

Water 101 – The Basics and Beyond
Legal & Institutional Management
Framework

Water Education Foundation
February 5, 2015

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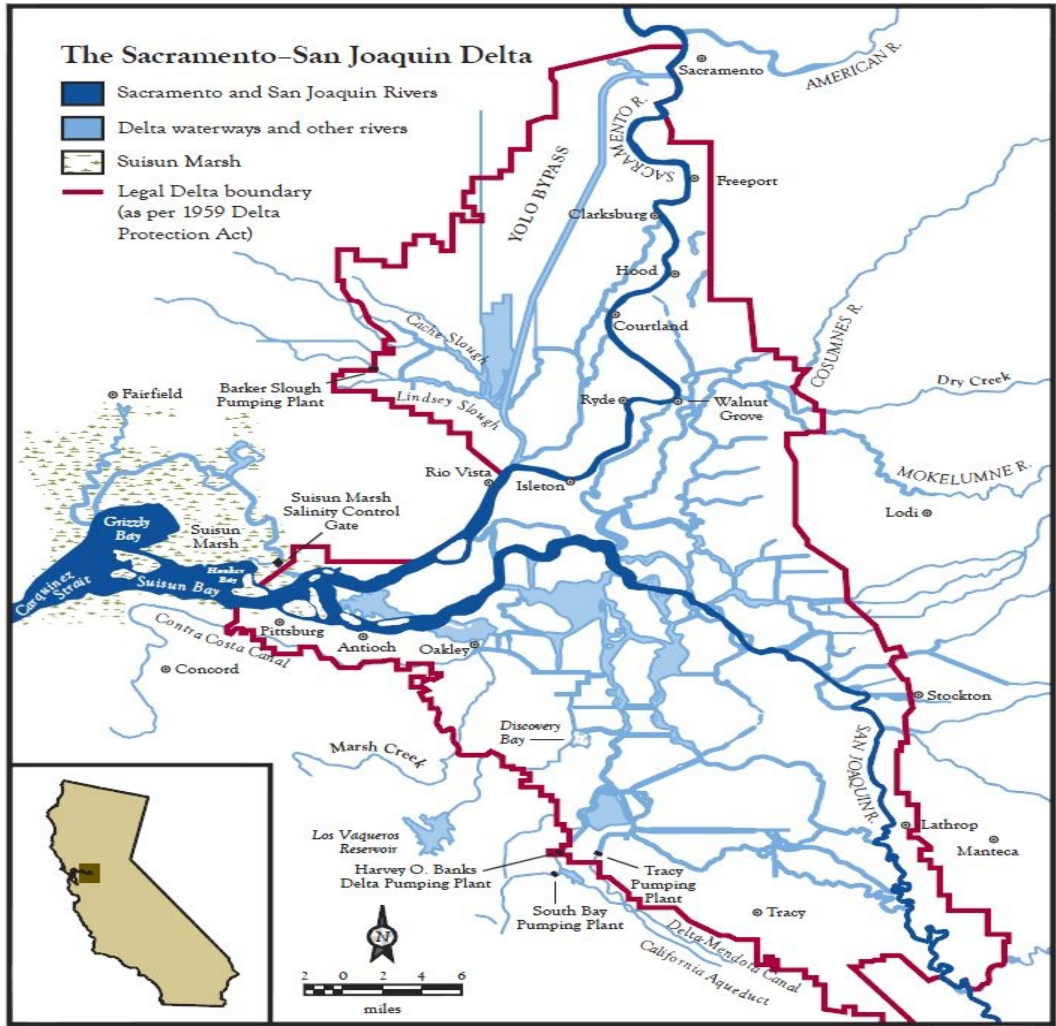
Overview

- Water Management Institutions and Stakeholder Groups
 - Government Agencies & Water Providers
 - Major Constituency Groups
- Summary of Governing Laws
 - Key Points of Controversy

California's Water Infrastructure



San Joaquin-Sacramento River Delta



Water Management Institutions and Stakeholder Groups

- Government Agencies & Water Service Providers
- Major Constituency Groups

Government Agencies - State

- Department of Water Resources (DWR)
 - **Mission:** “To manage the water resources of California in cooperation with other agencies, to benefit the State’s people, and to protect, restore, and enhance the natural and human environments”
 - Operates & maintains the State Water Project (SWP), which delivers water to 29 water agencies pursuant to long-term contracts
 - Holds contracts with water users/providers for delivery of SWP water

Government Agencies – State, cont'd

- DWR—Division of Safety of Dams: reviews and approves plans and specifications for the design of dams and conducts annual inspections of dams
- Central Valley Flood Protection Board: regulatory authority over state-federal flood control system (levees) and construction activities within flood zones

Government Agencies – State, cont'd

- State Water Resources Control Board and Regional Boards
 - **Mission:** “to preserve, enhance, and restore the quality of California’s water resources, ensure their proper allocations and efficient use for the benefit of present and future generations”
 - State Water Resources Control Board (SWRCB) is 5-member board, solely responsible for issuing surface water right permits.
 - SWRCB reviews petitions requesting changes to water rights or challenging Regional Board actions
 - 9 Regional Water Quality Control Boards: semi-autonomous 9-member boards which regulate a “basin” organized by hydrologic regions (map of hydrologic regions on next slide)
 - Regional Boards establish water quality control plans and standards, issue waste discharge requirements and determine compliance with applicable laws

California's Hydrologic Regions

- Region 1: North Coast
- Region 2: San Francisco Bay
- Region 3: Central Coast
- Region 4: Los Angeles
- Region 5: Central Valley
- Region 6: Lahontan
- Region 7: Colorado River Basin
- Region 8: Santa Ana
- Region 9: San Diego



Government Agencies – State, cont'd

■ California Water Commission

- 9-member Commission advises DWR and approves DWR's proposed rules and regulations
- Responsible for selecting water storage projects for funding under Proposition 1

– Department of Fish and Wildlife (formerly DFG)

- **Mission:** “to manage California’s diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public”
- DFW determines whether a species warrants protection under the CA Endangered Species Act and also acts as the expert agency for CEQA review of projects that may impact state-listed species

Government Agencies – State, cont'd

■ Delta Stewardship Council

- Created by 2009 legislation, to achieve the coequal goals of “providing a more reliable water supply for California and protecting, restoring, and enhancing the [Sacramento-San Joaquin River] Delta ecosystem”
- 7-member Council responsible for adopting a legally enforceable Delta Plan (adopted in May 2013)

■ Delta Conservancy

- Created by 2009 legislation, comprised of 11-member board and 12 advisors
- Primary agency to implement ecosystem restoration projects in the Delta

Government Agencies - Federal

- **U.S. Bureau of Reclamation**

- Manages & operates the Central Valley Project (CVP)
- Contracts with water districts and utilities for delivery of water

- **Resource Agencies**

- **U.S. Fish & Wildlife Service**

- Determines which terrestrial & anadromous species will be protected under the Endangered Species Act

- **National Marine Fisheries Service**

- Similar duties to the FWS, with authority over marine species and habitat

Government Agencies – Federal, cont.

- U.S. Army Corps of Engineers
 - Primary authority to implement the Federal Clean Water Act §404
- USEPA
 - Regulatory authority to oversee Federal Clean Water Act

Water Service Providers

■ Regional and Local Water Districts

- CA has a variety of special districts and water districts which provide water service
- They have a duty to provide water service under reasonable terms and conditions

■ CPUC-Regulated Water Providers

- Privately-owned utilities are regulated by the CA Public Utilities Commission
- Must get Commission's advance approval for all water rates

Major Constituency Groups

■ State and Federal Water Contractors

- 29 local water agencies have long-term contracts with DWR for delivery of SWP water
 - 250+ long-term contracts between the Bureau of Reclamation and private and public entities for delivery of CVP water

■ San Joaquin River Group Authority

- The SJRGA is a Joint Powers Authority est. in 1995 to protect the water supply of San Joaquin Valley water agencies (8 member agencies)
- Responsible for implementing the San Joaquin River Restoration Agreement, to meet flow objectives for water quality and specie protection

Major Constituency Groups, cont'd

■ Association of California Water Agencies (ACWA)

- Est. in 1910, ACWA is the largest statewide coalition of public water agencies in the country
- Collectively, its ~450 members are responsible for 90% of water delivered in the State

■ Northern California Water Association

- Est. in 1992 to protect the water rights and supplies of the Sacramento Valley Region
- Seeks to implement an integrated regional water management plan for the Sacramento Valley

Major Constituency Groups, cont'd

■ Environmental Water Caucus Members

- 30+ members (non-profit groups and native American tribes)
- Seeks to restore and protect the ecology and water quality of the Delta and surrounding watersheds

■ Think Tanks

- Influence water policy and law, as well as public opinion
- Examples: Public Policy Institute of California; Pacific Institute; Pacific Research Institute

■ Interest Groups

- Environmental groups – e.g. NRDC & Sierra Club
- Environmental justice groups – Community Water Center
- Agriculture groups – CFBF & California Farm Water Coalition
- Water user groups – Southern California Water Committee

Summary of Governing Laws

- Federal Statutes
 - Federal Clean Water Act
 - Federal Safe Drinking Water Act
 - Federal Endangered Species Act
 - National Environmental Policy Act

Summary of Governing Laws (cont.)

- California Statutes
 - Porter-Cologne Water Quality Control Act
 - California Safe Drinking Water Act
 - California Endangered Species Act
 - California Environmental Quality Act
 - Delta Reform Act
 - Fish & Game Code Section 5937 and Public Trust Doctrine
 - Sustainable Groundwater Management Act

Clean Water Act

- 33 U.S.C. § 1251 et seq. (1972)
- Prohibits the discharge of pollutants into the “waters of the United States” without a permit (either a “section 404” permit or NPDES permit)
- Authorizes the Environmental Protection Agency (EPA) to implement water quality and wastewater standards
- Allows States to implement the National Pollutant Discharge Elimination System “NPDES” program as a State program

Clean Water Act (cont'd)

- In CA, NPDES Permit is combined with State's Waste Discharge Requirement (to meet federal and state water quality standards)
- NPDES Permits include effluent limits, best management practices, monitoring & reporting requirements, etc.
- *Current Issue:* What is a "Water of the United States?"
 - *Rapanos* decision
 - USEPA Report: "Connectivity of Streams and Wetlands to Downstream Waters" – Jan. 2015

Clean Water Act (cont'd)

- Section 404 regulates the discharge of dredged and fill material “into waters of the United States,” including wetlands
- Administration and enforcement authority shared by U.S. Army Corps of Engineers and EPA (Corps & EPA currently updating regs)
- Corps issues 404 permits
- EPA develops environmental criteria for permits

Safe Drinking Water Act

- 42 U.S.C. § 300f et seq. (1974)
- Authorizes the EPA to set water quality standards for drinking water
- EPA regulations contain legally enforceable standards for certain contaminants (See 40 C.F.R. §§ 141-143)
- Regulatory and oversight authority over “public water systems” and drinking water is delegated by EPA to CA’s Department of Public Health, Water Program
- A “public water system”= a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals

Porter-Cologne Water Quality Control Act

- California Water Code § 13000 et seq. (1969)
- Grants the State Water Resources Control Board authority over State water quality policy
- Establishes 9 Regional Water Quality Control Boards to oversee regional water quality
- Regional Boards establish regional water quality control plans, issue NPDES permits, & issue Water Quality Certificates (pursuant to § 401 of CWA as condition of 404 permit)

Federal Endangered Species Act

- 16 U.S.C. § § 1531-1544 (1973)
- Governs listing of species as endangered or threatened, and designation of critical habitat
- Section 7
 - Requirement that Federal agencies "conserve" threatened and endangered species
 - Requirement that Federal agencies "consult" with USFWS or NMFS to ensure that any discretionary action carried out by them is not likely to jeopardize the continued existence of a listed species or adversely modify critical habitat
 - If the action would cause "jeopardy," the agency must develop "reasonable and prudent alternatives to the proposed action
 - Typically, consultation is accomplished through a Biological Opinion
- Key Issues:
 - What is a reasonable and prudent alternative? How do economics factor into this determination.
 - How much discretion may the agency exercise before triggering the Act?

Federal Endangered Species Act (cont'd)

- Section 9
 - "Take" prohibition
 - How do you prove take?
 - Key Issue
 - Can habitat modification constitute "take?"
- Section 10
 - Incidental take permits for non-Federal actors
 - "No Surprises" and "safe harbors" policies
- Key Issues
 - Can a federal agency obtain protection under Section 10?
 - What of a "Good Neighbor" policy?

California Endangered Species Act

- California Fish & Game Code § 2050 et seq. (1984)
- Similar to Federal ESA and administered by the Dept. of Fish & Wildlife (DFW)
- Requires state agencies to consult with DFW to ensure that their actions will not jeopardize listed species

Delta Reform Act of 2009

- Established Delta Stewardship Council (Council), Delta Watermaster position, Delta Independent Science Board and Delta Science Program
- Required Council to develop Delta Plan to achieve “coequal goals” of reliable water & ecosystem restoration
- The Delta Plan = long-term management plan containing regulatory policies and nonregulatory recommendations for “covered” government actions

Dam Operations/Sufficient Flows

- Fish & Game Code § 5937: “The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.”
- Fish & Game Code § 5946 requires Water Board to condition water right permits on compliance w/ § 5937
- *Current Issue*: the Water Board’s obligation/authority to enforce § 5937; compliance with § 5937 & meeting consumptive water demands

Public Trust & Reasonable Use

- Public Trust Doctrine
 - Roman Law
 - Mono Lake decision
 - Continuing obligation for the State to supervise water uses
 - *Scott River* litigation – Does the public trust doctrine apply to groundwater?
- Article X, Section 2 of the California Constitution
 - Waste and unreasonable use
 - Placing the water resources of California to the fullest use of which they are capable
 - What's unreasonable?
 - Swimming pools in Los Angeles
 - Alfalfa in the desert
 - Fall X2

California Environmental Quality Act (CEQA)

- Public Resources Code § 21000 et seq. (1976); CEQA Guidelines (14 CCR § 15000 et seq.)
- Applies to any activity undertaken, approved or financed by a state or local governmental agency
- Seeks to inform governmental decisions by requiring the agency to assess the environmental effects of a proposed “project”
- Public agency must impose “feasible” alternatives or mitigation to lessen significant environmental effects of the proposed project
- Certain “projects” subject to CEQA must identify the source of water supply for the proposed project (See Water Code § 10910 et seq.)

National Environmental Policy Act (NEPA)

- 42 U.S.C. § 4321 et seq. (1970)
- Corresponding regulations promulgated by the Council on Environmental Quality (40 CFR §§ 1500-1508)
- Applies to any Federal agency decision regarding discretionary actions
- Requires a federal agency to prepare a detailed statement (EIS) assessing the environmental impact of, and alternatives to, a “major federal action significantly affecting the quality of the human environment”

Discussion

Thanks!

Please feel free to call or e-mail with questions

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