

California Water Management Legal and Institutional Framework

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Purpose of Presentation

- 1) Key concepts for water law context
- 2) Framework of Federal and State environmental and water laws/ Institutions
 - A) Water Management
 - B) Water Quality
 - C) Endangered Species
 - D) Delta
 - E) Water and Environmental Review
- 3) Agency Overview
- 4) Key Players
- Acronym Bingo!



1) Key Concepts

- Multi-Level Compliance
- Delegation
 - Legislature vs Agencies
 - State Implementation of Federal Laws
- Federalism/ State's Rights



Must Comply with All Laws and Doctrines Simultaneously

Reasonable Use and Public Trust Doctrine



Legislation vs Agencies

- Legislature makes laws
 - Federal example: United States Code (USC)
 - State example: Public Resources Code (PRC)
- Agencies regulate, implement & enforce the law
 - Federal: Administrative Procedures Act (APA)
 - State: California Administrative Procedures Act
- Effective participation



2) Framework of State Environmental and Water Laws

- Federal
 - Reclamation Acts, Central Valley Project (CVP)
 - Clean Water Act (CWA)
 - Safe Drinking Water Act
 - Endangered Species Act
 - National Environmental Policy Act (NEPA)
- State
 - State Water Project (SWP)
 - Porter-Cologne Water Quality Control Act
 - California Endangered Species Act (CESA)
 - California Environmental Quality Act (CEQA)



A) Water Management

- Store and convey Water for multiple purposes
- US Bureau of Reclamation (USBR/ BoR)
 - Central Valley Project (CVP)
 - Reclamation Acts, Central Valley Project Improvement Act (CVPIA)
- Department of Water Resources (DWR)
 - State Water Project (SWP)





B) Water Quality: CWA, Safe Drinking Water Act, Porter-Cologne

- Law: CWA (33 USC § 1251 et seq. (1972)
 - Pollutant discharge to Waters of the United States
- Agencies share administration and enforcement authority
 - Environmental Protection Agency (EPA)
 - National Pollution Discharge Elimination System (NPDES)
 - U.S. Army Corps of Engineers (USACE/ Corps)
 - Section 401, Section 404



CWA

- Delegation
- NPDES combined with Waste Discharge Requirements (WDR) for water quality standards
- California EPA (Cal EPA)
- State Water Resources Control Board (SWRCB/ Water Board)
- Regional Water Quality Control Boards (Regional Boards/RWQCB)



C) Federal: Safe Drinking Water Act

- 42 USC § 300 (f) et seq. (1974)
- CWA authorizes EPA to set water quality standards for drinking water
- EPA regulations have legally enforceable standards for certain contaminants
 - 40 CFR §§ 141-143



State: Safe Drinking Water Act

- EPA delegated authority to CA
 - SWRCB, Division of Drinking Water
 - Public Water Systems/ Health
- Public Water Systems
 - System for provision to public of water for human consumption
 - 15 + connections, or 25+ people



State: Porter-Cologne Water Quality Control Act

- California Water Code §13000 *et seq.* (1969)
- Grants SWRCB authority over CA water quality
- Establishes 9 Regional Water Quality Control Boards (RWQCB) by water basin
 - Water quality control plans, Certificates, NPDES permit
 - Implement CWA, Section 401 and Section 404



C) Endangered Species Acts

- Federal Endangered Species Act
 - 16 USC §§ 1531- 1544 (1973)
 - Listing of species and habitat
 - Section 7
 - US Fish and Wildlife Service (FWS)
 - National Marine Fisheries Service (NMFS)
 - Biological Assessment (BA)
 - Biological Opinion (BiOp or BO)
 - Reasonable and Prudent Alternative (RPA)



ESA

- Section 9
 - Take prohibition
 - Habitat modification as take
- Section 10
 - Incidental Take Statements (ITS)
 - Habitat Conservation Plan (HCP)



California ESA (CESA)

- CA Fish & Game Code § 2050 *et seq.* (1984)
 - California Department of Fish and Wildlife (DFW)
- State agencies consult with DFW to ensure actions will not jeopardize listed species
- Differences with ESA
 - Same species, different listings
- Different terms from ESA: See handout





DELTA SMELT



LEAST BELL'S VIREO



D) Delta Reform Act

- Delta Reform Act
 - Legislative package: SB X 7 1 (2009)
 - CA Water Code § 85054
 - Co-equal goals
 - New standards for groundwater monitoring, statewide water conservation, enforcement of Delta diversions
- Delta Stewardship Council
- Delta Conservancy
- Delta Watermaster



E) Environmental Review Laws

- National Environmental Policy Act
 - 42 USC § 4321 *et seq.* (1970)
 - Council on Environmental Quality (CEQ) regulations
 - 40 CFR §§ 1500-1508
- Federal agency decision on discretionary action
- Environmental impacts
 - Environmental Impact Statement (EIS)
 - Alternatives
 - Mitigation



Environmental Review, continued

- California Environmental Quality Act (CEQA)
 - Public Resources Code § 21000 *et seq.* (1976)
 - CA Code of Regulations (CCR) 15 CCR § 15000 *et seq.*
 - Project: activity undertaken, approved, or financed by a state or local government agency
 - Environmental Impact Report (EIR), Mitigated Negative Declaration (MND), Negative Declaration (ND)
 - Alternatives
 - Mitigation Monitoring and Reporting Program (MMRP)
- Water and Land Use: identify water supply for project, Water Code § 10910 *et seq.*



NEPA and CEQA

- See handout
- Joint NEPA/ CEQA documents common
- Federal nexus such as funding triggers NEPA



Laws and Doctrines Covered Elsewhere

- CA Constitution: Reasonable Use, Article X, Section 2
- Sustainable Groundwater Management Act (SGMA)
- Ocean and Fisheries Protection and Management Laws
- Timber Harvest Plans
- Water Code: Section 1211 (Recycled Water)
- Fish & Game Code: Section 1602, Streambed Alteration Agreements
- Fish and Game Code: Section 5937, 5946 Dam Operations/Flow
- Water Rights
- Water and Land Use/ Development Requirements
- Public Trust Doctrine, National Audubon Society v. Superior Court



SHORT BREAK



3) Federal Agencies

- Council on Environmental Quality (CEQ)
- U.S. Department of the Interior (DOI)
 - Fish and Wildlife Service (FWS)
 - U.S. Bureau of Reclamation (BoR/ USBR/ Bureau)
- U.S. Environmental Protection Agency
 - Region 9
 - Office of Water
- U.S. Department of Commerce
 - National Oceanic and Atmospheric Administration (NOAA)
 - National Marine Fisheries Service (NMFS)

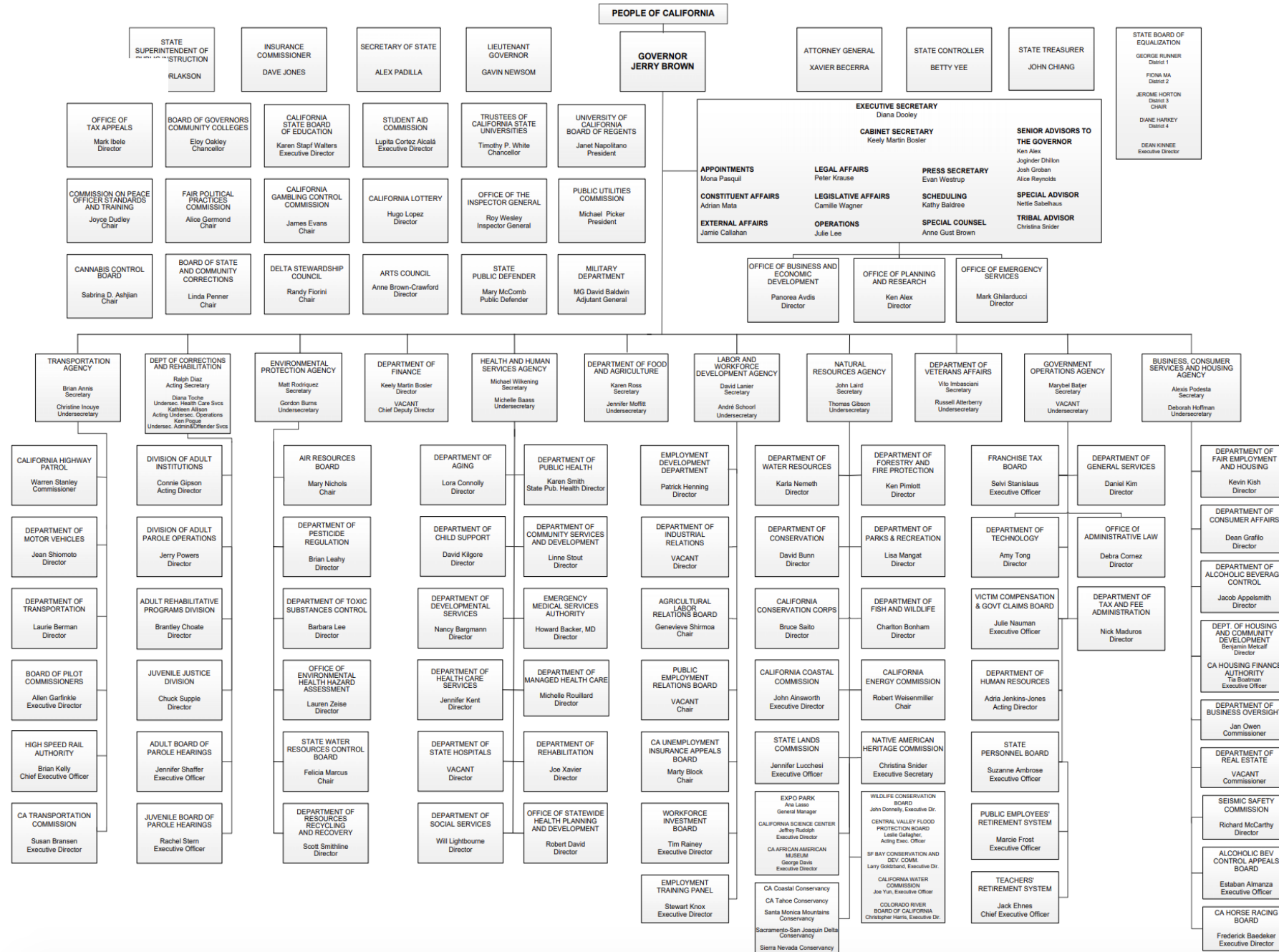


State Agencies

- Cal EPA
 - Water Board
 - Division of Drinking Water
 - Water Rights
 - Regional Water Boards
- Natural Resources Agency
 - DWR
 - Fish and Wildlife
- California Public Utilities Commission (CPUC)



CALIFORNIA STATE GOVERNMENT – THE EXECUTIVE BRANCH





State Water Resources Control Board Members



Other Agencies

- Governor's Office of Planning and Research
- Office of Environmental Health Hazard Assessment (OEHHA)
- Department of Pesticide Regulation (DPR)
- Flood Protection Boards
- California Water Commission
- Public Lands Commission
- Groundwater Sustainability Agencies (GSAs)
- Local Agency Formation Commission (LAFCO)
- Division of Safety of Dams
- Coastal Commission



Water Providers

- Regional and Local Water Districts
 - Public Special Districts and Water Districts
 - Duty to provide water under reasonable terms
 - Diversity among Districts
- California Public Utilities Commission (CPUC)
 - Privately-owned utilities
 - Advance approval from CPUC for water rates



4) Key Players

- Limited Resource, Multiple Uses and Goals
- Local Governments
- Non-Governmental Organizations (NGO's)
 - Environmental
 - Environmental Justice



Key Players, continued

- Water Agencies
 - Association of California Water Agencies (ACWA)
 - California Rural Water Association (CRWA)
 - Northern California Water Association (NACWA)
- Agricultural Interests: CA Farm Bureau
- California Native American Tribes (CNAT)
 - State and Federally Recognized
- Think Tanks
 - Public Policy Institute of California
 - University of California Centers



Recognition of Bingo Winners

- Use your winning acronyms in a sentence for the grand prize!



Thank You!

For more information, please visit us at

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