

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

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Overview

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

California's Water Infrastructure



Summary of Governing Laws

- Clean Water Act
- Safe Drinking Water Act
- Porter-Cologne Water Quality Control Act
- Endangered Species Act – State and Federal
- California Environmental Quality Act and National Environmental Policy 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*: dividing line between State and Federal permit requirements (if permit requirement is state mandate imposed on state subdivisions, cost reimbursable by state)

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 of Act requires federal agencies to consult with expert agencies (FWS or NMFS) to ensure that any action carried out by them is not likely to jeopardize the continued existence of a listed species or adversely modify critical habitat
- Section 7 consultation often results in issuance of a Biological Opinion by FWS or NMFS, which recommends Reasonable and Prudent Alternatives to the proposed action to avoid jeopardy to a listed species
- *Example:* Bureau of Reclamation required to consult with FWS & NMFS regarding impacts to Delta Smelt and Salmonids resulting from continued coordinated operation of the Central Valley Project and the State Water Project—resulting Biological Opinions required certain water flows and restricted water diversions and pumping (latest Biological Opinions found invalid by court and remanded to expert agencies)

Endangered Species Act (cont'd)

- Section 9 prohibits “take” of listed species, defined as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”
- Under Section 10, non-federal actors (States & private parties) must obtain an Incidental Take Permit, which authorizes the incidental “taking” of a listed species, subject to a Habitat Conservation Plan (seeks to mitigate impacts)

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

Other California Laws (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

Other California Laws (Streambed Alteration)

- Fish & Game Code § 1602 requires an entity to notify DFW of any proposed activity that may substantially modify a river, stream, or lake (i.e. changes to flows, removal or deposit of materials)
- If DFW determines that the activity may substantially adversely affect fish and wildlife resources, entity must comply with a Lake or Streambed Alteration Agreement

Other California Laws (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

Other California Laws

(Public Trust & Reasonable Use)

- All CA water rights are subject to public trust (common law) and reasonable use (state Constitution & statutory code) doctrines
- State holds water in “trust” for public uses & Water Board has continuing jurisdiction over water rights to protect public trust and ensure reasonable use of water
- In Mono Lake decision (*Nat'l Audubon v. Superior Court*, 33 Cal. 3d 419) CA Supreme Court held that water rights are subject to public trust but State/Water Board may balance interests and authorize actions that “harm” public trust uses
- What constitutes “unreasonable” use and “harm” to public trust may change over time, with water conditions and water demands

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”
- Application Example: Bureau of Reclamation plans to change operational regime of Central Valley Project in response to recommendations made in fish agency biological opinion

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 the "Safe, Clean, and Reliable Drinking Water Act of 2012" (if the bond bill is passed)

■ 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

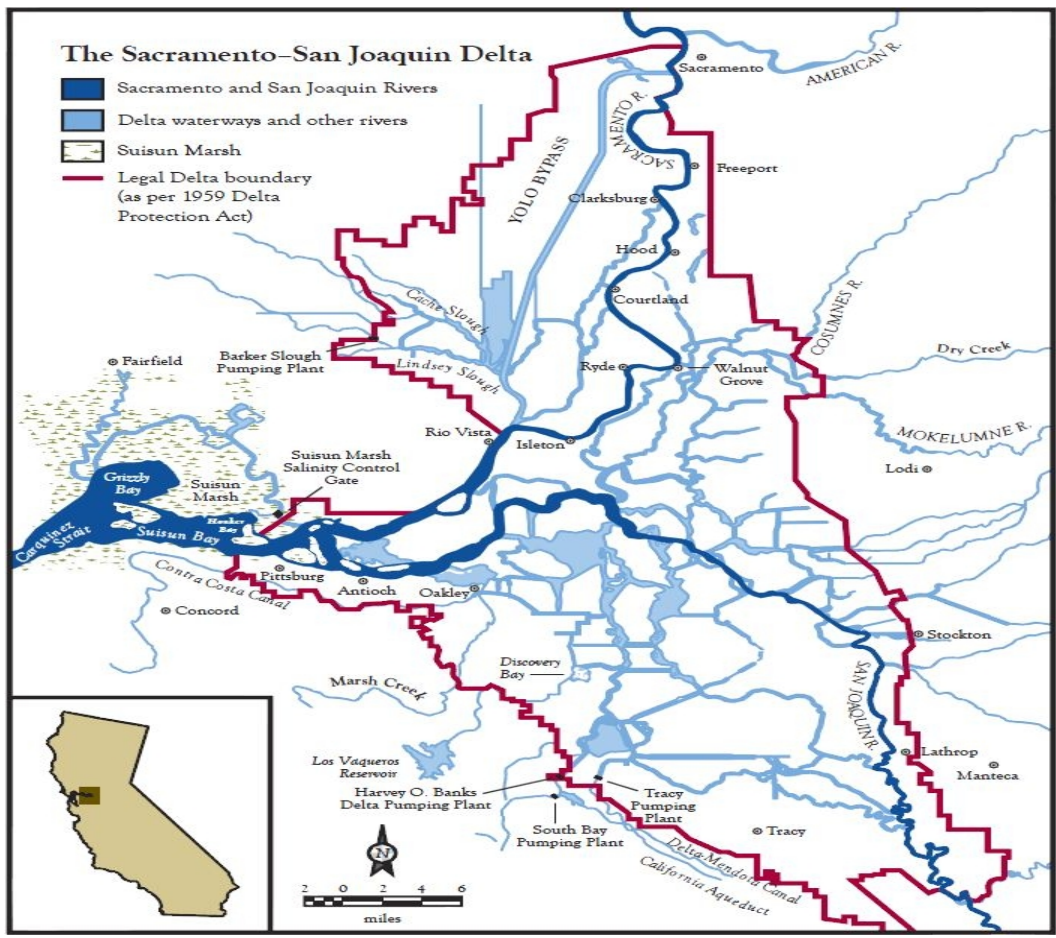
■ Delta Stewardship Council

- Created by 2009 water 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)
- (Map of “Delta” on next slide)

■ Delta Conservancy

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

San Joaquin-Sacramento River 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
- Fish and Wildlife Resources Agencies
 - **Fish & Wildlife Service**
 - Determines which plant and animal species will be listed for protection under the Endangered Species Act
 - Issues Biological Opinions which impact water management and deliveries in CA
 - **National Marine Fisheries Service**
 - Similar duties to the FWS, with regulatory authority over marine species and habitat

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
- *Current Issue:* Bay Delta Conservation Plan and development of new north Delta water conveyance for CVP and SWP

■ 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 species 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

- Typical Dividing Line on Issues: those who want water for in-stream uses (fish/wildlife/water quality) vs. those who want water for other uses (domestic use/irrigation)
- In-Stream Examples: Pacific Coast Federation of Fisherman's Associations; Sierra Club; Natural Resources Defense Council
- Water-User Examples: California Farm Bureau Federation; water agencies and suppliers

Discussion

Any questions?

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