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CHAPTER SEVEN

Identifying a Transferable Water Right

All surface water rights, excluding riparian rights, are transferable. This includes both pre- and post-1914 appropriative rights. However, not all rights are *easily* transferred. Investigating the legitimacy of a right and whether the particular type of water right is eligible for transfer and dedication under the Water Code for an environmental purpose is the next step in the process.

According to the SWRCB's *Guide to Water Transfers*,¹ there are at least four definitions of transferable water, depending on the nature of the water being transferred, and SWRCB's step-by-step decision tree is included to help distinguish between them. In transferring a water right to benefit the environment you will need to consider the historic uses of the water, including place and purpose of use and conveyance issues. You must also make sure that the transfer will not injure a legal user of water or have an unreasonable effect on fish and wildlife.²

There are multiple ways in which water can be made available for transfer, including conservation, water recycling, and conjunctive use (i.e., using an

alternative supply such as groundwater to replace use of surface water). At the same time, multiple factors can confound your ability to successfully implement a transfer, including laws and regulations, capacity and wheeling (transport) issues, and cost or other market factors. With these potential hurdles in mind, the first step in acquiring transferable water is to identify users who have valid water rights and who may be willing to sell or donate those rights. The tasks of verifying the validity of the right and addressing legal, administrative, and market issues are discussed in later chapters.

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LOCATING AVAILABLE WATER



Numerous methods exist to help you identify water rights that may be acquired for environmental purposes. What method you employ will depend on the specific circumstances of your project. In general, the best places to start your research are the SWRCB's water right registry database, the paper files at the SWRCB's Division of Water Rights, and local water users and water agencies such as irrigation districts. The division has information in electronic and non-electronic form. The latter includes "spot maps," which are based on USGS quad maps and are available for the entire state. Together, the databases and spot maps identify all of the pre- and post-1914 appropriate rights and the riparian rights for which a water right holder has filed a Statement of Water Diversion and Use.

You can access the electronic data either by inserting the name of the right holder or the reference number of the water right into the search engine, or by using a geographic information system (GIS), which lets you click on a map to identify the water rights associated with a particular spot on the map. You can then easily download the computer database of the water rights information. This can be particularly useful if your investigation involves a large geographical area or there are numerous water right holders. To ensure that your computer system is compatible, check with the SWRCB staff to determine which computer programs the Division of Water Rights uses.

It will be helpful to obtain a copy of the USGS quad maps for the area that you are interested in reviewing. Then as you review the division's maps, you

can transfer the information to your copy, saving yourself time and effort later in the process.

If your investigation involves a large geographical area or there are numerous water right holders, it is useful to download the SWRCB's computer database of water rights information.

The SWRCB maintains a physical file for each post-1914 appropriate water right. Each water right is assigned an application number when the applicant files the original application. This number stays with the water right, even after the SWRCB issues a water right permit or license. Therefore, the easiest way to access information is through this number. Both the electronic database and the spot maps provide the reference number with which you can request the file or microfiche for that water right from the SWRCB.

REVIEWING THE SWRCB'S APPLICATION FILES



The SWRCB's files usually provide you with the right holder's name and address, as well as additional information about the right that will help you determine what is available. Generally, this will include any statements of protest related to the application; information from any hearings that occurred in relation to the application; the SWRCB decision or order granting the water rights permit; the license issued; the Reports of Permittee or Reports of Licensee; and any requests to change the purpose of use, place of use, or points of diversion. This information will tell you the quantity of water claimed for a particular water right and how much water is currently being used and for what purpose. The files also identify the timing of the diversion (for example, the season in which it takes place) and the point at which the diversion occurs. The division's file staff can help you access this information.

These reports provide a relatively accurate picture of how much water has been put to reasonable and beneficial use. There are many instances in which the permittee was not able to utilize the entire amount of water designated in the permit or, over the years, reduced the quantity of water used due to a reduced need or conservation. These reports can indicate how much water has historically been used and how much may be available for acquisition.

You will want to review the water right application (for post-1914 right





holders) or the Statement of Water Diversion and Use (for riparian and pre-1914 right holders) that is stored in the file. When reviewing the statements, keep in mind that the claimed water right is just that, a claimed right. The extent and validity of the right must still be verified through further investigation. Therefore, you should view the information contained in the statements only as a starting point for identifying and researching water rights and holders of water rights.

STATEMENTS OF WATER DIVERSION AND USE



As mentioned, the Water Code requires that every individual or entity who diverts water under a pre-1914 appropriative right or a riparian right must file a Statement of Water Diversion and Use with the SWRCB. The diverter also must file supplemental statements every third year.³ However, because there is no penalty for failing to file, some right holders do not, and therefore you should not rely on these statements as your only source of information to identify all pre-1914 rights in a given area.

The statements identify the water right holder, the priority of the water right (whether the right holder has a senior versus junior claim to the water), the season of diversion, the quantity of the water or rate of diversion claimed, the purpose and place of use, and the point of diversion. There also is a section in which the water right holder can identify the amount of water allocated that has not been used (for example, if water was not used due to a change in cropping patterns or a change in irrigation efficiency). This conserved water, if properly documented in a supplemental statement, can be transferred.⁴

The next steps in the process are to determine the validity of a water right claim—and in cases where a claim was determined to be valid—to contact the water right holder. We address these steps in the next chapter.

1. *California State Water Resources Control Board, Division of Water Rights, A Guide to Water Transfers* (draft) (1999), available at <http://www.waterrights.ca.gov/watertransfer/watertransfer.htm>.
2. *Id.* A “water transfer” is defined as changing the allocation of water among water users.
3. CAL. WATER CODE § 5104 (Deering 2003).
4. *Id.* § 1011(a).