (Water Code §§ 5100 et seq.), although many riparians fail to file the Statements. As a result, the state's records of who is a riparian water right holder or who is exercising a pre-1914 appropriation, in any given area, are often incomplete.

B. APPROPRIATIVE WATER RIGHTS

The law of prior appropriation—a law of "first in time, first in right"—worked well in historic California because it was a satisfactory means to allocate a scarce resource through the granting of relative priorities, or rights, to all who claimed an interest in water. The first user or right holder was considered the most senior, and thus was able to have all of his or her beneficial needs for water met prior to the next in line having any claim to use water, and so forth, until all of the water within the system was exhausted.

California recognized the law of prior appropriation shortly after statehood in 1850, as a means to perfect a right to water in California. (*Irwin v. Phillips*, 5 Cal. 40 [1855].) The means to perfect the water right were codified in the Civil Code. (The riparian rights doctrine was recognized as part of the common law in *Crandall v. Woods*, Cal. 136 [1857], thus establishing the hybrid system of water rights that exists in California.) Various California enactments also recognize—both directly and indirectly—the existence of riparian rights, including California Civil Code, Section 662 (deeming riparian water right incident of owner's property right); and California Civil Code, Section 22.2 (rendering the common law of England, which recognized riparian rights, the rule of decision in California).

In 1913, the California legislature's enactment of the Water Commission Act modified the basic law of prior appropriation. The Act, which became effective on December 14, 1914, eliminated the informal process of obtaining appropriative water rights with a more formal application and permitting system. This system required that an individual interested in obtaining an appropriative right file an application with the state and proceed through a permitting process. An appropriative water right could not be obtained in this system until the state issued a permit, although the priority of the right obtained would "relate back" to the time the application was accepted. The permit issued specifies the purpose and place of use of water and the quantity of water obtained. The right may be otherwise limited based upon the terms and conditions of the permit. In allocating water, there is also a determination that the water is, in fact, available for appropriation and that the exercise of the right will not harm other lawful users, and that the use is in the public interest. The State Water Resources Control Board ("SWRCB") is the agency within California that currently administers this permitting system. Pre-1914 appropriative rights are still valid and recognized under California law.





1. General Elements of Appropriative Water Rights

There are three key elements to a valid appropriation:

1. an intent to apply the water to an existing or contemplated beneficial use;
2. an exercise of control over water by diverting it from the watercourse (exercising control over the water can be accomplished through the construction and use of reservoirs, ditches, pumps, etc.); and
3. an application of the water within a reasonable time to some "beneficial" use. (*Fullerton v. State Water Resources Control Board* 90 Cal.App.3d 590 [1979]); *California Trout Ltd. v. State Water Resources Control Board* 90 Cal.App.3d 816 [1979].)

The appropriative right only extends to that amount of water that can be put to beneficial use. Beneficial uses of water include domestic, municipal, agricultural, industrial frost protection, mining, fish and wildlife preservation and enhancement, aquaculture, recreation, water quality, and stock water uses. (Title 23 California Code of Regulations, §§ 659-669.)

The appropriative right also requires that water be put to beneficial use within a reasonable time and that the use of water and the method of diversion be reasonable. The California State Constitution sets forth the concept of reasonableness. (See California Constitution, Article X, § 2.) Wasting water, or using more than is reasonably necessary, is not considered beneficial and is, therefore, in excess of the right. (Water Code, § 100.)

The priority of the water right is the central feature of the doctrine of prior appropriation, with the date of appropriation determining the water right's priority date. The earliest appropriator possesses the most senior right, and the last appropriator has the most junior right. When not enough water is available to meet all of the rights, those with the most senior rights are allowed to divert their full supply, with those with junior rights forced to limit or even curtail entirely their diversion of water. In most situations, however, a riparian right is senior to all appropriative rights.

Generally, an appropriative right can be transferred or modified to meet changing conditions and needs. For instance, the designated use for an appropriative right can be converted from irrigation to municipal use. An appropriative right can also be transferred or modified to serve lands not originally intended to benefit from the initial appropriation.

In these situations a major consideration in allowing the transfer or modification will be the impact on other appropriators. Harm to other appropriators

prevents transfer or modification. With respect to post-1914 appropriative rights, changes require permission from the SWRCB. Pre-1914 water rights may be changed without any prior governmental permission.

Water that exists under an appropriative right can be diverted for use outside of the watershed of origin and can be stored for use at a later time. An appropriative right can also be acquired to appropriate "foreign waters" that are not natural to a watercourse but occur through human efforts. Foreign water may be foreign in time (i.e., water stored and later released from storage), or foreign in place (i.e., water diverted from one watershed to another).

An appropriator also has the right, as long as no harm results to other appropriators, to recapture and reuse water upon lands that were originally intended to benefit from a diversion. This right extends to the use of water conserved or developed through more efficient methods of diversion, application, and use.

C. PRE-1914 APPROPRIATIVE RIGHTS

Before 1914, water rights could be acquired simply by posting and taking water from the source, or exercising control over the water and applying it to reasonable beneficial use. This was known as a "common law appropriation." In 1872, the Legislature recognized the doctrine of prior appropriation and provided for a second method of appropriating water, under which an individual could record a notice of appropriation in the county where the diversion was located. (Civil Code, § 1410-1422 [1872].) This method is called a "Code appropriation," referring to the old provisions in the Civil Code that predated the Water Commission Act of 1913. There was no need to obtain permission to exercise these water rights from any governmental authority and that continues to be the case today.

1. Statements of Water Diversion and Use

Pre-1914 appropriators are not required to obtain a state-issued license or permit. However, the Water Code requires these water rights holders to file a report known as a Statement of Water Diversion and Use ("Statement") every few years. (Water Code, §§ 5100 et seq.) No penalties are associated with failure to file these Statements, however, and thus the requirement is often ignored. The submittal of the Statement neither confers nor constitutes evidence of a right to divert or use water. (Water Code, § 5106[a].) However, in any proceeding before the SWRCB, the Statement and supplemental statements may be submitted as evidence of the facts stated in the Statement. (Water Code, § 5106[c].)



2. Scope of Appropriation

Appropriative rights, unlike riparian rights, must be quantified. An appropriative right is limited to the amount of water that can be diverted and beneficially used in a reasonable manner. With pre-1914 appropriations, the extent of actual use may be far less than the amount of the noticed appropriation, and in such cases, the historic amount and place of actual beneficial use will define the scope of the right. Similarly, the scope of the appropriation could actually be larger than the notice because before 1914 additional water could simply be taken, constituting a “common law” appropriation. In other words, even though an original pre-1914 notice of appropriation stated a certain amount of water would be diverted, the actual water right could be less or more depending on the amount of historic use.

3. Priority among Appropriators

The priority for pre-1914 appropriations relates back to the date on which the appropriator took the first substantial act to initiate the appropriation, assuming the miner or settler was diligent in bringing the project to completion and putting the water to use. In common law appropriations, this first substantial act may be no more than beginning construction of the diversion works at the site. For Code appropriations, the developer had to begin work within 60 days of recording the notice, and if he did not develop the water within that time, he would not receive the benefit of a priority date relating back to the date of recording.

4. Place and Purpose of Use

The place of use and purpose of use of pre-1914 appropriative rights is grounded in the nature of the original diversion and beneficial use. However, the place and purpose of use may be changed at any time, without permission from the SWRCB, so long as other water rights holders are not injured by the change. (See Water Code, § 1706.)

5. The Doctrine of Relation

The doctrine of relation allows for the gradual or progressive development of putting water to a beneficial use. (See *Inyo Consolidated Water Co. v. Jesse* 161 Cal. 516, 520 [1911].) This gradual or progressive development includes the construction of the delivery facilities, as well as the delivery of water for beneficial uses. An appropriator is entitled to the water used to meet his needs at the time the water was originally used, and to additional water within the capacity of the ditch, as would be required for the future development and cultivation of land, if the right were otherwise maintained. (Hutchins, *The*

California Law of Water Rights [1956], p. 118.) The additional use must be within the scope of the original intent of the appropriator. (*Haight v. Costanich* 184 Cal. 426, 431-432 [1920].)

The appropriator must put the additional water to a beneficial use within a reasonable time and with reasonable diligence. (*Senior v. Anderson* 115 Cal. 496, 503-504 [1896].) The term “reasonable time” is not defined as a specific period of time. The right to increase the use, however, could be lost by failing to make the additional use for a period of time during which another user seeks to appropriate the water. (*Trimble v. Heller* 23 Cal. App. 436, 443-444 [1913].) Whether an appropriator has exercised reasonable diligence is a question of fact for the court. (*Weaver v. Eureka Lake Co.* 15 Cal. 271, 273-274 [1860].)

Under the doctrine of relation for a pre-1914 appropriative water right, a water right priority is established from the time the first steps toward realization of the water project were accomplished. For water appropriated prior to 1872, or by the nonstatutory appropriation, the priority date was established as of the date of the notice, but the right to appropriate did not vest until the diversion works were completed and the water actually used. (*Nevada County v. Kidd* 37 Cal. 282, 311 [1869].)

In 1872, the legislature codified the doctrine of relation in Civil Code, Section 1418. If the appropriator posted a notice in the form prescribed by the Civil Code, then the priority of use of the water related back to the original posting of the notice. (Civil Code, § 1418 [1872].) This does not apply to permitted rights.

6. Forfeiture of Pre-1914 Appropriative Water Rights

Under California law, appropriative water rights may be forfeited after a period of nonuse. In this regard, Water Code, Section 1240, provides that the “appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor-in-interest ceases to use it for such a purpose the right ceases.” Water Code, Section 1241, further provides as follows:

When the person entitled to the use of water fails to use beneficially all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, for a period of five years, such unused water may revert to the public and shall, if reverted, be regarded as unappropriated public water.

Section 1241 continues by requiring that “[s]uch reversion shall occur upon a finding by the Board following notice to the permittee and a public

hearing if requested by the permittee.” This final sentence of Section 1241 presumably only applies to post-1914 appropriative water rights, given that it only refers to a “permittee.” In this regard, the SWRCB has acknowledged its lack of authority to institute a forfeiture hearing for pre-1914 water rights by stating as follows:

The Board does not have the legal authority to ultimately decide the existence or extent of a pre-1914 water right; only a court can do this. The Board may, however, make a preliminary decision regarding these issues as necessary to decide whether the Board should pursue an action for trespass pursuant to Water Code, Section 1052. (*In the Matter of Application 26056*, SWRCB D-81-1575 [18 June 1981] p. 13, n. 4.)

Thus, under these statutory provisions, when a pre-1914 water right holder fails to beneficially use all or any portion of that water right for a five-year period, the water right may be deemed forfeited and revert to the state, and may be regarded as unappropriated water. Consistent with this statutory authority, California courts have consistently applied the five-year forfeiture rule for pre-1914 appropriative water rights. (See, e.g., *Erickson v. Queen Valley Ranch Co.* 22 Cal. App. 3d 578, 582 [1971]; *Wright v. Best* 19 Cal. 2d 368, 380 [1942]; *Crane v. Stevinson* 5 Cal. 2d 387, 398 [1936]; *Smith v. Hawkins* 120 Cal. 86, 88 [1898]; see also Hutchins, *The California Law of Water Rights* [1956] pp. 293-96.) Also, a portion of the appropriative right may be forfeited without affecting the validity of the part applied to beneficial use. (*Smith v. Hawkins*, *supra*, 120 Cal., p. 88.)

7. Abandonment of Pre-1914 Appropriative Rights

All or part of a pre-1914 appropriative water right may also be lost by abandonment. Once the water right is abandoned, there can be no reversion to the appropriator because the right ceases to exist. The water then becomes available for future claims. The two requirements for abandonment are: (1) relinquishment of possession, and (2) the permanent intent to abandon the water. (*Wood v. Etiwanda Water Co.* 147 Cal. 228, 233-34 [1905].) The intent to abandon must be permanent and the appropriator must have no intention to repossess. (*Lindblom v. Round Valley Water Co.* 178 Cal. 450, 455 [1918].)

A leading commentator succinctly states the primary distinctions between abandonment and forfeiture as follows:

Statutory forfeiture ‘is entirely distinct from abandonment, which depends upon proof of an intent to permanently relinquish the posses-

sion and enjoyment of her property right.’ As stated in *Smith v. Hawkins*, ‘If an appropriator has, in fact, abandoned his right, it would matter not for how long a time he had ceased to use the water, for the moment that the abandonment itself was complete his rights would cease and determine.’ But forfeiture by nonuse for the applicable period—whether judicial or statutory—‘ends the right regardless of the appropriator’s intent.’

Intent, therefore, is an essential element of abandonment; but it is not material to a forfeiture, which may take place regardless of the appropriator’s intent. Time is not determinative of abandonment, which may take place instantly; but it is an essential element of forfeiture, because forfeiture is not effective until the expiration of the applicable period of time.

(Hutchins, *The California Law of Water Rights* [1956] pp. 297-98 [footnote citations omitted].)

8. Changing Place of Use and Purpose of Use

Prior to the Water Commission Act in 1914, the general rule was that an appropriator could change the purpose of use of a water right so long as there was no injury to other appropriators. (*City of San Bernardino v. City of Riverside* 186 Cal. 7, 28 [1921]; *Ramelli v. Irish* 96 Cal. 214, 217 [1892]; *Jacob v. Lorenz* 98 Cal. 332, 340 [1893].) The Water Code now codifies this general rule. The Water Code states that, “The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change. . . .” (Water Code, § 1701; and see *Orange County Water Dist. v. City of Riverside* 173 Cal.App.2d 137, 195-96 [1959].)

D. POST-1914 APPROPRIATIVE RIGHTS

Since 1914, appropriations of water have been obtained by applying for a permit from the SWRCB, and then by putting the water to beneficial use as prescribed in the permit. (Water Code, §§ 1225 et seq.) The beneficial use is confirmed with a license given by the SWRCB. (Water Code, § 1605.)

1. Priority

The same principles of priority, reasonableness, and “relation-back” as apply to pre-1914 appropriations apply to post-1914 appropriations, except that the date of priority of a modern appropriation is the same as the application date.

2. Scope and Uses Permitted

Licenses and permits granted by the SWRCB define quantity of the diversion or storage right, as well as the allowable place and purpose of use of the water. Any change in this regard requires a petition for change to be filed with the SWRCB, subject to protests of competing water rights holders, intervening environmental requirements, etc. (Water Code, §§ 1700–1705.)

3. Forfeiture of a Post-1914 Appropriative Right

As with pre-1914 appropriative water rights, post-1914 water rights may be lost by a period of nonuse. The legislature has settled on a period of five years of nonuse before the right is deemed forfeited. (Water Code, § 1241.) Forfeiture, however, can only occur upon a finding by the SWRCB following notice and a public hearing. (*Id.*)

4. Abandonment of a Post-1914 Appropriative Right

Post-1914 appropriative water rights may be lost by abandonment. The requirements for a finding of abandonment of a post-1914 water right are the same as that for a pre-1914 water right. (See section C (7) above and *Wood v. Eirwanda Water Co.* 147 Cal. 228, 233–234 [1905].)

5. Reports of Licensee or Permittee

Modern appropriations are given a permit or license, one of the conditions of which is periodic filing of a Report of Licensee (or Permittee) with the SWRCB, stating the type and amount of use.

6. Modifying the Post-1914 Appropriative Right

a. Change of Ownership

Generally, a change in ownership does not affect an appropriative water right, as the point of diversion, rate of diversion, place, and purpose of use define the right. The SWRCB's regulations, however, require that when post-1914 appropriative water rights are transferred to a new owner, that the previous owner inform the SWRCB of the change. (Title 23, California Code of Regulations, § 831.)

b. Change in Place or Purpose of Use

In contrast, a post-1914 appropriation made under the procedures set forth in the Water Commission Act can only be changed with permission of the SWRCB, which must find that the change involves no injury to other legal users of water. (Water Code, §§ 1700, 1702.) The water right holder must submit a change petition to the SWRCB. (Water Code, §§ 1700 et seq.)

The change petition must be noticed, with specific notice given to the Department of Fish and Game. (Water Code, § 1703.)

E. RELATIVE PRIORITIES BETWEEN APPROPRIATORS AND RIPARIANS

Generally, riparian rights holders have priority over appropriators as to any portion of the natural flow that is reasonably necessary for use and enjoyment of riparian land. (An exception occurs when the appropriation was begun before the riparian lands in question were conveyed to private ownership pursuant to a United States land patent, if the point of diversion of the appropriation was on federal land.) To determine the relative priority between riparian and appropriative rights, it is necessary to determine the date the riparian lands were settled with the intent to obtain a patented title, which fixes the riparian's date of priority. This date is then compared to the date the first appropriation commenced.

F. PRESCRIPTIVE RIGHTS

Water rights are rights in real property. Since under the general law governing real property rights, such rights may be acquired through possession or use adverse to the true owner, the courts have applied the law of adverse possession (or prescription) to water rights. A prescriptive right, therefore, is a right acquired by one who continuously and openly uses water to which someone else has the right. On the expiration of the statutory period, which in California is five years, and the payment of all appropriate taxes, the adverse user possesses the right, and the person or entity to which such use has been adverse loses the right.

The question of whether it has been legally possible to acquire a right by prescription since enactment of the Water Commission Act was the subject of litigation in *People v. Shirokow*. (*People v. Shirokow* 26 Cal.3d 301 [1980].) In that case, the California Supreme Court held that the permit process is the only means of acquiring an appropriative right, as against the State. While the holding in this case is limited to those situations where one is claiming a prescriptive right against the State, any claim of prescriptive rights to water in California is suspect since the State has jurisdiction over all surface waters subject to appropriation.

G. PUEBLO RIGHTS

Pueblo rights are a rare type of water right originating in California with the founding of the Pueblo of Los Angeles along the Los Angeles River in 1781. (*Feliz v. City of Los Angeles*, 58 Cal. 73 (1881); *City of Los Angeles v. City of San*



Fernando, 14 Cal.3d 199 [1975].) Pueblo rights apply to the municipal successors of the Spanish and Mexican pueblos. (*City of Barstow v. Mojave Water Agency*, 23 Cal.4d 1224, 1245, n11 [2000].) These rights attach to the water needs of not only the inhabitants of the original pueblo but also inhabitants of areas annexed to the city. (*City of Los Angeles*, 58 Cal. 210–11.) As such, the right pertains not only to the waters of the Los Angeles River itself but also to groundwaters of the San Fernando Valley that feed the river. (Ibid; *City of Los Angeles v. Hunter*, 156 Cal. 603, 607-08 [1909].)

Although these rights may be utilized for instream uses in limited areas, this concept has not been universally accepted. Further, if the water rights are subject to adjudication or a court decree, you may have to get approval from the court for a change in the purpose of use, place of use, or point of diversion (Water Code, § 1740). Some court decrees state specifically that the court must approve any change to the water right; other decrees are silent on issue of changes. In sum, these decrees can place limitations on the extent to which the rights may be changed or transferred, which may in turn limit the ability for the holders to dedicate such rights to instream uses.

H. TRIBAL RIGHTS AND FEDERAL RESERVED RIGHTS

Native-American tribes have a special type of water right that attaches to treaty reservations and reservations created by executive order. (A. Dan Tarlock, “Putting Rivers Back in the Landscape: The Revival of Watershed Management in the United States,” *Hastings W.-N.W. J. Env. L. & Pol.*, 6 (2000): 167, 177; *Winters v. United States*, 207 U.S. 564 [1908].) All reservations may claim implied federal reserved Indian water rights. As pre-existing or aboriginal rights, the treaty creating the reservation reserved these water rights, or the federal government, as owner of all public lands including Indian reservations, granted Native-Americans rights to the water (ibid.). These rights possess the attributes of both riparian rights (because they are based on land ownership) and appropriative rights (because the right has a priority date).

The United States Supreme Court first recognized tribal water rights in the case of *Winters v. United States*, in which the court deemed these rights superior to most state-appropriated rights because the tribal rights dated back to the creation of the reservation (ibid). Furthermore, California Water Code, Section 1241.5, exempts Native-American water rights holders (whether individuals, tribes, or the United States acting in trust for a tribe) from loss of the water rights “by nonuse, abandonment, prescription, and lack of diligence . . . for the period of five years following the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land” (Water Code, § 1241.5). Courts have recognized tribal rights

for instream flows and fisheries (ibid; *United States v. Adair*, 9th Cir. 723 F.2d 1394, (1984), cert denied, 467 U.S. 1252 [1983]), but the idea has not been universally accepted (ibid).

Similarly, federal reserved rights allow federal entities to claim any water that is necessary to fulfill the congressional purposes for which the federal reservations were created, whether or not water has yet to be put to a beneficial use. (Michael J. Cianci, Jr., et al., “The New National Defense Water Right: An Alternative to Federal Reserved Water Rights For Military Installations,” A.F.L. Rev. 48 (2000): 159, 162.) Although federal land management agencies have tried to use these rights to protect threatened watersheds in national forests and grazing lands, the U.S. Supreme Court has essentially rejected the use of federal rights for this purpose except for national parks and monuments. (Tarlock, *Hastings J. Env. L. & Pol.*, 178; *United States v. New Mexico*, 438 U.S. 696, 707 [1978].)

I. ADJUDICATED OR DECREED RIGHTS

The purpose of the statutory adjudication process is to determine all of the water rights in a stream system “whether based upon appropriation, riparian right, or other basis of right.” (Water Code, § 2501; Marybelle D. Archibald, “Appropriative Water Rights in California: Background and Issues,” Governor’s Commission to Review California Water Rights Law, Staff Paper #1 (1977): 35–41.) Interestingly, underground water supplies—other than subterranean streams flowing through known and definite channels—are not included in the adjudication process; such supplies, however, are often interlinked with the surface flow of the stream system and, in one case, the groundwater was found to be so interconnected with the system that the legislature made a specific exception to include such water in the adjudication (Water Code, § 2500.5).

To initiate adjudication, one or more claimants to water of any stream system must petition the SWRCB for determination of their water rights; the board itself cannot initiate adjudication (§ 2525). If, upon investigation, the Board finds that the “facts and conditions are such that the public interest and necessity will be served by a determination of the water rights involved,” then the Board enters an order granting the petition and proceeds with the necessary steps for determining the rights (§ 2525).

The SWRCB notifies the claimants that a statutory adjudication has commenced, and the claimants must notify the Board by a certain date if they intend to file a proof of claim—a document detailing the nature of the right claimed and the purpose for which the water is used (Water Code, §§ 2526, 2575). The Board conducts its own investigation of the use and, following a



series of information exchanges between it and the claimants, prepares a report “describing the water supply and abstracting the claim of water right of each claimant” (§ 2600). The report also includes a preliminary order establishing the individual water rights of the various claimants (§ 2603). If any claimant objects to the report and/or preliminary order, the Board must hold hearings (§ 2650).

Once the Board makes its final determination of the claimants’ water rights, it files a copy with the Superior Court in the county in which the stream system is located (§ 2750). The court sets a time for hearings, and must provide proper notice as well as the opportunity for intervention by those who had no knowledge of the adjudication (§ 2769). Following such hearings, the court enters a decree establishing “the water right adjudged to each party, the priority, amount, season of use, purpose of use, point of diversion, and place of use of the water; and as to water used for irrigation, the decree shall also declare the specific tracts of land to which it is appurtenant, together with such other factors as may be necessary to define the right” (§ 2769). The decree is then recorded in those counties “in which any part of the stream system is situated and also in the office of the board” (§ 2772). Upon subsequent changes to the water rights involved, individual claimants and/or the board may ask the court to issue supplemental decrees (§§ 2819–2820; see also § 1740).

Water rights disputes may occur between some or all of those competing for water along a stream or other body of water. If all the claimants to water rights in a particular stream are involved in a dispute, the rights to the entire stream may be settled by a process of adjudication carried out by either the court or the SWRCB. This adjudication process quantifies all the water rights along the waterway and assigns them to certain parcels of land. The resulting decree has a final, binding effect on the entire tract of land bordering and served by the stream. (See *In re Waters of Long Valley Creek Stream System*, 25 Cal. 3d 339 [1979], holding that in statutory adjudication, the state water board has the power, indeed, the responsibility, to define all water rights in area being adjudicated.)

The following California stream systems have undergone statutory adjudications resulting in a court decree: Baxter Creek, Bidwell Creek, Butte Creek, Cold Creek, Cow Creek, Hallet Creek, Indian Creek, Long Valley Creek, Middle Fork Feather River, North Fork Pit River, Oak Creek, Parker Creek, Pit River in Big Valley, Purisima Creek, Roaring Creek, San Gregorio Creek, Scott River, Seiad Creek, Shackelford Creek, Shasta River, Soquel Creek, Stanislaus River, Tule Lake Reservoir (Cedar Creek), West Carson

River, Whitewater River, and Willow Creek. See State Water Resources Control Board, Hearings Program: Water Right Determinations, available at <http://www.waterrights.ca.gov/Hearings/Adjudications.htm>.

Disputes limited to only some of the claimants for surface water may be decided in superior court, resulting in a judgment determining the respective rights of only those parties. Non-parties are not bound by such judgments.



APPENDIX B

STATE WATER RESOURCES CONTROL BOARD FORMS

A. CHANGES TO PERMITS AND LICENSES

1. Environmental Information Form (required for all petitions)
2. Petition for Extension of Time Form
3. Petition for Change Form
www.waterrights.ca.gov/forms/pet-chg.pdf
4. Petition for Change in Distribution of Storage Form
5. Petition for Correction Form
6. Petition Protest Form
7. Notice of Assignment Form
www.waterrights.ca.gov/forms/app-asgn.pdf
8. Agent Assignment Request Form
9. Request for Revocation Form

B. TRANSFER FORMS

1. Environmental Information Form (required for all transfers)
www.waterrights.ca.gov/forms/PET-EVN.pdf
2. Temporary Transfer (Water Code, Section 1725)
www.waterrights.ca.gov/forms/appform.pdf
3. Long-Term Transfer (Water Code, Section 1735)
www.waterrights.ca.gov/forms/pet-tuc.pdf

C. STATEMENT OF DIVERSION AND WATER USE

1. Forms
2. Statement of Diversion and Water Use Form
www.waterrights.ca.gov/forms/statement.pdf
3. Notice of Assignment Form
4. Agent Assignment Request Form

APPENDIX C

EXCERPTS FROM THE CALIFORNIA WATER CODE

California Water Code, Section 1707(a), (b) and (c), allow for the transfer and dedication of all or part of a water right for environmental purposes.

The State Water Resources Control Board (SWRCB) may approve the environmental water petition if, in the SWRCB's judgment, the transfer will "best develop, conserve, and utilize, in the public interest, the water proposed to be used as part of the change, whether or not the proposed use involves a diversion of water, if the board determines that the proposed change meets all of the following requirements:

- (1) Will not increase the amount of water the person is entitled to use.
- (2) Will not unreasonably affect any legal user of water.
- (3) Otherwise meets the requirements of this division."

Further, "upon the request of the petitioner, the board may specify, as part of its approval of the petition, that the water that is subject to the approval pursuant to this section shall be in addition to water that is required, if any, to be used for instream purposes to satisfy any applicable federal, state, or local regulatory requirements governing water quantity, water quality, instream flows, fish and wildlife, wetlands, recreation, and other instream beneficial uses."

Although riparian right holders do not need a permit from the state, California Water Code, Section 5101, requires most to file Statements of Water Diversion and Use so that the state can document the riparian's water use.

No statement is required for certain diversions such as from a spring which does not flow off the property on which it is located; covered by an application, permit or license to appropriate water on file with the board; regulated by a watermaster appointed by the department; among others.

§ 1706: Pre-1914 rights holders may change the purpose of use, place of use, or points of diversion without the approval of the SWRCB. Such changes may not be made, however, if they would cause injury to another legal user of water.



§ 109: The California legislature declared that the established policy of this state is to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import. The Legislature further directed the Department of Water Resources, the SWRCB, and all other appropriate state agencies “to encourage voluntary transfers of water and water rights, including, but not limited to, providing technical assistance to persons to identify and implement water conservation measures which will make additional water available for transfer.”

§ 475: The Legislature declared that voluntary water transfers between water users can result in a more efficient use of water, benefiting both the buyer and the seller. Further, it found and declared that transfers of surplus water on an intermittent basis can help alleviate water shortages, save capital outlay development costs, and conserve water and energy.

§ 106: Domestic use is the highest use of water in the state, seconded by irrigation.

California Water Code § 1605: After receiving the report of completion, the board must initiate a full inspection and examination of the works constructed and the use of water therefrom.

§ 1011(a): If an appropriative rights holder reduces the amount of water used by virtue of conservation measures, such reduction will be deemed a reasonable beneficial use of water, and in turn, will not constitute forfeiture or cessation of use.

§ 1011(b): “Water, or the right to the use of water, the use of which has ceased or been reduced as the result of water conservation efforts as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law. . . .”

§ 1011(c): After the completion of the terms of the water transfer agreement, the right to use the conserved water will revert to the transferor.

§ 1201: “All water flowing in any natural channel, excepting so far as it has been or is being applied to useful and beneficial purposes upon, or in so far as it is or may be reasonably needed for useful and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is hereby declared to be public water of the State and subject to appropriation in accordance with the provisions of this code.”

§ 1740: Any water right determined by court decree is transferable. The court determining any water right retains jurisdiction over such right may enter a supplemental decree modifying any rights involved upon motion of the board or any party with a vested water right.

§ 1241.5: Native-American water rights holders (whether individuals, tribes, or the United States in trust for any tribe) are exempted from loss of the water rights “by nonuse, abandonment, prescription, and lack of diligence . . . for the period of five years following the conveyance by the United States of an unrestricted title to the land and the water rights appurtenant to or for use on such land.”

§ 2501: The SWRCB is given jurisdiction to determine, pursuant to proceedings provided for in the Water Code, “all rights to water of a stream system whether based upon appropriation, riparian right, or other basis of right.”

§ 2500.5: “[W]ith respect to the Scott River in Siskiyou County, ‘stream system’ includes ground water supplies which are interconnected with the Scott River, but does not include any other underground water supply.”

§ 2525: Upon petition of one or more claimants to water in any stream system, the SWRCB may, upon investigation and finding that the public interest will be served by the determination of such water rights, grant the petition and make arrangements for a statutory adjudication of water rights in the particular stream system.

§ 2526: “As soon as practicable after granting the petition, the board shall prepare and issue a notice setting forth the following: (a) The facts of the entry of the order and of the pendency of the proceedings; (b) That all claimants to rights to the use of water of the stream system are required to inform the board within 60 days from the date of the notice, or such further time as the board may allow, of their intention to file proof of claim; (c) The date prior to which all claimants to rights to the water of the stream system shall notify the board in writing of their intention to file proof of claim and the address to which all subsequent notices to the claimant relating to the proceedings may be sent; (d) A statement that all claimants will be required to make proof of their claims at a time to be fixed by the board after the conclusion of its investigation.”

§ 2575: “The proof of claim shall be filed with the board on the form provided by the board and shall include all of the following: (a) The name and post office address of the claimant. (b) The nature of the right on which the claim



is based, the date upon which it was initiated, and the purpose of use. (c) A description of any works of diversion or distribution and the date such works were constructed. (d) The character of the soil and the location, area, and kind of crops irrigated, if any; the season of use; and the amount of water required and diverted. (e) The number of people served water, if any. (f) Such other facts as the board requires to show the extent and nature of the right and compliance with the law in acquiring it.”

§ 2600: “After all field investigations have been completed and the time for filing proofs of claims has expired, the board shall prepare a report describing the water supply and abstracting the claim of water right of each claimant.”

§ 2603: “The report shall include a preliminary order of determination determining and establishing the several rights to the water of the stream system, giving appropriate consideration to claims at variance with the measurements and determinations of the representatives of the board.”

§ 2650: “Within 10 days after the close of the period for filing objections, the board shall mail copies of the objections to the claimant or water user against whom the objections are directed and shall notify by registered mail the persons whose rights are significantly affected to appear before it at a time and place specified and at such time and place the objections will be heard.”

§ 2757: “At least 10 days prior to the day set for hearing, each party in interest who is aggrieved or dissatisfied with the order of determination may file with the clerk of the court notice of exceptions to the order of determination.”

§ 2780: “Any claimant who, prior to entry of the order of determination by the board, had no actual knowledge or notice of the pendency of the proceedings may, at least 10 days prior to the date set for hearing by the court or within such further time prior to the decree as the court may allow, intervene in the proceedings by filing with the court an exception to the order of determination and a proof of claim which shall contain all the matters required by this chapter of claimants who have been served with notice of the proceeding.”

§ 2781: “Upon filing his exception and proof of claim, the intervenor shall make application to the court for an order prescribing the time and manner of service of the exception and proof upon other claimants and the time within which contests of the proof may be filed with the court and served upon the intervenor.”

§ 2782: “After expiration of the time fixed by the court for filing contests, the court shall proceed to hear and determine the exception and proof of intervenor and any contest thereto in accordance as near as may be with Article 9 (commencing with Section 2750).”

§ 2783: “The court may refer the matter for such further evidence to be taken by the board as the court may direct, and may require a further determination by the board, in which event the board shall be entitled to reimbursement for expenses incurred by it in the manner provided in Article 13 (commencing with Section 2850) of this chapter.”

§ 2769: A court decree following a statutory adjudication must declare “the priority, amount, season of use, purpose of use, point of diversion, and place of use of the water; and as to water used for irrigation, the decree shall also declare the specific tracts of land to which it is appurtenant, together with such other factors as may be necessary to define the right.”

§ 2772: “A certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed for record in the office of the county recorder of each county in which any part of the stream system is situated and also in the office of the board.”

§ 2819: “Incomplete appropriations initiated by application under the provisions of the Water Commission Act or this code shall be included in the decree but shall continue to be administered by the board as in other cases.”

§ 2820: “After revocation by the board of a permit or license relating to a right included in the decree and upon completion of court review of the board’s action under Article 3 (commencing with Section 1126) of Chapter 4 of Part 1, if court review is sought, the court shall, upon motion of the board or any interested party, enter a supplemental decree denying the right involved.”

§ 5104: Supplemental statements shall be filed at three-year intervals. They must contain the quantity of water diverted and the rate of diversion by months in each of the preceding three calendar years and any change in the other information contained in the preceding statement.

§ 1725: “A permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would



have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.”

“Consumptively used” means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

§ 1202: The following constitute unappropriated water:

- (a) All water which has never been appropriated.
- (b) All water appropriated prior to December 19, 1914, which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation, or which has not been put, or which has ceased to be put to some useful or beneficial purpose.
- (c) All water appropriated pursuant to the Water Commission Act or this code which has ceased to be put to the useful or beneficial purpose for which it was appropriated, or which has been or may be or may have been appropriated and is not or has not been in the process of being put, from the date of the initial act of appropriation, to the useful or beneficial purpose for which it was appropriated, with due diligence in proportion to the magnitude of the work necessary properly to utilize it for the purpose of the appropriation.
- (d) Water which having been appropriated or used flows back into a stream, lake or other body of water.

§ 1735: “The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.”

§ 1726: “[A] permittee or licensee who proposes a temporary change shall submit to the board a petition to change the terms of the permit or license as required to accomplish the proposed temporary change.” The section further provides the required contents of such petition, the public notice requirements, as well as to which agencies the petitioner must provide a copy of a

petition. Within 10 days of the date of receipt of a petition, the SWRCB shall commence an investigation of the proposed temporary change. Potentially affected users in the stream system may file a written comment regarding a petition with the SWRCB. The SWRCB shall render a decision on the petition: 1) no later than 35 days after the date the investigation commenced, or 2) the date that the notice was published, whichever is later.

California Water Code § 1727: The method by which the SWRCB must review petitions for a temporary change of use is provided. Section 1727(b) states: “The board shall approve a temporary change if it determines that a preponderance of the evidence shows both of the following:

- (1) The proposed temporary change would not injure any legal user of the water, during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows.
- (2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.”

§ 1728: “[A] temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out. . . .”

§ 1729: “A proposed temporary change under this article shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code [regarding Environmental Quality].”

§ 1730: Repealed.

§ 1731: “Following the expiration of the temporary change period, all rights shall automatically revert to the original holder of the right without any action by the board.”

§ 1732: “The petitioner shall not initiate or increase the use of groundwater to replace surface water transferred pursuant to this article, except in compliance with Sections 1745.10 [regarding replacement of surface water with groundwater] and 1745.11 [regarding recharged groundwater].”

§ 1702: “Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved.”

§ 1736: “The board, after providing notice and opportunity for a hearing, including, but not limited to, written notice to, and an opportunity for review and recommendation by, the Department of Fish and Game, may approve such a petition for a long-term transfer where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.”

§ 386: “The board may approve any change associated with a transfer pursuant to this chapter only if it finds that the change may be made without injuring any legal user of the water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and does not unreasonably affect the overall economy of the area from which the water is being transferred.”

§ 1810: “[N] otwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use,” subject to several conditions, including prohibiting the commingling of transferred water from resulting in a diminution of the beneficial uses or quality of the water in the facility, and prohibiting the use of a water conveyance facility from injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.

§ 382: “Notwithstanding any other provision of law, every local or regional public agency authorized by law to serve water to the persons or entities within the service area of the agency may sell, lease, exchange, or otherwise transfer, for use outside the agency, either or both of the following:

- (1) Water that is surplus to the needs of the water users of the agency.
 - (2) Water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.”
- Further, the chapter does not prohibit or restrict the trans-

fer of water or water rights by local or regional public agencies pursuant to other provisions of law.

§ 1225: “Except as provided in Article 2.5 (commencing with Section 1226) of this chapter, no right to appropriate or use water subject to appropriation shall be initiated or acquired except upon compliance with the provisions of this division.”



APPENDIX D
EXCERPTS FROM THE
CALIFORNIA CODE OF REGULATIONS

TITLE 14. NATURAL RESOURCES

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California
Environmental Quality Act (CEQA)

Article 19. Categorical Exemptions

§ 15300. "Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA.

"In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents."

The following two exemptions from CEQA's environmental impact report requirements include actions taken by regulatory agencies for environmental protection. In some instances, a dedication of water for environmental restoration/enhancement will fall under a categorical exemption in CEQA, as the project will benefit the environment.

§ 15307. Actions by Regulatory Agencies for Protection of Natural Resources. "Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption."

§15308. Actions by Regulatory Agencies for Protection of the Environment. "Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption."

TITLE 23. WATERS

Division 3. State Water Resources Control Board

Chapter 2. Appropriation of Water

Article 2. Definitions

Sub article 2. Beneficial Uses

§ 659. Beneficial Use of Water.

"Beneficial use of water includes those uses defined in this subarticle. The board will determine whether other uses of water are beneficial when considering individual applications to appropriate water."

§ 660. Domestic Uses.

"Domestic use means the use of water in homes, resorts, motels, organization camps, camp grounds, etc., including the incidental watering of domestic stock for family sustenance or enjoyment and the irrigation of not to exceed one-half acre in lawn, ornamental shrubbery, or gardens at any single establishments. The use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use."

§ 661. Irrigation Use.

"Irrigation use includes any application of water to the production of irrigated crops or the maintenance of large areas of lawns, shrubbery, or gardens."

§ 662. Power Use.

"Power use means the use of water for hydroelectric and hydromechanical power."

§ 663. Municipal Use.

"Municipal use means the use of water for the municipal water supply of a city, town, or other similar population group, and use incidental thereto for any beneficial purpose."

§ 664. Mining Use.

"Mining use means any use of water is for mining processes such as hydraulic-ing, drilling, and on concentrator tables."

§ 665. Industrial Use.

"Industrial use means using the use of water for the purposes, not more specifically defined herein, of commerce, trade or industry."



§ 666. Fish and Wildlife Preservation and Enhancement Use.

“For purposes of specifying a beneficial use in an application to appropriate unappropriated water, fish and wildlife preservation and enhancement use means using water to maintain or provide habitat or other benefit for fish and wildlife by taking water under control as in the following examples:

- (a) The collection or diversion of water to storage for either retention in the reservoir or release downstream for the purpose of preservation or enhancement of fish or wildlife; or
- (b) Direct diversion of water for the purpose of preservation or enhancement of fish or wildlife.

This category of water use includes the use of water for the raising of fish or other organisms for scientific purposes or release in the waters of the state.”

§ 667. Aquaculture Use.

“Aquaculture use means the use of water for raising fish or other organisms for commercial purposes, or large scale private use in which the fish or organisms will not be released in waters of the state.”

§ 668. Recreational Use.

“Recreational use means the use of water for resorts or other recreational establishments, boating, swimming, and fishing, and may include water which is appropriated by storage and either retained in the reservoir or released downstream to support these purposes. Use of water at a camp ground or resort for human consumption, cooking or sanitary purposes is a domestic use and irrigation of golf courses is an irrigation use.”

§ 669. Stockwatering Use.

“Stockwatering use means the use of water for commercial livestock.”

§ 670. Water Quality Use.

“Water quality use includes appropriation of water by storage to be released for the purpose of protecting or enhancing the quality of other waters which are put to beneficial uses.”

§ 671. Frost Protection Use.

“Frost protection use means the application of water to crops by fine sprays, mists, or sprinklers for the purpose of preventing damage by frost.”

§ 672. Heat Control Use.

“Heat control use means the application of water to crops by fine sprays, mists, or sprinklers for the purpose of preventing damage by high temperatures.”

TITLE 23. WATERS

Division 3. State Water Resources Control Board

Chapter 2. Appropriation of Water

Article 15. Changes in Point of Diversion,
Place of Use, or Purpose of Use

§ 794. Petition Information and Map Requirements.

“(a) A petition for change(s) submitted by a permittee or licensee, or submitted pursuant to Water Code Section 1740 by a holder of a water right determined under Water Code Section 2500 et seq. after January 1, 1981 shall identify the amount(s) and holder(s) of the right(s) involved and shall include the following information and map(s):

- (1) The amount(s) of water which would have been diverted, consumptively used, or stored under the water right in the absence of the proposed change(s), (a) during the period for which the change is requested, or (b) in a maximum year if the change is permanent;
- (2) The amount(s) of water proposed for change, transfer or exchange;
- (3) The existing and the proposed purpose(s) of use of water;
- (4) The existing and the proposed point(s) of diversion and rediversion, and the existing and proposed location(s) of any return flow;
- (5) The existing and the proposed place(s) of use of the water for various purposes of use;
- (6) The existing and the proposed diversion, release and return flow schedules if stored water is involved or if the streamflow regime will be changed;
- (7) Any changes in property ownership(s) involved, and the point(s) of diversion and place(s) of use of other known users of water who may be affected by the proposed change(s);
- (8) Information identifying any effects of the proposed change(s) on fish, wildlife, and other instream beneficial uses;
- (9) Information identifying any effects of the proposed change(s) on other known users of water, including identification in quantitative terms of any



projected change in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the streams affected by the proposed change(s);

(10) The parties involved in the proposed change, transfer or exchange;

(11) Map(s) prepared in accordance with Article 7 which describe the proposed change(s), delineate any additional information required by Items (4), (5), and (7) above, and show the hydrologic basin of origin and the streams which could be affected by the proposed change(s);

(12) The proposed place(s) of use for irrigation may be listed as net acreage(s) within gross area(s) shown on a map submitted with the petition.

(b) Water right holders proposing a change in point of diversion, place of use or purpose of use shall provide preliminary information and map(s) required by subdivision (a) to, and shall request consultation with, the Department of Fish and Game and the appropriate Regional Water Quality Control Board regarding the potential effects of the proposed change(s) on water quality, fish, wildlife, and other instream beneficial uses.

(c) Before approval of a change petition, any water right holder petitioning for a change in point of diversion, place of use or purpose of use shall provide to the board all comments of the Department of Fish and Game and the Regional Water Quality Control Board in response to the request for consultation required by subsection (b).

(d) The petition for change(s) will not be accepted for filing unless it contains all of the information required by subdivision (a) and proof that a copy of the petition has been served on the Department of Fish and Game.”

TITLE 23. WATERS

Division 3. State Water Resources Control Board

Chapter 2. Appropriation of Water

Article 19. Changes of Ownership and of Address-Notices

§ 831. Notice to Board of Changes in Ownership.

“When rights under an application, permit, or license are transferred, a statement to that effect, signed by the previous owner, shall be filed immediately with the board, referring to the number of the application and stating the name and address of the new owner. Thereafter, notices and correspondence concerning the application, permit, or license will be sent to the new owner designated in such statement.”



APPENDIX E SUGGESTED READING

- Hundley, Norris, Jr., *The Great Thirst, Californians and Water: A History*. Berkeley: University of California Press, rev. ed. 2001, 763 pp.
- Hutchins, Wells A., *The California Law of Water Rights*. Sacramento, California: Sacramento Office of the California State Engineer, 1956.
- Landry, Clay J., *Saving Our Streams Through Water Markets: A Practical Guide*, 1998. Available from the Political Economy Research Center, Bozeman, Montana, www.perc.org.
- National Research Council, Committee on Western Water Management. *Water Transfers in the West: Efficiency, Equity, and the Environment*. Washington, D.C.: National Academy Press, 1992, 300 pp.
- Reisner, Marc P., *Cadillac Desert: The American West and Its Disappearing Water*. Viking Penguin USA, rev. ed. 1993, 608 pp.
- State Water Resources Control Board, Division of Water Rights. *A Guide to Water Transfers*, Sacramento, California: California Environmental Protection Agency, July 1999 [draft], 84 pp.
- Water Education Foundation, *Layperson's Guide to Water Rights Law*, updated ed. 2000. Available from the Water Education Foundation, Sacramento, California, www.wef.org.

APPENDIX F AGENCY CONTACT INFORMATION

- | | |
|---|--|
| U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825
916-978-5100
www.mp.usbr.gov | California Department of Water
Resources Water Transfers Division
1416 Ninth Street
Sacramento, CA 95814
Office of Water Transfers
916-651-7051
www.water.ca.gov |
| U.S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, CA 95825
916-414-6600
www.pacific.fws.gov | State Water Resources Control
Board Division of Water Rights
901 P Street
Sacramento, CA 95814
916-657-2170
www.waterrights.ca.gov |
| U.S. Bureau of Land Management
2800 Cottage Way
Suite W1834
Sacramento, CA 95825
916-978-4419
www.ca.blm.gov | CALFED Bay/Delta Authority
1416 Ninth Street Rm 1155
Sacramento, CA 95814
916-657-2666
www.calfed.water.ca.gov |
| U.S. Forest Service
1323 Club Drive
Vallejo, CA 94592
707-562-8737
www.fs.fed.us | Natural Resource Conservation
Service NRCS – CA Office
430 G Street #4164
Davis, CA 95616-4164
530-792-6500
www.ca.nres.usda.gov |
| National Marine Fisheries Service
501 West Ocean Blvd.
Long Beach, CA 90802
562-980-4000
www.nmfs.noaa.gov | United States Geological Survey
Water Resources Division
6000 J Street
Placer Hall
Sacramento, CA 95819-6129
916-278-3000
www.ca.water.usgs.gov |
| California Department of
Fish and Game
1416 Ninth Street
Sacramento, CA 95814
916-445-0411
www.dfg.ca.gov | |
| www.tpl.org | |



APPENDIX G SAMPLE DEED

FOR A VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged.

GRANTOR, does hereby grant and convey to Grantee those pre-1914 appropriative water rights in [Name of County] California, described as follows:

All rights, title and interest in and to [quantity] feet per second (“cfs”) of water, not to exceed _____ acre-feet annually, that is an allocated proportion of the pre-1914 appropriative water rights, obtained pursuant to a Notice of Water Right filed by [name] dated [date] and recorded on [date] in the office of the County Recorder of [name of county] in Book [number] Records, at page XX, to waters flowing in [name of watercourse]. The [quantity] cfs of water annually granted herein is to the first [quantity] cfs out of the total water right possessed by Grantor based upon the Notice of Water Right and shall be superior in priority to any pre-1914 appropriative water rights that Grantor continues to possess that are derived from the Notice of Water Right dated [date], as that appropriation was allocated to Grantor’s successors in interest.

Together with all necessary and reasonable access easements to and from all applicable points of diversion, including all water conveyance facilities.

APPENDIX H REQUIREMENTS FOR TRANSFER PETITIONS

A petition for change(s) submitted by a permittee or licensee must identify the amount(s) and holder(s) of the right(s) involved and include the following information and map(s):

- (1) The amount(s) of water which would have been diverted, consumptively used, or stored under the water right in the absence of the proposed change(s), (a) during the period for which the change is requested, or (b) in a maximum year if the change is permanent;
- (2) The amount(s) of water proposed for change, transfer or exchange;
- (3) The existing and the proposed purpose(s) of use of water;
- (4) The existing and the proposed point(s) of diversion and rediversion, and the existing and proposed location(s) of any return flow;
- (5) The existing and the proposed place(s) of use of the water for various purposes of use;
- (6) The existing and the proposed diversion, release and return flow schedules if stored water is involved or if the stream flow regime will be changed;
- (7) Any changes in property ownership(s) involved, and the point(s) of diversion and place(s) of use of other known users of water who may be affected by the proposed change(s);
- (8) Information identifying any effects of the proposed change(s) on fish, wildlife, and other instream beneficial uses;
- (9) Information identifying any effects of the proposed change(s) on other known users of water, including identification in quantitative terms of any projected change in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the streams affected by the proposed change(s);



- (10) The parties involved in the proposed change, transfer or exchange;
- (11) Map(s) prepared which describe the proposed change(s), delineate any additional information required by Items (4), (5), and (7) above, and show the hydrologic basin of origin and the streams that could be affected by the proposed change(s);
- (12) The proposed place(s) of use for irrigation may be listed as net acreage(s) within gross area(s) shown on a map submitted with the petition.

APPENDIX I
ORGANIZATIONS THAT TRAIN AND/OR CERTIFY APPRAISERS

Appraisal Institute, www.appraisalinstitute.org

The American Society of Farm Managers and Rural Appraisers,
www.calasfmra.com

The National Association of Independent Fee Appraisers, www.naifa.com

The American Society of Real Estate Appraisers, www.appraisers.org

The Foundation of Real Estate Appraisers, www.frea.com

The National Association of Real Estate Appraisers,
<http://expertpages.com/org/narea.htm>

National Association of Master Appraisers, www.masterappraisers.org

