



An Overview of California's Water Rights Laws

**GEOHERMAL LEASING , UNITIZATION, &
WATER USE LEGAL ISSUES WORKSHOP**

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So much information, so little time!



Definition of geothermal resources in CA.



Relationship between geothermal & water rights



Brief history of CA water rights



CA surface water



CA groundwater



Drought related impacts/curtailment issues



Definition of Geothermal Resources

- For the purposes of this chapter, "geothermal resources" shall mean
 - the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas or other hydrocarbon substances. (emphasis added)
 - Per CA CAL. PRC. CODE § 6903. See more at:
<http://codes.lp.findlaw.com/cacode/PRC/1/d6/2/3/5.5/s6903#sthash.iZwH0Ne7.dpuf>



Relationship between CA Geothermal Resources and Water Rights

CA Division of Oil
Gas & Geothermal
Resources



State Water
Resources Control
Board



In the beginning...



1849 - The Gold Rush, EUREKA!

- Water rights were influenced by the invasion of thousands of gold miners in 1849.
- Miners applied “finders-keepers” rule to water like their claims.
- “First in time, first in right” was the rule with the first miner posting the owner.



1850 - CA becomes 31st State

- First water law was the common law of **riparian rights**.
- 1851 legislature legalized an **appropriative** water rights system.
- Conflicts with dual water right system caused legal disputes due to requirements of the **Public Trust Doctrine**.



What is the Public Trust Doctrine?

- Adopted by English Common Law-considered the oldest “environmental law”.

Protection of:

- Beneficial uses
- Fishing,
- Navigation,
- Commerce on waterways
- Recreational
- Environmental benefits



More -Public Trust Doctrine

- Holds that certain resources are above private ownership and are held for the benefit of the People.
- State owns all of the water (CA Constitution & Water Code).
- Rights are *usufructuary* and pertain to the **use** of the water and not actual **ownership** (CA Constitution).



Water Law Basics - Surface Water

- California law recognizes three major types of surface water rights:
 1. Riparian rights,
 2. Pre-1914 appropriative rights (Senior),
 3. Post-1914 appropriative rights (Junior).
- Duel Rights (The CA Doctrine – blending of Appropriative & Riparian)



CA Water Regulating Agencies

- **Surface Waters/Water Rights** – State Water Resources Control Board.
- **Ground Water** – Also State Water Resources Control Board.
- **Water Quality** – State Regional Water Quality Control Boards, (Fed. Clean water Act; CA Porter-Cologne Water Quality Control Act.)
- **State Water Project** - (Sac.Delta/San Joachin Valley)- Dept. of Water Resources



Riparian Land & Rights

- Right to use the natural flow of water on riparian land that touches a lake, river, stream, or creek.
- Riparian rights do not require permits, licenses, or government approval.
- Title cannot be lost through non-use.
- Rights are subject to a “Reasonable and beneficial use” clause.
- Riparian rights remain with the parcel when it changes hands.



More About Riparian Rights

- Eastern states recognize riparian rights (English Common Law); CA and OK are the only Western states that do.
- Riparian rights water cannot be used on adjacent parcels, must be used on the parcel with the right.
- Riparian rights do not entitle a water use to divert water to storage in a reservoir for use in the dry season



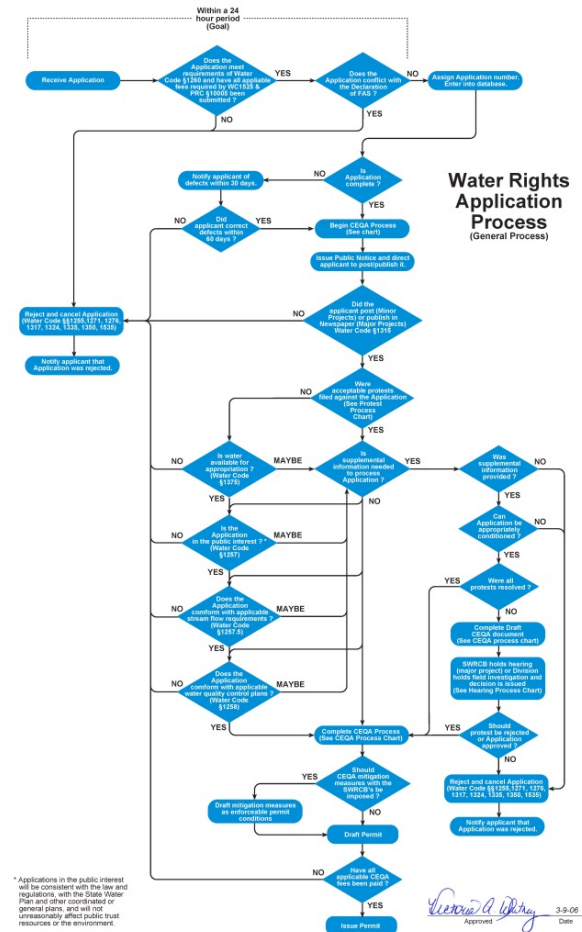
Appropriative Water Rights (Doctrine of Prior Appropriation)

- Surface water allocations are getting harder to obtain.
- CA is estimated to have allocated >5x more surface water than it has in an average year (UC Davis/UC Merced Report 2014).
- Pueblo Rights - a municipal right based on Spanish and Mexican law, not common.
- Prescriptive rights – uncommon, granted by court only.



California Water Rights Application Process

- Detailed application
- Requires CEQA process
- Dedicated budget
- Patience – Typically 3-5 yr.



Water Law Basics- Groundwater

- California law was absent for 164 years on groundwater until Tues. Sept. 16, 2014.
- Last week Governor Jerry Brown signed a legislative package of 3 groundwater bills, (SB 1168, SB 1319 & AB 1739)
- California is the last western state to regulate groundwater.



How Do You Get a Ground Water Right?

- Extract the water and use it for a beneficial purpose. No formal permit needed, but this may change!
- One exception: Use water from a “subterranean stream flowing in known and definite channels”.
- If used on land over the groundwater basin you have an Overlying Groundwater Right, which is paramount to non-overlying land.
- Use the water somewhere else and you have an Appropriative Groundwater Right.



Groundwater Laws :

- Always check with local authorities before pumping.
- State does have the right to stop unreasonable uses of groundwater or to stop groundwater diversions that harm state resources, like fisheries.
- New groundwater laws will eventually assert more control over water wells.



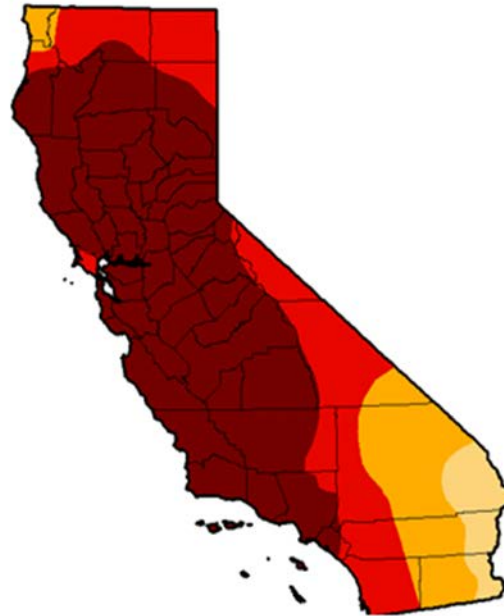
New Groundwater Laws Will:

- Take effect in January, 2015;
- Authorize local agencies to develop sustainable groundwater management plans in the next 5-7 years;
- Allow pumping to continue until 2020;
- Will keep personal information related to extraction confidential.

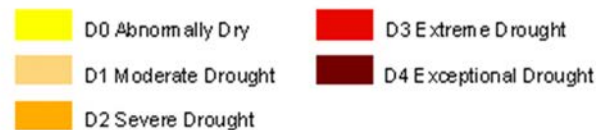


We're in a Drought

U.S. Drought Monitor | California
September 16, 2014



Intensity:



*The Drought Monitor focuses on broad-scale conditions.
Local conditions may vary. See accompanying text summary
for forecast statements.*

SOURCE: MICHAEL BREWER | NCDC | NOAA

 CNBC



Subsidence in Central Valley

- Ground Water over pumping effects
- Subsidence nearly 30 feet/9meters in 52 years shown by the photo.
- 40% of CA drinking water comes from groundwater /60% during a drought.



A pole is marked with the land levels in Mendota, California, showing the drastic sinking of the land for nearly a century.

Drought Impacts 2014

- Folsom Lake
- Lake Shasta



Conclusions

- Geothermal resources are not water in CA.
- Determine water sources/needs in the early stages of a project.
- Identify water sources/costs.
- Surface waters : Riparian/Appropriative
- Ground water protection (new laws)
- Drought impacts drive up water availability and costs.



References

- Water Rights Application Process:
 - http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml
- Definition of Geothermal Resources, CA Public Resources Code:
 - <http://codes.lp.findlaw.com/cacode/PRC/1/d6/2/3/5.5/s6903>
- Good information for non-lawyers:
 - <http://www.watereducation.org/publication/layersons-guide-water-rights-law>

