California Water Management
Legal and Institutional Framework

Presented to the Water Education Foundation
Water 101 Workshop
*February 7, 2019*

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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

Water Laws and Regulations

Environmental Laws and Regulations

Case Law
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
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)
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!

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